

AGREEMENT BETWEEN MIDLAND ISD AND CARVER CENTER

This Agreement (the “Agreement”) is made and entered into as of March 25, 2019 (“Commencement Date”) by and between MIDLAND INDEPENDENT SCHOOL DISTRICT, a public independent school district and political subdivision of the State of Texas, (“MISD” or the “District”) and THE CARVER CENTER (“Operating Partner” or “OP”) (together, the “Parties”) to operate CARVER CENTER (“School”) beginning on June 1, 2019. The purpose of this Agreement is to set forth the objectives, understandings, and agreements of the Parties in connection with the establishment and operation of Senate Bill No. 1882, adopted by the 85th Texas Legislature in 2017, codified as Texas Education Code §§ 11.174 and 42.2511 (“SB 1882”), which allows this cooperative partnership between a public education institution and an in-district charter.

ARTICLE I. RECITALS

- 1.01 Independent School District. Midland Independent School District is an independent school district created in accordance with the laws of Texas.
- 1.02 Authority to Contract. The Board of Trustees of the MISD is empowered by Texas Education Code (“TEC”), §§ 11.157 and 11.174, to contract with a public or private entity for that entity to provide educational services for the District.
- 1.03 Statutory Authorization. This Agreement is made pursuant to and in accordance with SB 1882, which allows school districts to partner with either an open-enrollment charter school or other eligible entity to operate a district campus, including an in-district charter as in this Agreement.
- 1.04 Non-Profit Organization. Carver Center is an organization that is exempt or has applied for exemption from taxation under Section 501(c)(3), Internal Revenue Code of 1986 (26 U.S.C. § 501(c)(3)), and is hereby contracted to operate a charter granted to the School under TEC Subchapter C, Chapter 12 and is eligible under TEC §§ 11.174 and 12.101(a) to operate the School.
- 1.05 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. 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 June 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. Failure of the Texas Commissioner of Education to approve the Parties’ relationship as an eligible partnership under TEC 11.174 shall render this Agreement null and void.
- 1.06 The District has consulted with campus personnel regarding provisions to be included in this Agreement. The District’s consultation with campus personnel occurred at a meeting on January 30, 2019 whereby personnel were able to ask questions and receive information. At that meeting, the District informed campus personnel of the opportunity to apply for an “assignment” at the School and campus personnel understand that all assignments shall be determined by OP and the District (as detailed in Article IX below) and that OP may have a separate Employee Handbook than what is required of the District. The District recognizes that all rights and protections afforded by current employment contracts it has with personnel shall not be affected by this Agreement.

- 1.07 Consideration. In consideration of the mutual agreements set forth in this Agreement, and for other good and valuable consideration, the Parties agree as follows:

ARTICLE II. PURPOSE OF AGREEMENT

- 2.01 Contract for Services. This Agreement constitutes a contract for services.
- 2.02 Premise of Agreement. This Agreement is predicated on an understanding that students benefit when decisions regarding educational programs, operations, and student services are made at the school level and that autonomy and accountability are mutually reinforcing principles.
- 2.03 Student Achievement. The primary purpose of this Agreement is to improve student outcomes by allowing the District to partner with OP to operate the School as an independent campus subject to transparent accountability requirements, which are set by TEC Chapters 39 and 39A. The provisions of this Agreement shall be construed and applied to achieve this purpose.
- 2.04 Continuation of Agreement for the Benefit of Students. The Parties intend that this Agreement shall continue in effect and may be renewed for a three (3) year term in accordance with the provisions of Article IV.

ARTICLE III. DEFINED TERMS

- 3.01 School Campus. “School Campus” has the meaning assigned in the Texas Administrative Code Title 19, § 97.1051(3) and includes all components of the operation of the campus, including, without limitation, the grade levels served, the courses taught, the instructional materials, staffing, budgetary allocations, scheduling, transportation, and other services and responsibilities associated with school operation.
- 3.02 Facilities. “Facilities” are defined as the building(s) located on the School Campus and related equipment, furnishings, and property improvements, including any athletic fields and related improvements, and the land on which the building(s) and related improvements are located as more fully defined in Article XIII.
- 3.03 Material Breach. A “Material Breach” of this Agreement shall include the failure of a Party to comply with or fulfill any material obligation, condition, term, representation, warranty, provision, or covenant contained in this Agreement, including without limitation any failure by either Party to meet generally accepted fiscal management and government accounting principles, or comply with all Applicable Law under Paragraph 3.04.
- 3.04 Applicable Law. “Applicable Law” means all state and federal laws, rules, regulations, and administrative and judicial determinations and decisions that govern the performance of this Agreement, as they currently exist or as they may be adopted, amended, or issued during the Term of this Agreement under Paragraph 4.01.

ARTICLE IV. TERM AND TERMINATION

- 4.01 Term. The term of this Agreement shall begin on the Commencement Date and end on June 30, 2024 (“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 another three (3) years. This Agreement is subject to the termination provisions detailed in this Agreement.
- 4.02 Notice of Non-Renewal. If this Agreement has not been terminated *and* the District anticipates opting to not-renew the Term of this Agreement, then no later than June 30, 2021, the District shall notify the OP in writing of its intent to not-renew this Agreement.
- 4.03 Termination Right to a Public Hearing. If the School successfully achieves the student outcome goals specified in **Addendum A-3**, attached, the District must hold a public hearing at least sixty (60) days prior to any District action to terminate the Agreement. If the School fails to achieve the student outcome goals specified in **Addendum A-3**, the District shall not extend this Agreement without a public hearing at least sixty (60) days prior to any District action to extend or renew this Agreement.
- 4.04 Termination by Mutual Consent. This Agreement may be terminated at any time by mutual written agreement of OP and the District if termination is effective no sooner than the end of the then current school year.
- 4.05 Termination for Cause. Either Party may terminate this Agreement if the other Party fails to remedy a Material Breach of this Agreement within sixty (60) days after written notice by the non-breaching Party of such Material Breach; provided, however, that if the breach would affect the safety or well-being of a student or is not reasonably capable of being cured, then no such notice and opportunity to cure shall be required.
- 4.06 Termination Related to Academic Performance. The District may terminate this Agreement if the School fails to achieve three out of the four student outcome goals specified in **Addendum A-3**, attached, after the third year of School operation under this Agreement. Termination under this paragraph shall be effective at the end of the then current school year 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 determination of student outcome goals.

ARTICLE V. RELATIONSHIP OF THE PARTIES

- 5.01 Nature of Relationship. The relationship between the Parties hereto shall be that of contracting parties. OP shall operate as an independent contractor to MISD and shall be responsible for delivering the services required by this Agreement. The relationship between and among the Parties was developed and entered into through arms-length negotiations and is based solely on the terms of this Agreement and such contracts and agreements as may be created in the future from time to time between the Parties and reduced to writing.
- 5.02 No Agency. Neither Party will be the agent of the other Party except to the extent otherwise specifically provided by this Agreement. Neither Party has the express nor implied authority to bind the other Party to any contractual duty other than what is specifically stated in this Agreement.

- 5.03 No Common Control. Neither Party is a division, subsidiary, affiliate, or any part of the other Party, nor has the right or authority to exercise any common control of any other Party. Nothing herein shall be construed to create a partnership or joint venture by or between MISD and the OP.
- 5.04 Assurance of Independence. The OP and/or the School's governing body shall remain independent of MISD. Both OP's and the School's governing bodies are not and shall not be comprised of any members of the District's Board of Trustees, the District's Superintendent, or any staff member responsible for granting this Agreement.

ARTICLE VI. APPLICABLE LAWS

- 6.01 Compliance with Applicable Law. The Parties shall perform their respective obligations under this Agreement in compliance with Applicable Law. The Parties stipulate that Applicable Law includes, but is not limited to, Title VI of the Civil Rights Act of 1964, as amended; Title VII of the Civil Rights Act; Title IX of the Education Amendments of 1974; Section 504 of the Rehabilitation Act of 1973 ("Section 504"); the Age Discrimination Act of 1975; the Americans with Disabilities Act; the Individuals with Disabilities in Education Act ("IDEA"); the Family Educational Rights and Privacy Act of 1974 ("FERPA"); the Every Student Succeeds Act to the extent specified in the Act; the Texas Education Code to the extent the Schools are not exempt; record retention laws and conflicts of interest laws under the Texas Local Government Code; the Texas Local Government Code, to the extent it applies to school districts; the Texas Open Meetings Act and Texas Public Information Act under the Texas Government Code; and any amendments, interpretations, and reauthorizations of the foregoing.
- 6.02 Scope of Applicable Law. The Parties agree that certain laws and regulations that apply to other schools within the District may not apply to the Schools or its operation as a consequence of the grant of a campus charter under Texas Education Code, Chapter 12. Additionally, the Schools continue to be exempt from any law or regulation from which MISD is exempt under the terms of its Local Innovation Plan adopted under Texas Education Code (TEC) Section 12A.005. The Parties further agree that, except as provided in this Agreement, as identified in **Addendum A-2**, or required by Applicable Law, no provision, rule, or guideline of Texas law otherwise applicable to a governing body or school shall apply to the School or its operation.
- 6.03 Immunity. Nothing contained in this Agreement shall be read to waive the immunity granted by TEC, Chapter 22, Subchapter B, and TEC, Chapter 12, Subchapter C.

ARTICLE VII. GOVERNING POLICIES

- 7.01 Limitation on Authority. An educational or administrative service necessary for operation of the Schools, but not specifically reserved for MISD to provide under this Agreement, shall be provided and solely managed by OP insofar as such delegation is permitted by state and federal law. A service is provided by OP if OP performs the service, contracts for its performance, or otherwise ensures and oversees provision of the service. Neither this paragraph nor this Agreement prohibits MISD from contracting with another entity for the provision of services for the campuses. Any and all services contracted for or performed for the Schools must be made in accordance with the responsibilities detailed in this Agreement.

- 7.02 Policy Election. OP shall operate in accordance with the District’s Charter Policy specified in **Addendum A-1** and other policies specified in **Addendum A-2**, as they currently exist or as they may be amended, so long as any such amendment does not constitute a Material Breach of this Agreement. If both Parties agree that an amendment amounts to a Material Breach, then the Parties may agree to operate under a prior (non-amended) policy so long as the prior policy is in compliance with the then-current Applicable Laws.
- 7.03 Adoption and Publication of School Policies. OP shall have the final decision in adopting policies applicable to the Schools, including the policies specified in **Addendum A-2**. All policies adopted by OP shall comply with Applicable Law. OP shall also provide drafts of proposed policies or proposed amendments to policies currently in effect to MISD for review and comment no later than 30 days prior to the meeting at which the policies are to be considered for adoption or amendment. OP will publish adopted policies and MISD Board Policies applicable by law or by election under this Agreement on the School’s website.
- 7.04 Future Waivers and Exemptions. Pursuant to 19 TAC § 97.1075(d)(6), the Schools are exempt from laws and rules to the fullest extent allowed by TEC, Chapter 12, Subchapter C, and are exempt from all MISD policies except for laws, rules, and policies that are specifically identified as applicable to the Schools in this Agreement and/or incorporated by reference herein. The Parties will collaborate in applying for waivers from any restrictions imposed by Applicable Law when it is jointly determined that such waiver would expand opportunities for students enrolled in the Schools. If MISD is relieved from compliance from certain state or federal law or regulation through a waiver, adoption, or amendment of a local innovation plan under Chapter 12A, Texas Education Code, the Schools are automatically relieved from compliance regardless of whether such relief is addressed in this Agreement. Further, if a waiver from a local policy, procedure, protocol, or other requirement is granted to another school in the District that serves students at the same grade levels offered at the Schools, and the policy is not waived by this Agreement, the waiver applies to the Schools unless MISD notifies the Schools otherwise in writing within 60 days of the waiver’s application to the other MISD school(s).

ARTICLE VIII. PERFORMANCE REQUIREMENTS

- 8.01 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. The MISD Superintendent or designee shall develop a School Performance Framework (“SPF”) by which all schools and programs will be evaluated, including the Schools. The SPF will inform MISD decisions related to campus replacement, restart, or closure. 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.
- 8.02 Performance Measurement, Methods, and Timeline. The Parties agree that achievement of annual student academic and financial performance targets agreed upon by the Parties and specified in **Addendum A-3** and **Addendum A-4** will be determined using the methods, indicators, and timelines specified in that Addendum. OP agrees to work, with the assistance of the MISD Finance Department, to provide financial reports in coordination with MISD. OP also commits to use substantially all funds received pursuant to this Agreement towards the Schools.

- 8.03 Performance Consequences. The Parties agree to specific consequences in the event that the OP does or does not meet the annual academic or financial performance expectations and goals described in **Addendums A-3, A-4 and A-5.**
- 8.04 Responsibilities of OP Governing Board. The governing board of OP agrees that it is responsible for ensuring that OP achieves performance goals specified in **Addendum A-3** and is obligated to oversee management of the Schools and intervene as required to ensure that performance goals are achieved.
- 8.05 Monitoring Performance. The District shall retain the right to monitor the performance of the Schools and OP under **Addendum A-3.**

ARTICLE IX. RESPONSIBILITIES

- 9.01 OP Responsibilities: The OP shall have the 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 Schools, or request removal by the District of District employees. OP's request for removal of a District employee shall not be unreasonably denied and requests shall coincide with nonrenewal timelines. The District shall not assign District contracted teachers or administrators to work at the Schools without the written agreement of the OP. 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 select and manage the School's Executive Director (who shall be employed by the OP).

9.01.2 *Teaching Staff.* The OP shall have full and complete authority over staffing decisions at the school. District employees shall have the opportunity to apply for an assignment to the OP. All assignments and rescissions of such assignments to the OP shall be determined by the Executive Director in accordance with Federal and State law as well as District policies and administrative procedures. District Human Resources shall continue to post open positions at OP at the Executive Director's request. Any necessary non-renewals of District teaching staff will be led by the District Human Resources Department with support and documentation provided from the Executive Director.

9.01.3 *Miscellaneous.* A person may not be employed by or serve as a teacher, librarian, educational aide, administrator, or school counselor for OP 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). OP may contract with the District to perform all criminal history background checks required by Applicable Law. If OP does not contract with the District to perform criminal history background checks, OP must perform these checks itself. OP and 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 Any and all legal issues that may arise with the District's employees with regard to their working relationship with OP shall be handled by the District's legal counsel at the District's cost. The Executive Director at OP shall have access to the District's legal counsel for legal assistance regarding school business at the District's cost.

9.02 District Responsibilities: The District shall maintain control of and shall be responsible for all non-academic and non-curriculum staff and personnel, which includes but is not limited to the below services. The amount the District retains for these services may not exceed the District average cost per student for similar services rendered.

9.02.1 *Maintenance*: The District shall maintain the School Campus and Facilities by overseeing and contracting for the maintenance of the campus via janitorial staff, grounds keeping, and necessary repair work. The District shall provide the utilities for operating the School and shall withhold funds for the costs associated with the same.

9.02.2 *Special Education*: The District shall have authority to operate, maintain, oversee, and intervene in the School's Special Education program, which OP shall comply with in accordance with State and Federal laws, including but not limited to the IDEA and Section 504. The District shall retain final say in Special Education matters.

9.02.3 *Record Keeping*: The District shall appoint and employ the personnel responsible for maintaining necessary records at the district level, which shall include, but not be limited to, student attendance, and State and Federal funds accounting. The OP will utilize the district's Student Information System (SIS). The District will perform the same PEIMS functions, including all reporting to TEA, that it performs for all current District campuses, as part of its administrative fee. The OP will also participate in the district's Unified Enrollment software system.

9.02.4 *Transportation*: The District shall provide all necessary transportation to and from the School and school related activities and to and from the School and a regular student transportation route on the days that the District is in operation. For days where OP needs transportation and the District is not operating its transportation services, OP may contract back to the District for those additional services at OP's cost. .

9.02.5 *Health*: The District shall determine and oversee the School's nurse and/or any other health care provider located on the District's premises.

9.02.6 *Food Services*. The District shall provide food and cafeteria services to the School in the manner detailed in this Paragraph. Food Services shall be provided by the District on an annual basis effective July 1st of each year during the term of this Agreement. The District's responsibility to providing food services is for the days that the District is in operation; for days where the District is not in operation and OP needs food services, OP may contract back to the District for those additional services at OP's cost. The District will not be responsible for any meals served to ineligible students by the District's food service vendor. OP is responsible for the distribution and collection of meal applications for all students.

9.02.7 *Substitute Teachers*. The District shall provide substitute teachers to the School upon request by the School in accordance with District's procedures and policies and/or the procedures and policies of the District's third-party provider for substitute teachers.

9.02.8 *Miscellaneous*. The District shall staff and oversee the Schools' security team, registrar, secretaries, payroll, accounting staff, purchasing staff, human resources staff, and other administrative support staff. The District will assist the OP's Executive Director with any campus needs promptly as the District would for any other District campus.

9.02.9 *For District Employees.* The District shall be responsible for all salaries, compensation and benefits of its employees assigned to OP and shall be responsible for maintaining its necessary personnel records. The District shall continue to maintain records of the OP's Executive Director.

ARTICLE X. SCHOOL OPERATIONS

- 10.01 OP's Governing Board. OP represents that a true and accurate list of its current board members is attached to this Agreement as **Addendum A-9**. If there is any change to the board members during the Term of this Agreement, OP shall provide written notice to the District of the change within 30 days. No District Board of Trustees member, Superintendent, or any staff member responsible for granting this Agreement shall be appointed to OP's Governing Board. District staff may not comprise a majority of OP's Governing Board.
- 10.02 Budgetary Authority of OP. OP has sole authority to approve or amend the budget for the School.
- 10.03 Executive Director: The Chief Administrator of the School shall be the Executive Director, who shall be appointed by the OP. The Executive Director shall oversee the work of the School in executing effective strategies toward meeting the academic needs of students. The Executive Director shall be assigned to record, prepare, disseminate, and maintain meeting minutes. The School's overall educational framework, mission, budgetary approval, and policies shall be developed and adopted by OP. The School shall be subject to the direction, control, policies, practices, and procedures of the Executive Director, subject to the requirements of this Agreement. The Executive Director shall ensure that the curriculum meets the requirements of state law, subject to the academic program review.
- 10.03.1 *OP Employee.* OP shall hire and manage at least one employee at the School, which may be, but is not limited to, the Executive Director.
- 10.04 Grade Levels. The School shall serve students in grade levels 1 through 6. OP shall not change the grade levels served at the School without the District's written consent.
- 10.05 Enrollment Policies. Enrollment shall be open to students who reside in the District and who qualify as gifted and talented under MISD's EHBB (Legal) and (Local) policies.
- 10.05.1 OP is prohibited from discriminatory admission, suspension, or expulsion of a student on the basis of a student's national origin, ethnicity, race, religion, disability, or gender.
- 10.06 Discipline and Expulsion Policies. OP has reviewed and understands and agrees that the Schools are subject to the District's policies governing student discipline, suspension, and expulsion.
- 10.06.1 *Alternative Education Placements.* Any student assigned to a School can be placed in a MISD alternative setting through a process similar to the process used for all other students in the District. MISD and OP will work in good faith to implement this process fairly and effectively. OP shall not have to pay any additional cost for an OP student that is placed at a District Alternative Education school.
- 10.07 Schedule. OP will have 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. OP shall continue to be a part of the District contract for Right at School and shall receive their portion of any reimbursement made to the District from Right at School. OP shall continue to receive orchestra as an extra-curricular program at no additional cost to OP.

- 10.08 District Meetings, Initiatives, and Training. School staff under the supervision and control of OP will not be required to participate in District training events or other meetings unless directed by OP. OP agrees that all School staff shall comply with and receive training required by Applicable Law.
- 10.09 Contractor Criminal History Background Checks. The District shall conduct criminal history background checks for all vendors and contractors selected by the District as well as for all District employees. The District shall allow OP to contract with the District for criminal background checks for all vendors and contractors selected by OP as well as for all OP employees. The District will alert the OP if there is a criminal history alter on any OP employee or any District employee assigned to OP. The District and OP shall adhere to reporting requirements, definitions, and laws further detailed in Paragraph 11.03.
- 10.10 Technology Infrastructure; Network Services. The District shall be responsible for providing, repairing, and maintaining technology infrastructure and network services at the School to the extent reasonably necessary to permit OP to establish its own internet and phone service at the School of a standard reasonably comparable to other District schools. OP shall provide the District with a list of equipment purchased and collaborate with the District to ensure consistency between the standard equipment and the needs of the School. The initial information technology equipment located at the School as of the commencement of the Term is included in the term “furnishing.”
- 10.11 Media Requests. The Parties agree to follow district processes on responses to any media requests or press releases related to the School. This requirement does not apply to general communications regarding OP or the District that may include references to the School.

ARTICLE XI. STAFFING

- 11.01 Employment. OP and MISD shall have the respective authority to select personnel and staff assignments as detailed and limited by Article IX. However, OP shall have sole authority to determine whether any open positions exist in the Schools and shall have initial and final authority to approve the assignment of an MISD employee applicant to the Schools, irrespective of seniority or other MISD-imposed criteria, as detailed and limited by Article IX. Requests for additional District staff by OP shall be based on enrollment and District standard practices and shall not be unreasonably denied. Any and all personnel and staff who apply for and are selected for assignment to the Schools and who are current MISD employees shall remain MISD employees. However, OP shall have authority to supervise, manage, and rescind the assignment of any MISD employee at the Schools. Personnel and staff of the Schools that are employees of MISD are eligible to participate in the Teacher Retirement System of Texas (“TRS”); MISD shall notify TRS of its eligible employees. However, it has been explained to all assigned staff and all assigned staff understands that they may be subject to separate rules for the Schools and may be reassigned as determined by the OP. OP’s employees are also eligible for the TRS. District shall also notify TRS of OP’s eligible employees who elect to participate in TRS.

11.01.1 *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 OP shall remain District employees and will work under the contractual and termination obligations of the District. The OP's Executive Director shall have final authority over which employees are hired or assigned to work at OP, which may include non-District employees. However, any proposed adverse action against a District 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 OP to another assignment within the District shall not be considered an adverse employment action.

- 11.02 Documentation. The OP shall explain to the School's Executive Director and administrative team that MISD procedures surrounding employment contracts shall be applicable to all MISD employees, and as such the administration shall document employment and performance concerns in accordance with the MISD's policies specified in **Addendum A-2**.
- 11.03 Criminal History Background Checks. MISD shall perform all criminal history background checks required by Applicable Law, including without limitation those required for School personnel, applicants, vendors, contractors, and volunteers and shall take action required by law upon completing the background check. OP agrees to provide all information required for criminal history background checks to MISD in a timely manner. Unless contracted for by the District as stated in Paragraph 10.12, OP shall perform all criminal history background checks required by Applicable Law, including without limitation those required for vendors and contractors, and shall take action required by law upon completing the background check. OP and 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. OP shall notify the District of any unlawful conduct or criminal misconduct discovered by or reported to the School's Executive Director within seven (7) business days of notice. OP shall comply with any subsequent investigation by the District as OP understands that the District is bound by the reporting requirements of TEC §§ 21.006 and 22.087. Additionally, OP also understands that the District's Superintendent may investigate and report any educator misconduct that he or she believes in good faith may be subject to sanctions under 19 Administrative Code, Chapter 249 and/or Chapter 247, Educators' Code of Ethics. OP's failure to comply with this paragraph's reporting requirements shall amount to a Material Breach of this Agreement. MISD shall perform all criminal history background checks required by Applicable Law, including without limitation those required for School personnel, applicants, vendors, contractors, and volunteers and shall take action required by law upon completing the background check. OP agrees to provide all information required for criminal history background checks to MISD in a timely manner.
- 11.04 Child Abuse Reporting. All MISD and OP employees working at the Schools shall comply with all Applicable Law governing mandatory child abuse and neglect reporting, including but not limited to the Texas Family Code Chapter 261, TEC §§ 38.004, 38.0041, and the Texas Administrative Code § 61.1051.
- 11.05 Certified Personnel. School personnel shall at a minimum have the qualifications required by Applicable Law for the assigned role except to the extent a requirement has been lawfully waived or the individual is subject to a lawful exemption under the campus charter or local District of Innovation plan.

- 11.06 Employment Records. MISD is responsible for maintaining the employment records for all School personnel, and all employment records of employees are the property of MISD. The District shall continue to maintain OP's Executive Director's records.
- 11.07 Employee Complaints and Grievances. The Parties agree that MISD employees' complaints and grievances will be governed by MISD's policies and OP's employees' complaints and grievances will be governed by OP's policies.
- 11.08 Non-Solicitation. OP agrees it will not solicit or hire any MISD employees outside of mutually agreed upon transfer windows unless and until it receives written confirmation from MISD that the employee has been released from any contractual obligations with MISD. MISD agrees it will not solicit or hire any employee of OP, outside of mutually agreed upon transfer windows, during any school year, summer school, or after July 1 of any year, unless it receives written confirmation from OP that the employee has been released from any contractual obligation with OP. Nothing in this Agreement alters the nature of OP employees or changes the employment relationship between any employee and his/her employer.
- 11.09 Teacher Retirement System. Faculty and staff of the Schools are employees of MISD and will participate in the Teacher Retirement System of Texas. An employee of OP is eligible for membership in and benefits from the Teacher Retirement System of Texas if the employee would be eligible for membership and benefits if holding the same position at MISD.
- 11.10 District Non-Renewal. For purposes of personnel and employment decisions under Article XI of this Agreement, OP shall follow the District timelines for the non-renewal deadline which District employees will not be accepted or asked to return to the School for the following school year.
- 11.11 Nepotism Restrictions. The School shall comply with all nepotism restrictions as more fully described in **Addendum A-10**, including its ATTACHMENT, both of which are attached to this Agreement. All persons employed by School prior to the effective date of this Agreement will be considered grandfathered in and exempt from nepotism restrictions.
- 11.12 . Dissolution of 501(c)(3) or Termination of Former MISD Administrator. In the event that OP is dissolved or OP's Administrator is terminated *and* that administrator is a former MISD administrator ("Administrator" for this Paragraph only), then MISD shall hire its former Administrator back for employment with MISD in the same professional capacity and pay grade as they were prior to employment with the 501(c)(3). The District does not guarantee an exact position. If the Administrator's employment with OP was terminated for cause based on the Administrator's actions, then MISD has no obligation to consider re-hiring the Administrator.

ARTICLE XII. ACADEMIC PLAN

- 12.01 Curriculum and Program. OP will have 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 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 Paragraph 9.02).

12.01.1 *Special Education and 504 Plans.* OP has decided to contract back to MISD for the provision of Special Education Services. Therefore, MISD shall maintain and oversee the School's special education program and 504 plans. OP and the District agrees to comply with all Applicable Laws, including but not limited to the Individuals with Disabilities Education Act ("IDEA") and Section 504 of the Rehabilitation Act of 1973.

- 12.02 Educational Plan. OP will implement the education plan described in its proposal to operate the School, attached as **Addendum A-6**. OP will ensure that curriculum satisfies the minimum requirements outlined in 19 Texas Administrative Code §§ 74.2, 74.3. OP agrees to notify MISD of any significant alteration of this plan.
- 12.03 Selection of Instructional Materials. OP has sole authority to select instructional materials (as defined in TEC, §31.002(1)) for the Schools 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.
- 12.04 Assessments. OP has sole authority over the selection and administration of student assessments not required by state or federal law.
- 12.05 Extracurricular Programming and Participation. Students enrolled at the Schools may join any extra-curricular activity offered to MISD students to the same extent as other students so long as participation does not interfere with the School's schedule, tutorials, or other parts of the program as determined by the OP School leader and so long as such enrollment adheres to the rules and guidance of the University Interscholastic League ("UIL").
- 12.06 Student Behavior. Students enrolled at the Schools will be required to follow MISD's Code of Student Conduct. OP agrees to notify MISD of any other modification in writing at least 60 days in advance of implementation. OP agrees that a student shall not be suspended or expelled from the Schools for attendance or academic performance reasons.
- 12.07 Due Process. OP will cooperate with MISD to ensure that due process is afforded with respect to student removals and expulsions.

ARTICLE XIII. FACILITIES

- 13.01 Facilities. MISD shall provide facilities, in the form of classrooms, office furniture, equipment, and storage areas for the Schools at no cost detailed in Article XIV, and provide utilities in accordance with Facility Plan attached as **Addendum A-8**. The parties may expand or reduce the amount of space allotted to use by OP during the term as mutually determined and agreed upon by the parties. Facilities do not include classroom materials (e.g. books, notepads, pencils, etc.) or any other resources needed for the Schools' academic curriculum.
- 13.02 Ownership. The Parties acknowledge that all Facilities are owned by MISD.
- 13.03 Permitted Use. Beginning on June 1, 2019 ("Possession Date"), and during the Term of this Agreement, OP may use and occupy the Facilities solely for the operation of the Schools as permitted by this Agreement and Applicable Law. To the extent OP wishes to use the Facilities for educational activities, separate from the Schools but associated with its educational purposes, OP must seek approval from MISD, and such approval shall not be unreasonably denied but any

costs for such facility use shall be reimbursed to MISD by OP. Any use of the Facilities by any other individual, group, or organization shall be governed by MISD's facilities use policies.

- 13.04 Furniture and Equipment for Classrooms and Instructional Areas. In consultation with OP regarding the furniture and equipment needs of the OP classrooms, MISD will supply chairs, desks, bookcases, bookshelves, file cabinets, computer tables, conference tables, and other furniture as reasonably required for the Schools. Such furniture and equipment will be substantially the same as furniture and equipment provided in other classrooms for the same grade level and/or same subject at MISD. Any resources currently at the campus needed for the Schools' academic operations are available for use by the OP but remain under district ownership. Supplies and resources that are not utilized shall remain under district ownership and should be returned to the District. OP also may furnish other furniture, fixtures, and equipment, at OP's cost and expense, as OP determines what is needed to implement the Program. The title to all furniture and equipment supplied by MISD for use by OP remains vested in MISD. The title to all furniture and equipment purchased with federal, state, or local funds for use by OP at the Schools remains vested in MISD. The title to all furniture and equipment provided by OP with funds other than funds received from this Agreement remains vested in OP. OP and MISD shall tag and identify their respective property so that ownership is clear. Each Party shall maintain an inventory list of all of its assets located at the Schools.
- 13.05 Fixtures and Alterations. OP may attach non-permanent materials and fixtures to the walls of the Schools' classrooms but may not make any other alterations (including adding/removing fixtures) in or to the Schools' classrooms or any other part of MISD's facilities used by OP that would alter the walls, floors, or any other permanent structure of MISD's premises without written consent of MISD.
- 13.06 Order and Maintenance. Subject to Paragraph 9.02.1, OP shall keep the Schools' classrooms and any other portion of MISD's premises, such as office space and storage area used exclusively for OP in a neat and orderly manner. Both Parties shall comply with the Applicable Laws regarding standards of safety and health of students. MISD shall be responsible for routine maintenance and major repairs of the Schools including, upgrades, HVAC equipment, roof repairs, and parking lot repairs. MISD shall maintain all other portions of the Schools in a neat and orderly manner.
- 13.07 Utilities. MISD shall maintain responsibility for providing utilities necessary for operating the Schools and is responsible for the costs associated with the same. Cost of utilities will be withheld from the allocation through the administrative services charge.
- 13.08 Insurance. The District shall obtain and maintain property insurance for the School in the same manner that it deems necessary and advisable to carry for every other school in the District. Each Party may elect to carry insurance to insure its own personal property located at the School. The District agrees to request from its insurance carriers that OP be added as an additional named insured on any District held policies of insurance related to transportation or general liability. The District will add to their insurance any necessary Executive Director and Operators insurance for the OP Board, if allowable under the plan. The District will provide OP with a copy of each insurance policy, indicating OP as an additional insured, within 10 business days of receipt of documentation from the District's insurance carriers. The District will also notify OP of any policy change and provide OP with updated records upon any changes in coverage.
- 13.08 Surrender of the Facilities. On the termination of this Agreement, OP shall leave the Facilities in good condition and repair. OP shall return and surrender to MISD all exterior door keys, interior

door keys, mail box keys, security access cards, and improvements that were provided to OP by MISD. The obligations under this Section shall survive the termination of this Agreement.

ARTICLE XIV. FINANCIAL MATTERS

- 14.01 **Payment Sources & Structure.** The Parties understand that this Agreement allows for the School to receive MISD's usual funds from the State's Foundation School Program ("FSP Funds") that all students within the District receive, and to receive *additional* SB 1882 funds ("SB 1882 Funds") due to this partnership Agreement.
- 14.02 **FSP Funds.** FSP funds are based primarily on the weighted average-daily-attendance ("WADA") allocation received by the District under TEC Chapter 42, Tiers I and II for students enrolled in the District and in actual attendance at the Schools. The Parties understand and agree that the District shall retain the necessary FSP Funds and federal funds to pay for the educational and support services that the District is required to provide under Paragraph 9.02 of this Agreement, which include but are not limited to: transportation; utilities; normal/regular maintenance and repairs; special education; District employees assigned to the School; School security; and food services. The amount the District retains for these required services may not exceed the District average cost per student for similar services rendered. Any unused FSP Funds or federal funds, which OP is legally able to receive, shall be held by MISD in a designated account for the Schools and spent in accordance with the budget and at OP's direction. Any unused FSP Funds, which OP is legally able to receive, shall be reserved as a restriction of the MISD general fund balance for future use for the Schools or until termination of this Agreement.
- 14.02.1 *Instructional Materials Allotment.* Instructional Materials Allotment funds shall be allocated to the Schools in accordance with the state's textbook adoption schedule in the same manner as other MISD schools, though the School need not purchase the same materials as at other MISD schools.
- 14.03 **SB 1882 Funds.** The Parties agree that the District shall withhold no more than 7.5% of all SB 1882 Funds annually for the District's administrative services, including mandatory state and federal reporting and data system administration and authorizing oversight. Itemization and cost of administrative services for 2019-2020 are set forth in **Addendum A-8**, attached. The Parties understand and agree that SB 1882 Funds are separate from the FSP Funds retained to pay for educational and support services. The remaining 92.5% of SB 1882 Funds shall be held by MISD in a designated account for the Schools and spent in accordance with the budget and at OP's direction. Both Parties acknowledge and agree that the goal of this Agreement is to focus effort, money, assistance, and aid to the Schools' students.
- 14.04 **Individual Service Pricing.** The District may annually publish a service menu and price list for educational and support services other than or in addition to what the District is required to provide under Paragraph 9.02. If the District opts to publish a service menu and price list, the District must do so no later than April 1 for the following school year. Such services may include but are not limited to: professional development; participation of Schools students in extra-curricular activities; transportation for field trips; and transportation or food services needed on days in which the District is not operating (if the Schools operates on a different schedule than other District schools). Prices will be stated in a per-pupil, per-square foot, or per-day basis format. Prices will be the at-cost prices for District schools.

- 14.05 Distribution of Funding Allocation. Payments of the funding allocation set forth above shall be made in monthly installments on the 15th day of each month during the term, commencing on July 15, 2019 and be shall be held by the District in a designated account for the Schools and spent in accordance with the budget and at OP’s direction. Payments shall be issued on an average monthly basis, over 11 equal periods, provided that the 11th payment may be withheld by the District to allow for any required adjustments for the reasons stated below. The estimated weights will be adjusted to actual weights for purposes of determining the compensation hereunder and the amount of the 11th month payment. The 11th payment shall not be withheld for more than 30 days, and if the District is unable to determine the actual weights within 30 days after the 11th payment is initially due, it shall make such payment based on estimated weights as described above; any adjustment determined thereafter shall be held by the District in a designated account for the Schools and spent in accordance with the budget and at OP’s direction upon such determination if warranted, or shall be withheld in 10 equal amounts from the next payment due to OP if the final determination indicates an overpayment based on actual weights. In the event that the 15th shall fall on a Saturday or Sunday, payment shall be made on the *following* Monday. In the event that the 15th shall fall on a holiday, payment shall be made on the preceding day or preceding Friday as applicable.
- 14.06 Limitations. Payment shall be issued contingent on current Average Daily Attendance (“ADA”) and Full Time Equivalent (“FTE”) records (as applicable) in balance ten (10) days after receipt of the monthly invoice for the periods covered in this Agreement, and submitted to the District. In no case shall the District be obligated to pay any amount for students not included in the District’s eligible ADA count to the Texas Education Agency. Notwithstanding any terms herein to the contrary, the District’s obligation to compensate OP is expressly subject to the receipt, adjustment, or modification of funds by the District from the State of Texas specifically allocated for those eligible students in attendance at OP. In the event that such funding is not received or reduced, the District shall not be obligated to OP in any amount, and OP may terminate this Agreement, and any prior payments made by the District shall be retained by OP in consideration of and as payment for educational services provided up to the date of such termination. This paragraph shall not be construed to relieve the District of any responsibility or obligation to OP if the District fails to receive funding as a result of a failure by the District or its agents or contractors to fulfill requirements necessary for securing funding from the State of Texas.
- 14.07 Procedure for Initiating Payment. By May 1 January 31 of each calendar year under this Agreement, OP shall submit its projected enrollment for the upcoming school year to the District, which shall use the projected enrollment to calculate the monthly payments for the next school year. For the second year of School’s operation, attendance rates and percentages of LEP and economically disadvantaged students shall be calculated based on actual figures from the first year of operation. For the third year and succeeding years, attendance rates and percentages of LEP and economically disadvantaged students shall be calculated based on an average of the prior two (2) years.
- 14.08 Refund upon Termination. In the event of termination during the Term of this Agreement, OP agrees to refund to the District within ninety (90) days of the date of termination, all advanced but unearned funds.
- 14.09 Federal and State Grants. In addition to the funding described above, OP may also be eligible for Federal entitlement grants, such as Title I, as approved by the Federal granting agencies and the State. Such funding must be spent as approved and designated by Federal and State agencies. OP admits knowledge of and agrees that the District’s obligation hereunder for payment of Federal

and/or State grants is limited to and expressly subject to receipt of any funds from the Texas Education Agency. In the event the District is ever required to refund any funds received from TEA specifically designated for any Federal or State grant program, then it is understood and agreed that OP shall be liable for and shall refund such amounts received. If OP obtains a federal or state grant specifically for the Schools and for a cost originally assigned to the District, OP shall use the grant money for the cost and the District shall not pay for the cost.

- 14.10 Contracting, Purchasing and Procurement. OP may establish school-level systems for obtaining, contracting with, and paying its vendors for goods it acquires and services it provides under this Agreement. OP will ensure compliance with applicable state and federal contracting and payment laws. Purchases made with funds held in the OP's designated district account shall be in accordance with the District's purchasing procedures. The procedures include guidance related to competitive procurement requirements in federal regulations, state laws, and local policy. The District's purchasing department shall provide for the acquisition of goods and services at the lowest practical price. The addition, deletion, and changes to vendors will be made in accordance with District policy and purchasing procedures. OP shall utilize the District's automated financial system to enter purchase requisitions, verify account balances, select preapproved vendors, and receive goods and services. Check payments for all goods and services will be processed and issued on a weekly basis through accounts payable. OP reserves the right to contract for any services it deems beneficial in operation of the Schools.
- 14.11 Accounting and Audits. OP shall comply with generally accepted fiscal management and accounting principles. The Parties shall comply with the financial performance goals detailed in **Addendum A-4**, which shall include, but is not limited to a completion of OP's annual financial report, receipt of an unqualified audit opinion, and specific consequences in the event that OP does not meet the financial performance goals. In addition to any audits required by Applicable Law, OP shall submit to the District within 180 days following the end of each fiscal year during the Term of this Agreement, financial statements audited by an independent certified public accountant. The District shall also retain the right to conduct its own campus audit of the School and annual audit of OP as it deems necessary. OP agrees to comply with all rules, regulations, ordinances, statutes, and other laws, whether local, state or federal, including, but not limited to, all audit and other requirements of the Single Audit Act of 1984. In the event an audit occurs and any expenditures relating to this Agreement are disallowed, OP agrees to reimburse the District immediately for the requisite full amount.

ARTICLE XV. RECORDS AND REPORTING

- 15.01 Records Management System. The District shall maintain a records management system that conforms to the system required of school district under the Local Government Records Act, Section 201.001 *et seq.*, Local Government Code, and rules adopted thereunder; provided, however, that records subject to audit shall be retained and available for audit for a period of not less than five (5) years from the latter of the date of termination or renewal of this Agreement.
- 15.02 State and Federal Reporting. OP shall report timely and accurate information to MISD as necessary for MISD to comply with all applicable state and federal requirements. OP shall report information in the manner requested by MISD and correct any demonstrable errors as requested by MISD, provided that the manner of reporting or correction requested is not unduly burdensome to OP.

- 15.03 Lawful Disclosure. To the extent that OP or MISD will come into possession of student records and information, and to the extent that OP or MISD will be involved in the survey, analysis, or evaluation of students incidental to this Agreement, both parties agree to comply with all requirements of the FERPA and the Texas Public Information Act. In the event that MISD is required to furnish information or records of the Schools pursuant to the Texas Public Information Act, OP shall furnish such information and records to MISD, and MISD shall have the right to release such information and records. Either OP or MISD may object to disclosure of information and records under FERPA or the Texas Public Information Act.

ARTICLE XVI. INTELLECTUAL PROPERTIES

- 16.01 Proprietary Materials. Each of the Parties shall own its own intellectual property including without limitation all trade secrets, know-how, proprietary data, documents, and written materials in any format. Any materials created exclusively by MISD for the Schools shall be owned by MISD, and any materials created exclusively by OP for the Schools shall be OP's proprietary material. The Parties acknowledge and agree that neither has any intellectual property interest or claims in the other Party's proprietary materials. Notwithstanding the foregoing, materials and work product jointly created by the Parties shall be jointly owned by the Parties and may be used by the individual Party as may be agreed upon by both Parties from time to time.
- 16.02 Name. OP owns the intellectual property right and interest to the name "Carver Center." The Parties agree that the name "Carver Center." may be used by either Party during the Term of the Agreement. The Parties agree that after the expiration or termination of this Agreement, the District shall not use the name "Carver Center" for its own individual purposes.

ARTICLE XVII. INDEMNIFICATION

- 17.01 **OP AND THE DISTRICT AGREE TO COMPLY WITH THE FOLLOWING INDEMNITY PROVISION:**

OP and the District covenant and agree to, as allowable by law, to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS each other, and the elected officials and appointed officials, employees, officers, directors, volunteers and representatives of each entity, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon either entity directly or indirectly arising out of, resulting from or related to either entities activities under this AGREEMENT, including any acts or omissions of either entity, any agent, officer, directors, representative, employee, consultant or subcontractor of either entity, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this AGREEMENT. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of either entity its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT OP AND MISD ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO MISD UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

The provisions of this INDEMNIFICATION are solely for the benefit of the Parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

Either entity shall advise the other party in writing within 24 hours of any claim or demand against the other party related to or arising out of the other parties activities under this AGREEMENT.

ARTICLE XIII. SERVICE-LEVEL AGREEMENTS

- 18.01 District Authority. MISD has sole decision-making authority, as set forth in Paragraph 9.02 of this Agreement, regarding the delivery of any service to transportation, food services, janitorial, security, or related services. MISD shall coordinate and cooperate with OP to determine dates of contracted service at the Schools and OP shall allow service contractors on School grounds absent any serious and legitimate complaints or concerns.

ARTICLE XIX. GENERAL AND MISCELLANEOUS

- 19.01 Entire Agreement. This Agreement, including all referenced attachments and terms incorporated by reference contains the entire agreement of the parties. All prior representations, understandings, and discussions are merged into, superseded by and canceled by this contract.
- 19.02 Severability. The parties intend that each provision hereof constitute a separate agreement between or among them. Accordingly, the provisions hereof are severable and in the event that any provision of this Agreement shall be deemed invalid or unenforceable in any respect by a court of competent jurisdiction, the remaining provisions hereof will not be affected, but will, subject to the discretion of such court, remain in full force and effect, and any invalid or unenforceable provision will be deemed, without further action on the part of the parties, amended and limited to the extent necessary to render the same valid and enforceable and reflect the intent of the parties.
- 19.03 Waiver. No waiver of any provision of this Agreement will be effective unless in writing, nor will such waiver constitute a waiver of any other provision of this Agreement, nor will such waiver constitute a continuing waiver unless otherwise expressly stated.
- 19.04 Venue and Jurisdiction. OP and MISD agree that this Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the Parties created hereunder are performable in Midland County, Texas. Any action or proceeding to enforce the terms of this Agreement or adjudicate any dispute arising out of this Agreement shall be brought in a court of competent jurisdiction in Midland County or in the United States District Court for the Western District of Texas, Midland Division.
- 19.05 Governing Law. The laws of the State of Texas, without regard to its conflict of laws provisions, will govern this Agreement, its construction, and the determination of any rights, duties, obligations, and remedies of the parties arising out of or relating to this Agreement.
- 19.06 Assignment. Except as otherwise provided in this Agreement, neither Party may assign or delegate any rights or obligations under this Agreement without the prior written consent of the other Party.
- 19.07 Successors and Assigns. This Agreement will be binding upon, and inure to the benefit of, the parties and their respective successors and permitted assigns.

- 19.08 Headings and Captions. The headings and captions appearing in this Agreement have been included only for convenience and shall not affect or be taken into account in the interpretation of this Agreement.
- 19.09 Notice. Any notice or communication required or permitted hereunder shall be given in writing, sent by (a) personal delivery, or (b) expedited delivery service with proof of delivery, (c) United States mail, postage prepaid, registered or certified mail, or (d) via facsimile, telegram or e-mail, address as follows:

If to the OP:

Stephanie Carnett
 Executive Director of Carver Center
 1300 E. Wall Street
 Midland, TX 79701
 (432) 240- 6400
 Email: stephanie.carnett@midlandisd.net

If to the DISTRICT:

Orlando Riddick
 Superintendent of MISD
 615 W. Missouri Ave.
 Midland, TX 79701
 (432) 240-1002
 Email: orlando.riddick@midlandisd.net

Previously entered into this 25th day of March, 2019
Amended this 31st day of May, 2019

By: Stephanie Carnett
 Executive Director
 Carver Center

DocuSigned by:
 By: Orlando Riddick
 Superintendent
 Midland ISD

ADDENDUMS REFERENCE

Addendum A-1: MISD Charter Policy

- Policy ELA(LOCAL) Adopted 7/22/ 2018
 - Internet accessible MISD policies located at <https://pol.tasb.org/Home/Index/886>

Addendum A-2: Adopted School Policies

- Internet accessible MISD policies located at <https://www.midlandisd.net/domain/74>

Addendum A-3: Student Outcome Goals

Addendum A-4: Financial Performance Goals

Addendum A-5: Performance Consequences

Addendum A-6: Charter Proposal (Application)

Addendum A-7: Facility Plan

Addendum A-8: District Services and Fees

Addendum A-9: OP's Governing Board

Addendum A-10: Nepotism

Authorization

To provide quality educational settings for all students and to obtain benefits under Education Code 11.174 and 42.2511, the District may establish partnership charters as permitted by law and as described in this policy. The District shall be committed to rigorous decision-making and shall grant campus charters only to applicants that have demonstrated the competence and capacity to succeed in all aspects of the proposed campus charter.

Definitions

“Operating Partner”

An operating partner means a state-authorized open-enrollment campus charter or an eligible entity as defined by law for purposes of contracting to partner with the District to operate a District campus under state law.

“Partnership Program”

A partnership program means a District-initiated program established in accordance with state law in which the Board contracts to operate a District campus in partnership with an open-enrollment charter school or other eligible entity as defined by law.

Compliance with Law

A partnership program shall comply with all applicable requirements of state law, any applicable grant program requirements, local criteria specified in policy, and the applicable charter performance contract. Campus charters shall comply with all federal and state laws governing such charters and shall be nonsectarian. [See EL(LEGAL)]

Application

Process

In establishing a partnership program, the District may issue requests for applications designed to identify operating partners best qualified to meet the needs of the District.

The Board shall consider an application if the applicant:

1. Meets the eligibility requirements for a campus charter in accordance with law;
2. Follows the application process established by the District; and
3. Provides assurances to the Board that the applicant will comply with the statutory and District requirements for a campus charter.

The application process shall include:

1. A comprehensive written application;
2. A rigorous review of the application by a charter application review committee;
3. A formal recommendation from the review committee to the Superintendent for approval or denial of each application;

Content

4. A formal recommendation from the Superintendent to the Board for approval or denial of each application; and
5. A vote by the Board to approve or deny each application.

An application shall include the following, at a minimum:

1. The purpose and community need for the proposed campus charter;
2. A statement of the proposed campus charter's mission and goals;
3. Identification of the students to be served;
4. The academic plan including educational focus, program, curriculum to be offered, and a description of the proposed school day, calendar, and year;
5. The plan for meeting the needs of students with disabilities, English language learners, and other special populations;
6. The plan for measuring and reporting student achievement and increases in student achievement for all student groups;
7. The financial and business plan, including a proposed five-year operating budget and a contingency budget for lower than expected enrollment;
8. Identification and description, including the expertise and professional backgrounds, of the proposed governing body members and campus leadership;
9. The governance and decision-making plan including governing board structure, campus leadership and management structure, and organization chart;
10. Indications that the proposed governance structure is conducive to sound fiscal and administrative practices and strong, accountable, independent oversight of the campus;
11. Identification and description of any services the proposed campus charter expects to be performed by the District (e.g., transportation, food);
12. The proposed campus charter's leadership roles and responsibilities regarding personnel, the budget, purchasing, program funds, and other areas of management;
13. The campus charter's staffing and employment plan consistent with federal and applicable state guidelines, including

due process, employment contract nonrenewal, and termination procedures;

14. Information on the qualifications, experience, recruitment, selection, professional development, and ongoing evaluation of teaching staff to be hired for the campus;
15. The proposed student recruitment, enrollment, and withdrawal processes, and a plan for ensuring equitable access in accordance with law;
16. The student discipline plan and procedures;
17. The petition indicating evidence of support for the approval of a charter as required by law, if applicable; and
18. A pre-operational start-up plan detailing tasks, responsible parties, and a timeline for completion.

Review Committee

Composition

The Superintendent shall establish a review committee to conduct a substantive and merit-focused evaluation of each application submitted in accordance with the District's published application procedures.

The review committee shall be composed of District staff and external evaluators with relevant and diverse expertise.

Conflicts of Interest

A review committee member shall disclose any potential conflict of interest with an applicant.

Review Process

The review committee may:

1. Request additional information or documents from the applicants;
2. Schedule interviews with applicants; or
3. Request that the Board schedule a public hearing to allow applicants an opportunity to present their application and campus plans to the Board and to the community before formal consideration by the Board.

Recommendations

The review committee shall provide to the Superintendent a recommendation for denial or approval of each application based on the District's established criteria. After considering the review committee's recommendation, the Superintendent shall make a formal recommendation to the Board for approval or denial of each application.

Charter Performance Contract

If the Board approves an application, the Board shall execute a written charter performance contract that includes provisions as required by law and establishes the legally binding terms under

which the campus charter will operate and be evaluated during the charter term and for renewal.

Each charter performance contract shall address the material terms of the campus charter's operation as required by law. Each charter performance contract shall be granted for a period of up to ten years with a rigorous review every five years.

Standards

In addition to standards required by law, the charter performance contract shall include additional standards established by the Board, including expectations for academic performance, short-term financial performance, long-term financial stability, and operational and governance performance.

The performance standards shall also address expectations for appropriate access, education, support services, and outcomes for students with disabilities.

**Oversight and
Evaluation**

Monitoring System

The Board shall implement a comprehensive performance accountability and compliance monitoring system that is aligned with the Board's performance standards and provides the Board with the information necessary to make rigorous, evidence-based decisions regarding charter renewal, revocation, and probation or other interventions. This monitoring system shall be based on and aligned with academic, financial, operational, and governance standards set forth in the charter performance contract.

To the extent possible, the Board shall minimize administrative and compliance burdens on campus charters and focus on holding campus charters accountable for outcomes rather than processes.

Data Collection

Campus charters shall provide information and data to the District pursuant to state law and the District's reporting schedule using a state-approved student management system.

The District shall require each campus charter to report its performance separately and shall hold each campus charter accountable for its performance.

Evaluation and
Reports

Annually, the Board shall evaluate each campus charter against the performance standards established by the Board or law.

The Board shall communicate evaluation results to the campus charter's governing body and leadership in a written report that summarizes compliance and performance, including areas of strength and improvement. The results of all evaluations shall be made accessible to the public and available on the District website.

The Board shall produce for the public an annual report that provides performance data for all the campus charters it oversees, including individual campus performance and overall campus charter performance. The annual report shall at a minimum be posted on the District website.

**Campus Charter
Autonomy**

In accordance with law and the charter performance contract, the Board shall support the operating partner's authority over the campus charter's day-to-day operations.

The Board shall recognize the governing board of the campus charter as independent and autonomous from the Board and District, with full authority and accountability for the campus charter's performance and operations.

Conflicts of Interest

The District and the operating partner shall comply with applicable conflict of interest provisions in law.

Intervention

The District shall give timely notice to the campus charter of any violations of the charter performance contract or performance deficiencies justifying formal intervention. The notice shall identify in writing the concerns, and, if applicable, the time frame for remediation. The notice may include additional consequences if any of the concerns are not remedied within the stated timeline.

Depending on the severity of the concern or deficiency, the Board may place a campus charter on probation or revoke the charter performance contract, in accordance with the terms of the contract and applicable law.

Probation

Criteria

The Board may place a campus charter on probation as permitted by law or the charter performance contract, or for failure to meet academic performance standards.

Procedure

In the event of any indication or allegation that a campus charter has committed a violation of law or the charter performance contract that may warrant probation, the District shall take the following steps:

1. The Superintendent shall investigate the allegations and hold a conference with the chief operating officer and governing body of the campus charter to discuss the allegations.
2. If the Superintendent determines that a violation or mismanagement has occurred, the chief operating officer of the campus charter shall respond to the allegation at the next regularly scheduled Board meeting.
3. The Board shall hear the presentation and take action, if necessary, to place the campus charter on probation. If the Board

decides to place the campus charter on probation, it must provide an opportunity for a public hearing as required by law.

4. If a campus charter is placed on probation, the campus charter must take action to remedy the identified violations or underperformance and report on the status of its corrective actions in accordance within the timeline for remediation established by the District.
5. The District shall establish a timeline for monitoring the campus charter's corrective actions and re-evaluating the campus charter's status to determine when the campus may be removed from probation or whether to consider revocation.

Revocation

Criteria

The Board may revoke a campus charter as permitted by law or the charter performance contract for failure to meet performance standards.

The Board shall revoke a campus charter if the District finds clear evidence of a campus charter's persistent or serious underperformance or violation of law, the charter performance contract, or the public trust in a way that imperils students or public funds, including any of the following:

1. Persistent or serious violation of applicable state or federal law;
2. Persistent or serious violation of a provision of the charter performance contract;
3. Persistent or serious failure to meet generally accepted accounting standards for fiscal management;
4. Persistent failure to improve student academic achievement for all student groups;
5. Failure for three consecutive years to meet the academic or financial accountability standards outlined in law;
6. Failure for three consecutive years to meet the academic or financial performance standards established in the charter performance contract;
7. Multiple placements on probation as specified in the charter performance contract; or
8. Failure of the District to obtain the benefits of Education Code 11.174 and 42.2511, if applicable.

The Board's decision whether to revoke a campus charter shall be based on the best interests of the students, including a decision by the commissioner to extend an exemption from a sanction or other

action under Education Code 11.174(g); the severity of the violation; applicable law; and any previous violation committed by the campus charter.

Procedure

In the event of an indication or allegation that may warrant campus charter revocation, the District shall take the following steps:

1. The Superintendent shall investigate the allegations and hold a conference with the chief operating officer and governing body of the campus charter to discuss the allegations.
2. If the Superintendent determines that a violation or mismanagement has occurred, the chief operating officer of the campus charter shall respond to the allegation at the next regularly scheduled Board meeting.
3. The Board shall hear the presentation and take action, if necessary, to revoke the campus charter. If the board decides to revoke the campus charter, it must provide an opportunity for a public hearing as required by law.

In the event of a health or safety concern, the Board may immediately suspend campus operations before revocation takes effect.

Notification

If the Board decides to revoke a charter performance contract, the Board shall notify the campus charter of the action in writing. The notice shall include the reasons for the revocation and the effective date of the revocation, which shall be no later than the end of the current school year or may be effective immediately in the event of a health or safety concern.

Contract Renewal

Upon the expiration of a charter performance contract, the Board may renew the contract for up to an additional ten-year term. In accordance with law, the Board shall renew a charter performance contract only if the Board finds that the campus charter has substantially fulfilled its obligations and met the performance standards in the contract and applicable law.

The Board shall consider the following, in addition to other factors specified in the charter performance contract:

1. Multiple years and measures of performance against the performance standards and expectations established in the charter performance contract and applicable law;
2. Financial audits;
3. Performance and compliance reports, including site visit reports, if applicable; and

4. The campus charter's performance on corrective action plans or other required interventions, if necessary.

Procedure

The District shall publish the renewal application process, including the renewal criteria and timelines.

As part of the renewal application process, the District may provide each campus charter, in advance of the renewal decision, a cumulative report that summarizes the campus charter's performance record over the contract term and states the District's summative findings concerning the campus's performance and its prospects for renewal.

Decision Not to Renew

The Board may choose not to renew a charter performance contract for any of the following reasons:

1. Failure to meet student performance standards or other obligations in the charter performance contract;
2. Failure to meet generally accepted accounting standards for fiscal management;
3. Violation of any provision of the contract or applicable state or federal law; or
4. Other reason as determined by the Board.

Notification

If the Board decides not to renew a contract, the Board shall notify the campus charter of the action in writing no later than the last Friday in January during the final year of the charter performance contract. The notice shall include the reasons for the action and the effective date of the campus charter closure, which shall be no later than the end of the current school year.

Closure Protocol

The Board shall develop a detailed campus closure protocol to apply if the Board decides not to renew or to revoke a charter performance contract and close the campus. The protocol shall ensure timely notification to parents including assistance in finding new placements; orderly transition of student records to the District; and disposition of campus funds, property, and assets in accordance with law. In the event of closing any campus charter, the District shall oversee and work with the campus charter's governing board and leadership to carry out the closure protocol.

ADDENDUM A-2

Policies:

The below shall serve as the governing policies for the School partnership between OP and the District. The Parties have reviewed and agreed that the following District Policies shall be applied and enforced at the School (all policies below include Legal, Local, Regulation, and Exhibit, when applicable, and unless otherwise stated):

The policies of Midland ISD will serve as the governing policies for Carver Center.

ADDENDUM A-3
Carver Center Student Outcome Goals

Performance Measure #1	2019-20	2020-21	2021-22	2022-23	2023-24
Campus Rating	A	A	A	A	A

Performance Measure #2	2019-20	2020-21	2021-22	2022-23	2023-24
Campus Rating for School Progress Domain	A	A	A	A	A

Performance Measure #3 Student Progress*	2019-20	2020-21	2021-22	2022-23	2023-24
Earn all six possible Distinction Designations awarded by TEA *82% meeting or exceeding progress in both Reading and Math in 2018 with at least 75% achieving Mastery	Maintain	Maintain	Maintain	Maintain	Maintain

Performance Measure #4	2019-20	2020-21	2021-22	2022-23	2023-24
School Performance Framework (SPF) The SPF will be officially rolled out November 2019. Expectations for the OP will be finalized upon the publication of that rating system.	Based on the final development of the SPF in 2019-2020 will be utilized to determine a baseline score band for the SPF.	Set specific target for SPF based on SPF development	Set specific target for SPF based on SPF development	Set specific target for SPF based on SPF development	Set specific target for SPF based on SPF development

ADDENDUM A-4

Financial Goals:

1. OP submits a complete annual financial report and data submitted to the District within 180 days following the end of the fiscal year.
2. OP obtains an unmodified opinion in the annual financial audit on the financial statements as a whole.
3. The audit report is free of any instances of material weaknesses in the internal controls over financial reporting.
4. The OP is in compliance with the payment terms of all debt agreements at fiscal year end.
5. OP avoids overspending the allocated budget and operates within its means; OP's total expenditures does not exceed total revenues for the fiscal year.

Addendum A-5

Performance Consequences

The goal progress measures (Addendum A-3) will be monitored and presented to the MISD Board at least once a year. Upon reporting, if goal progress measures are not met, then OP is required to develop and implement an improvement plan which will be publicly reported to the MISD Board.

The District may terminate this agreement if the OP fails to achieve the student outcome goals specified in Addendum A-3 for three consecutive years of the school operating under this agreement or fails to achieve three out of four of the same student outcomes goals specified in Addendum 3, attached, after the third year of School operation under this Agreement for three or more consecutive years.

Termination under this paragraph shall be effective at the end of the then current school year so long as written notice of such termination is provided no later than thirty (30) days after the Commissioner of Education's academic ratings or the determination of student outcome goals by the District.

The district may also terminate the agreement if the OP does not maintain the Financial Performance Goals established in Addendum A-4.

Addendum A-7

Facility Plan:

Carver Center will operate at 1300 E. Wall Street, Midland, TX 79701.

Addendum A-8

District Services and Fees:

Midland ISD will be responsible for establishing a service menu of fees by April 1 of each preceding school year. The OP will have the right to select service options as needed for the operations of the campus.

ADDENDUM A-9
Operating Partner's Governing Board

Carver Center Board Members

Sara Burleson
Marcy Madrid
Leah Robertson

Addendum A-10

NEPOTISM RESTRICTIONS AT CHARTER SCHOOLS

I. NEPOTISM RESTRICTION ON SCHOOL SUPERVISORS

Principals and supervisors at a charter school may hire and/or retain employees at the same school or work location who are related within the first, second, or third degree of consanguinity or affinity. Notwithstanding this provision, principals and supervisors are subject to the prohibition against employees reporting directly or indirectly to their own relatives, as described herein:

A charter school employee shall not be assigned to work in a school, building, or department where the employee reports directly or indirectly to an administrator to whom the employee is related within the second degree by blood or marriage. If such situations develop as a result of marriage, administrative transfer due to reorganization, or similar circumstance, both of the employees involved shall bring it immediately to the attention of the appropriate administrator for resolution.

II. LIMITED NEPOTISM RESTRICTION RELATING TO THE SCHOOL'S CHIEF ADMINISTRATIVE OFFICIAL

There is no restriction against the top administrative official at a charter school, whatever the official title, (e.g., superintendent, president, founder of schools, CEO etc.) from appointing a person, to whom the official is related, to a position at the charter school, whether as an employee or as an independent contractor. However, if the person appointed to a position at the charter is related to the top administrative official by consanguinity (blood) within the third degree or by affinity (marriage) within the second degree, the official shall, before making the appointment, make a determination that the positives of appointing the person outweighs any possible negatives associated with a nepotistic appointment.

III. LIMITED NEPOTISM RESTRICTION RELATING TO SCHOOL BOARD MEMBERS

There is no restriction against the charter appointing a person, who is related to charter board member, to a position at the charter school, whether as an employee or as an independent contractor. However, if the person appointed to a position at the charter is related to a charter board member by consanguinity (blood) within the third degree or by affinity (marriage) within the second degree, the top administrative official at the school shall, before making the appointment, make a determination that the positives of appointing the person outweighs any possible negatives associated with a nepotistic appointment.

ATTACHMENT TO ADDENDUM A-10

The following illustrations depict the relationships that violate the nepotism restrictions set forth in **EXHIBIT B**.

CONSANGUINITY (Blood Kinship):

Charter School top administrative official or board member is prospective employee's:

First Degree	Parent	Child		
Second Degree	Grandparent	Grandchild	Sister/Brother	
Third Degree	Great-Grandparent	Great-Grandchild	Aunt/Uncle	Niece/Nephew

AFFINITY (Marriage Kinship):

Charter School top administrative official or board member's spouse is the prospective employee.

OR

Charter School top administrative official or board member's spouse is prospective employee's:

OR

Prospective employee's spouse is Charter School top administrative official or board member's:

First Degree	Parent	Child	
Second Degree	Grandparent	Grandchild	Sister/Brother

NOTE: The spouses of two persons related by blood are not by that fact related. The affinity chart supposes only one affinity relationship between the Charter School top administrative official or board member and prospective employee through either of their spouses.