

**SWALLOWS CHARTER ACADEMY
CHARTER SCHOOL CONTRACT**

THIS CHARTER SCHOOL CONTRACT (“Contract”), dated this 1st day of April, 2023, is made and entered into between Pueblo County School District 70 (“District” or “Authorizer”) and Swallows Charter Academy, a public charter school organized as a Colorado nonprofit corporation (“SCA” or “School”) (collectively, the “Parties”).

WHEREAS, the Colorado General Assembly has enacted the Charter Schools Act (“Act”), C.R.S. §§ 22-30.5-101 – 117, for certain purposes as enumerated in C.R.S. § 22-30.5-102(2) and (3);

WHEREAS, beginning with the 1996-1997 academic and budget year, the School has operated as a charter school within the District after the District’s Board of Education (“District Board”) approved the School’s application for a five (5) year charter in 1996; the District Board then approved the School’s Renewed Charter Application, which established the foundation of a K-12 school operation, effective July 1, 2001, to June 30, 2021 (2001 Application); the School and the District then entered into another charter contract dated October 13, 2008 and a renewal Charter School Contract dated February 1, 2013; the Parties are currently operating under the 2001 Application, and the Charter School Contract entered into by the School and the District on February 1, 2018, which is set to expire on June 30, 2023 (“2018 Contract”).

WHEREAS, The School and the District have agreed to the terms of this charter contract (“2023 Contract”). Thus, moving forward, SCA will operate its Preschool-12 program under the terms of the 2001 Application and the 2023 Contract.

WHEREAS, the District’s Board of Education voted on November 1, 2022, to renew the School’s charter contract for a term of five years, which shall end on June 30, 2028.

WHEREAS, the Parties desire to enter into the 2023 Contract for the ongoing operation of the School pursuant to the Act for a term of five (5) years.

NOW, THEREFORE, in consideration of the foregoing Recitals and their mutual covenants contained herein, the Parties agree as follows:

AGREEMENT

1.1 Establishment of School.

1.2 Term. This Contract is effective as of July 1, 2023, and shall continue through June 30, 2028. Although this Contract is for operation of the Charter School for a period of five (5) years, any financial commitment on the part of the District contained in this Contract is subject to annual appropriation by the District and the Parties agree that the District has no obligation to fund the financial obligations under this Contract other than for the current year of the Contract term; and that the District has not irrevocably pledged and held for payment sufficient cash reserves for funding the School or for providing services herein for

any subsequent fiscal year during the remaining term of the Contract.

- 1.3 School Legal Status. The School is incorporated as a Colorado non-profit corporation. The School shall continue to operate as a Colorado non-profit corporation and shall assure that its operation is in accordance with its articles of incorporation and bylaws. The School shall notify the District promptly of any change in its corporate and/or tax-exempt status.

The School is organized and maintained as a separate legal entity from the District for all purposes of this Contract. As provided by the Charter Schools Act, the School shall constitute a public school in Colorado. Notwithstanding its existence as a separate legal entity, the educational programs conducted by the School are considered to be operated by the School as part of the District. As such, the School is subject to Colorado laws and District policies that apply to all public schools unless waived in accordance with Section 4.5 of this Contract. Further, the School is a public entity within the meaning of C.R.S. § 24-10-106, and is therefore entitled to the protections of the Colorado Governmental Immunity Act (C.R.S. §§ 24-10-101 – 120) (“CGIA”), and is a local public body within the meaning of C.R.S. § 24-6-402(1)(a), and therefore subject to the Sunshine Law (C.R.S. §§ 24-6-401 – 402) and the Open Records Act (C.R.S. §§ 24-72-204 – 206).

- 1.4 Controlling Document. The terms of the 2023 Contract shall control when there is difference or contradiction between the 2023 Contract and the 2001 Application.

2.1 District-School Relationship.

2.2 District’s Rights and Responsibilities:

A. Right to Review. The School shall operate under the auspices of, and shall be accountable to, the District and subject to, unless specifically waived or delegated pursuant to this Contract, all applicable federal and state laws and regulations, Board policies and regulations. All records established and maintained in accordance with the provisions of this Contract, Board policies and regulations, and federal and state law and regulations shall be open to inspection and review and made available in a timely manner to District officials who have legitimate educational interests in such records within the meaning of the Family Educational Rights and Privacy Act (FERPA). Records include, but are not limited to, the following:

- i. School records, including but not limited to student cumulative files, policies, special education and related services;
- ii. Financial records;
- iii. Education program, including test administration procedures and student protocols;

- iv. Personnel records, including evidence criminal background checks have been conducted;
- v. School's operations, including health, safety and occupancy requirements;
- vi. Inspection of the facility; and
- vii. Waiting lists the School holds at each grade level, and for prospective students not yet school age including name, address and contact information for each student on the School's waiting list.

Further, the District may make visits to the School to fulfill its oversight responsibilities. Except in emergencies, and when directed by the Superintendent of Schools, visits should be pre-arranged in a professional manner to avoid needless disruption of the educational process.

- B. Complaints. The District agrees to notify the School regarding any complaints about the School that the District receives. The notification shall be made within ten (10) days of its receipt by the District and shall include information about the substance of the complaint taking into consideration any complainant's request for anonymity. The District further agrees to direct any complaining party to the School's internal grievance policy, so that the School and the complaining party may address the complaint at the School-level prior to any involvement by the District.
- C. School Health or Safety Issues. The District shall immediately notify the School of any circumstances requiring School closure, lockdown, emergency drills or any other action that may affect School health or safety.
- D. Access to Data and Information. The District will timely provide the School with access to any data and information pertaining to the School that it receives from the State or other sources, including but not limited to test scores, Elementary and Secondary Education Act (ESEA) school improvement status, Adequate Yearly Progress (AYP), accreditation, special education, and funding information.
- E. Accreditation Data and Process. The District shall provide to the School the data used by the Colorado Department of Education (Department) to conduct its analysis of the School's performance and the Department's initial recommendation considering the type of performance plan the School should be required to implement at the same time the District provides the data to other District schools. The District shall give due consideration to any appeal made by the School to the plan assignment, provided that the School has submitted valid and reliable data for consideration in accordance with a reasonable deadline established by the District. The District shall represent any appeal it deems valid to the

Department in accordance with CCR 301-1-10.03. No later than five (5) business days following the receipt of the information, the District shall provide to the School the final plan assignment determination that the School shall implement and the final accreditation status assigned to the School and the District's assessment of the progress made by the School toward the goals and objectives set forth in Section 6.11 of this Contract.

- F. Access to Student Records. The District shall timely make available to the School cumulative files and/or student information, including but not limited to information regarding special education and related services for students of the School. The School shall use such information exclusively for fulfillment of its educational responsibilities or for compliance with the law and shall not use student information acquired from the District for any other purpose.
- G. Mailing. The District shall make available to the School the mailing lists of students at requested grade levels provided that Swallows pays for the reasonable costs of producing the lists, pursuant to C.R.S. § 22-30.5-109(6).

2.3 School's Rights and Responsibilities:

- A. Records. The School agrees to comply with all federal, state, and District record keeping requirements including those pertaining to students, governance, and finance. This includes maintaining up-to-date information about enrolled students in the District's student information system. In addition, the School shall ensure that records for students enrolling in other Schools are transferred in a timely manner. Financial records shall be posted in accordance with the Financial Transparency Act and reconciled at least monthly. All records shall be maintained at the School and shall be open to inspection, consistent with law, during reasonable business hours. The School further agrees to assist the District in accessing or reviewing any records as part of its oversight responsibility or to address its compliance requirements.
- B. Notifications Provided to the District. The School shall timely notify the District (and other appropriate authorities) in the following situations:
 - i. The discipline of employees at the School arising from misconduct or behavior that may have resulted in harm to students or others, or that constituted violations of law; and
 - ii. Any complaints filed against the School by any government agency.

The School shall immediately notify the District of any of the following:

- i. Conditions that may cause the School to vary from the terms of this Contract, applicable District requirements, federal, and/or state law;
- ii. Any circumstance requiring the closure of the School, including but not limited to a natural disaster, such as an earthquake, storm, flood or other weather-related event, other extraordinary emergency, or destruction of or damage to the School facility;
- iii. The arrest of any members of the Charter Board, School employees, or contract workers for a crime punishable as a felony or any crime related to the misappropriation of funds or theft;
- iv. Misappropriation of funds;
- v. A default of any obligation, which shall include debts for which payments are past due by sixty (60) days or more; or
- vi. Any change in its corporate status with the Colorado Secretary of State's Office or status as a § 501(c)(3) entity, if applicable.

C. Compliance. The School shall comply with all applicable federal and state laws, local ordinances, and District policies applicable to charter schools, except to the extent that the School has obtained waivers from state law and District policies in accordance with Section 4.5 of this Contract. A list of some, but not all, of the federal and state laws with which the School must comply, unless otherwise waived, are listed in Attachment 4.

D. Reports. The Charter School shall timely provide to the District any reports necessary and reasonably required for the District to meet its oversight and reporting obligations. Required reports include, but are not limited to those listed below along with projected due dates for the current school year. Timely notification shall be provided when due dates are changed. The District will annually update the list of required reports and due dates and provide this information to the School. The School shall timely provide the reports listed below without request from the District, but failure to provide reports shall not be considered a material violation of the Contract until five (5) business days after the District has made a written request for any delinquent reports. At such time the District may take actions outlined in Section 2.6 of this Contract.

- i. Accreditation Report (in accordance with State requirements);
- ii. Projected Purchased Services Options (June 1) (See Section 7.12);
- iii. Projected Enrollment Report (June 30);
- iv. Projected Budget Report (June 30);
- v. Governance Information (June 30);
- vi. Final Budget (November 30);
- vii. Quarterly Financial Reports (consistent with the District's schedule);
- viii. Audit (October 15. However, the School shall have 45 days after the School receives the final information and documentation

- needed from the District to complete the School's audit.); and
- ix. School Calendar (March 1).
- x. Governance information.
 1. Charter Board membership (i.e., names/ contact info, terms and signed Board Member Certification Forms) – within ten (10) days after election.
 2. Signed Board member conflict of interest disclosures – within thirty (30) days of the start of each school year.
 3. Current bylaws – within ten (10) days after any changes.
 4. Current articles of incorporation – within ten (10) days after any changes.
- xi. Insurance certification.

2.4 Indemnification. To the extent permitted by law and not covered by insurance or not otherwise barred by the CGIA, the District and School each agree to indemnify and hold the other and its respective employees, directors, officers, agents and assigns harmless from all liability, claims and demands of third parties arising on account of personal injury, sickness, disease, death, property loss, or damage or any other losses of any kind whatsoever that are proximately caused by the negligent, grossly negligent or intentional acts of the indemnitor or its respective employees, directors, officers, agents and assigns. The foregoing provision shall not be deemed a relinquishment or waiver of any applicable bar or limitation on liability provided by the CGIA or other law. The indemnitee shall reasonably seek to recover any amounts due under this Section from any applicable insurance policy paid for by the indemnitor before withholding funds otherwise due to the indemnitor.

2.5 Procedures for Articles of Incorporation and Bylaws Amendments. The School shall follow any requirements of the Colorado Revised Nonprofit Corporations Act in amending its articles of incorporation and bylaws and shall provide the District with notice of any such changes. The bylaws or policies of the School shall include a requirement that each Board member annually sign the School's conflict of interest policy and a conflict of interest disclosure.

2.6 District-School Dispute Resolution Procedures: All disputes arising out of the implementation of this Contract, and not subject to immediate appeal to the State Board of Education, shall be subject to the dispute resolution process set forth in this Section; unless specifically otherwise provided, all timelines in this Section may be extended by mutual agreement:

- A. The School and the District agree that the existence and details of a dispute notwithstanding, both parties shall continue without delay their performance hereunder, except for any performance which may be directly affected by such dispute.
- B. Either party shall notify the other party that a dispute exists between them within thirty (30) days from the date the dispute arises. Such notification

shall be in writing and shall identify the article and section of the Contract that is in dispute and the grounds for the position that such article and section is in dispute. The matter shall be immediately submitted to the President of the Board of the School and the President of the Board of the District, or their respective designees, for further consideration and discussions to attempt to resolve the dispute.

- C. In the event these representatives are unable to resolve the dispute informally pursuant to this procedure within thirty (30) days after the date of notification by one to the other of the existence of such dispute, then either party may elect to submit the matter to the Boards of the School and the District for their consideration. The submission to the Boards shall be made in writing to the other party and to the Board Presidents for delivery to the Boards, no later than forty (40) days after the initial date of notification by one party to the other of the existence of the dispute. The Presidents of both Boards are required to place the item on the agenda at the earliest meetings for discussion by the respective Boards. The Board Presidents are required to inform each other in writing of any resolution proposed by their respective Boards within ten (10) days after the Board meeting at which the item is discussed. The Board Presidents may elect to meet to identify possible solutions.
- D. In the event that the matter is not resolved by the Boards, then the matter shall be submitted to non-binding mediation by notice in writing (“Mediation Notice”) to the other party within thirty (30) days following the Board meetings. The thirty (30) days shall be determined by the date of the last Board meeting at which the matter is discussed.
- E. Any and all disputes which cannot be resolved informally shall be addressed by mediation to the extent not inconsistent with the requirements of state law. The Parties shall attempt to agree upon a mediator within five (5) days of the Mediation Notice. If the Parties are unable to agree on a mediator, each Party shall choose a mediator within ten (10) days of the Mediation Notice and those two mediators shall select the neutral mediator to be used within twenty (20) days of the Mediation Notice. The Parties expressly agree that the mediation shall be held within forty-one (41) days of the Mediation Notice and that the mediator shall be required to render a written opinion concerning the matter(s) in controversy within fifty-one (51) days of the Mediation Notice.
- F. Each Party shall pay one-half of the reasonable fees and expenses of the neutral mediator. All other fees and expenses of each party, including without limitation the fees and expenses of its counsel, witnesses and

others acting for it, mediators not jointly appointed, shall be paid by the party incurring such costs.

- G. The mediator shall have no authority add to, delete from, or otherwise modify any provision of this Contract or to issue a finding having such effect.
- H. Either party may appeal to the State Board within thirty (30) days of the written release of the mediation opinion or if the mediation opinion is not released within fifty-one (51) days of the Mediation Notice.

2.7 Other Remedies. If the School is subject to nonrenewal or revocation pursuant to C.R.S. § 22-30.5-110(3), is in violation of state or federal laws or regulations, or if the School materially breaches the Contract, the District may, but is not required to, impose other remedies prior to initiating revocation procedures in accordance with Section 11.3. Remedies include, but are not limited to, those listed below. These remedies may be applied individually, in succession, or simultaneously.

Prior to applying a remedy other than Section 2.6.B, the District shall send a notice of breach and provide the School an opportunity to cure. The notice shall state the deficiency and the basis (evidence), inform of an opportunity for the School to contest the deficiency, the timeframe for remedying the deficiency, and the expected results. Unless extraordinary circumstances dictate a different period, the School shall have thirty (30) days from receipt of notice of breach, to cure any perceived deficiency.

- A. Withholding. The District may withhold up to Five Percent (5%) of Funds Due to the School. This remedy may be applied in situations where the School could reasonably take actions to remedy the breach prior to the withholding of funds. These situations include, but are not limited to, failure to submit reports listed in Section 2.2.D by the established deadlines, failure to submit other required information or records by the date required or requested, and failure to submit a budget to the District that meets the requirements of Section 7.3. Any action taken pursuant to this subsection is subject to review as provided in C.R.S. § 22-30.5-112.
- B. Taking Immediate Control of the School. Notwithstanding any other provision of this Contract, in the case of any breach which the District reasonably determines poses a serious and imminent threat to School or District students or the property rights of the District or the School, the District may, but shall not be required to, take immediate control of the School or some portion thereof, and may exercise any portion or all power and authority over the School for such period of time as may be necessary to deal with such threat. These additional rights of the District shall continue during the pendency of any dispute resolution process with respect to any alleged breach.

Within ten (10) days of the District taking such action, the District Board shall hold a hearing and take formal action regarding the District's continued control of the School. At the hearing, the School shall have the opportunity to present evidence regarding the District's action and an opportunity for public comment shall be provided. The Charter Board may appeal the District Board's decision, with such appeal to be made to the State Board as a unilateral imposition of conditions.

C. Submission of Plan to Remedy Deficiency. At the request of the District, the School shall develop a remediation plan to cure a deficiency and submit it to the District for review and comment. The plan may be revised at the discretion of the School. The approved plan shall include a statement that directs the School's staff to implement the plan and provide the Charter Board and the District's Board with periodic reports of progress. The District may request the School to review and revise the plan if it is not effective in remedying the deficiency. This remedy may be applied if the School fails to make progress toward achieving its goals and objectives or District accreditation requirements, implementing its educational program, or fails to complete two (2) or more required reports by the established deadlines.

2.8 District Violations of Charter School Law or Contract. If the School believes that the District has violated any provision of this Contract or law, the School may initiate dispute resolution procedures, file an appeal with the State Board, or seek other remedies provided by law.

2.9 Emergency Powers. If the District seeks a preliminary order under the Emergency Powers set forth in C.R.S. §§ 22-30.5-701 – 704, it shall follow the procedures set forth therein.

3.1 School Governance.

3.2 Governance. The Governance and Operation Section of the Application (section h) concerning the nature and extent of parental, professional educator, and community involvement in the governance and operation of the School is accepted by the District to the extent permissible under federal and state law and subject to all conditions and amendments of this Contract and to the policies and regulations of the District, as amended and adopted from time to time (except to the extent waived by the Board as provided in this Contract). In addition, the Application is amended as follows, which amendments and other provisions of this Contract shall supersede and control over any conflicting language contained in the Application:

A. SCA Board. The School's articles of incorporation and bylaws will not conflict with the School's obligation to operate in a manner consistent with this Contract. The Charter Board's policies shall provide for governance of the operation of the School in a manner consistent with this

Contract. The Charter Board shall operate in accordance with these documents. Any material modification of the articles of incorporation or the bylaws or changes in the composition of the School's governing body shall be made in accordance with the procedures described in Section 2.4 of this Contract.

- B. Fair Campaign Practices Act. SCA and its employees shall agree to be bound by the restrictions of the Fair Campaign Practices Act, C.R.S. §§ 1-45-101, *et seq.*, in connection with election of the SCA Board, District Board Bond Issues and Mill Levy Overrides. Specifically, SCA employees may not conduct campaign activities while on duty. SCA employees may respond with factual information to unsolicited questions about SCA Board candidates, District Board candidates, Bond Issues or Mill Levy Overrides. SCA employees may not use SCA or District money or resources to support an SCA Board member's campaign, a District Board member's campaign, a Bond Issue or a Mill Levy Override. SCA employees may not materially use any SCA or District equipment or supplies for campaign-related work, including copiers, fax machines, telephones, SCA or District email. SCA employees may use personal funds and personal time to urge electors to vote for particular SCA Board candidates, District Board candidates, Bond Issues or Mill Levy Overrides. While at work, SCA employees must maintain a neutral disposition as to SCA Board candidates, District Board candidates, Bond Issues and Mill Levy Overrides.
- C. Conflict of Interest. Members of the SCA Board and other committees of SCA shall comply with state law and SCA Board policies and regulations regarding ethics and conflict of interest.
- D. Nonreligious, Nonsectarian Status. SCA agrees that it shall operate, in all respects, as a nonsectarian, nonreligious, non-home-based public school. SCA shall not be affiliated in any way with any nonpublic sectarian school or religious organization. SCA shall not discriminate against any person on the basis of race, creed, color, national origin, gender, sexual orientation, marital status, religion, ancestry, or disability.
- E. Commitment to Nondiscrimination/Equal Opportunity Employer. SCA affirms that it shall comply with all applicable federal, state, and local laws, rules, and regulations prohibiting discrimination on the basis of race, creed, color, national origin, gender, sexual orientation, marital status, religion, age, ancestry, or disability. Unless and until SCA adopts its own set of written policies that are approved by the District, SCA shall comply with all Board or Superintendent-approved policies and regulations concerning non-discrimination.

SCA affirms that, consistent with applicable law, it shall not discriminate against any applicant or employee on the basis of race, creed, color,

national origin, gender, sexual orientation, marital status, religion, age, ancestry, or disability in its recruitment, selection, training, utilization, termination, or other employment-related activities.

- F. Low-Income Students. SCA shall waive all fees for indigent (meaning students who qualify for free or reduced lunch) students in accordance with Board policy and applicable federal and state law; however, extended day programs are specifically excluded from this fee waiver. If requested by the District, SCA shall survey its student population for eligibility for free and reduced lunches under federal guidelines in accordance with State Board of Education regulations. On all fee lists and schedules, SCA shall include notification of the policy of waiver of fees for indigent students.
- G. Accountability. SCA shall comply with the educational accountability provisions of Colorado law as amended from time to time, including without limitation the Education Accountability Act of 2009, C.R.S. §§ 22-11-101, *et seq.*, the Educational Reform Act, C.R.S. §§ 22-7-401 *et seq.*, SCA Accountability Reports, C.R.S. §§ 22-7-602, *et seq.*, the State Board Accreditation Rules, 1 CCR 301-1 2202-R-0.00—5.02, and terms of any Accreditation Contract between the District and the State Board, as amended from time to time. SCA is subject to the District's and the Colorado Department of Education's accreditation and accountability requirements. SCA shall operate under the auspices of, and be accountable to, the District and subject to Colorado law, regulations of the State Board of Education and the Colorado Department of Education, and all Board and Superintendent-approved policies and regulations unless specifically waived.
- H. School Accountability Committees. SCA shall establish a School Accountability Committee at the SCA campus. Membership of the SCA Accountability Committee shall be as set forth in C.R.S. § 22-11-401 and the SCA Accountability Committee shall have the powers and duties specified in C.R.S. § 22-11-402. SCA will establish the SCA Accountability Committee no later than September 30 of each school year. The SCA Accountability Committee shall have no authoritative power but shall only make recommendations to the Executive Director of SCA (hereinafter "Director" or "Executive Director"). The SCA Director is responsible for establishing the School Accountability Committee. The Director will report to the SCA Board President when the SCA Accountability Committee has been formed and the date of its first meeting has been scheduled.
- I. Periodic Review of Progress. SCA shall be subject to a review of its operations and finances by the Board or a designee upon reasonable advance written notice. Upon request, SCA shall provide a yearly report which meets the conditions of the District and state accountability requirements.

- 3.3 Corporate Purpose. The purpose of the School as set forth in the articles of incorporation shall be limited to the operation of a charter school pursuant to the Act.
- 3.4 Transparency. The School shall make Charter Board-adopted policies, meeting agendas, minutes and related documents readily available for public inspection and shall conduct meetings consistent with principles of transparency, the Colorado Sunshine and Open Records laws, and shall adopt and strictly enforce a conflict of interest policy.
- 3.5 Complaints. The School shall establish a process for resolving public complaints, including complaints regarding curriculum, which shall include an opportunity for complainants to be heard. The final administrative appeal shall be heard by the Charter Board, not the District's Board. As stated in Section 2.1.B, the District agrees to direct any complaining party to the School's internal process, so that the School and the complaining party may address the complaint at the School-level, prior to any involvement by the District. The School agrees to inform the District regarding the resolution of any complaint that it receives and processes through the School's internal grievance policy within Thirty (30) days of such receipt.
- 3.6 Contracting for Core Educational Services. Unless otherwise agreed in writing by the District, the School shall not have authority to enter into a Contract or subcontract for the management or administration of its core instructional program or services, excluding special education and related services. This shall not prevent the School from engaging independent contractors to teach selected, specific courses.
- 4.0 Operation of School and Waivers.
- 4.1 Operational Powers. The School shall be fiscally responsible for its own operations, and shall have authority independently to exercise the following powers (together with such powers as provided for elsewhere in this Contract): contracting for goods and services; preparation of budgets; selection, supervision, evaluation, and determination of compensation for personnel; promotion and termination of personnel; leasing facilities for school purposes (a copy of which shall be provided to the District at least thirty (30) days prior to execution for review; provided, however, that the School retains the sole authority for deciding what leases to enter into); accepting and expending gifts, donations, or grants of any kind in accordance with such conditions prescribed by the donor as are consistent with law and this Contract; and adoption of policies and bylaws consistent with the terms of this Contract.
- 4.2 Transportation. Any transportation of students (other than special education students who require transportation as a related service) to the School shall be the sole responsibility of the student's parent or guardian.
- 4.3 Food Services. If requested to do so by the School, the District shall consult with

the School to provide school meals, including free and reduced price meals, in a manner determined by the District and in accordance with District Board policy and applicable federal and state law. The costs associated with all food services will be borne by the School.

4.4 Insurance. During the term of its charter, the School shall maintain insurance coverage either purchased in its own right or through the District. The School may purchase all types of insurances the District carries, including but not limited to health and liability, from the District. The School must give the District one hundred twenty (120) day notice before canceling any insurance policies purchased through the District.

4.5 Waivers:

A. State Laws and Regulations:

- i. Initial waiver request. The District agrees to seek waiver from the State Board of Education of state statutes and regulations that are automatically approved, upon request pursuant to 1 CCR 301-35 and the additional agreed upon waivers. The School agrees to provide acceptable replacement policies for these automatic waivers. The waivers from state law or regulation, to be requested jointly, are set forth in Attachment 1.
- ii. Subsequent waiver requests. The School may request additional waivers after the original request. Upon receipt of such request, the District shall have thirty (30) calendar days to review the request and, thereafter, shall present the matter before the Board at its next regular meeting. The Board shall, unless otherwise agreed by the Parties, have thirty (30) calendar days to consider the matter prior to rendering a decision at a regular meeting. The District agrees to jointly request such a waiver from the State Board, if the District's Board first approves the request. Board of Education approval of requests to waive state law or regulations shall not be unreasonably withheld. To the extent the State Board does not grant the requested waivers or imposes conditions upon the School with respect to such waivers, it is agreed that representatives of the Parties shall meet to negotiate the effect of such State Board action.

B. District Policies:

- i. Automatic waivers. The District shall grant automatic waivers that are necessary or appropriate when a policy by its express terms does not apply to a charter school or the District, through the Contract, has delegated this authority to the School. Such automatic waivers from District policy are subject to compliance with all state and federal laws, rules, and regulations. The waivers

from District Policy being granted with this Contract are listed in Attachment 2.

- ii. Additional waivers. The School shall be granted certain waivers from District policies upon approval by the Board of acceptable replacements.
- iii. Subsequent waiver requests. The School may request additional waivers after the original request. Upon receipt of such request, the District shall have thirty (30) calendar days to review the request and, thereafter, shall present the matter before the Board at its next regular meeting. The Board shall, unless otherwise agreed by the Parties, have thirty (30) calendar days to consider the matter prior to rendering a decision at a regular meeting. Waivers of District policies may be granted only to the extent permitted by state law. Waiver of District policies shall not be unreasonably withheld.

5.1 School Enrollment and Demographics.

- 5.2 School Grade Levels. The School will serve students in grades preschool through grade 12 and any additional grades beyond grade 12 that are funded under Colorado law. Prior to opening preschool programming, the School will provide a description of programming and services to the District for approval. Approval will not be withheld, conditioned, or delayed unless the preschool program does not comply with law.
- 5.3 Student Demographics. As required by the Act, School enrollment decisions shall be made by the School in a nondiscriminatory manner as specified in the charter school application. The School shall have and implement a recruitment and enrollment plan that ensures that it is open to any child who resides within the District, and has a diverse student population which includes, but is not limited to, making reasonable efforts to enroll a percentage of students that are eligible for free or reduced lunch programs consistent with District averages, taking into account the demographics of other public schools within a reasonable proximity to the School. The School shall make reasonable progress toward this goal.
- 5.4 Minimum and Maximum Enrollment. The minimum enrollment is 122 students, which is determined to be the lowest enrollment necessary for financial viability. If minimum enrollment is not reached or the school falls below minimum enrollment at any time, it shall close at the end of the school year. The School and the District agree that during the term of this Contract, the School's maximum enrollment shall only be limited to facilitate a safe, effective learning environment. The School's shall not exceed the capacity of its facilities. The School agrees to notify the District if the School adds any additional facilities and added capacity.

- 5.5 Eligibility for Enrollment. The School shall limit enrollment of students accepted through the process outlined in 5.5 below, including enrollment procedures for students with disabilities, to those who meet the School's age and grade requirements, are not otherwise ineligible to enroll based on criteria in Article 33 of Title 22 or who meet the criteria in C.R.S. § 22-33-106(3)(f) in another District school.
- 5.6 Admission Process and Procedures for Enrollment. To ensure that students are admitted and enrolled in compliance with law, the procedures below must be followed
- A. SCA enrollment policy prohibits discrimination based on race, color, religion, national origin, gender, gender identity, sexual orientation, age, genetic information, handicap (disability), need for special education services in admission or access to, or treatment, or employment in its education programs or activities. This policy is required as it is anticipated that the enrollment interest will exceed the enrollment capacity of the school.
 - B. Terms:
 - i. Admissions process. The admissions process is the means by which a family applies to the School by completing an Intent to Enroll or similar application form. If a School has not reached its enrollment limit and has an available spot in the appropriate grade, the student will be admitted.
 - ii. Enrollment process. The enrollment process begins after a student has completed the admissions process and has been offered a spot at the School. Only after a student has been admitted can the School request more detailed information about a student, such as enrollment history, identifying the student's need for special programming, English language development, or special-education services.
 - C. Class size at the School shall be set by the Governing Board of SCA.
 - D. The School will enroll students based on the preferences and procedures below:
 - i. Currently enrolled SCA students shall automatically be re-enrolled from year-to-year.
 - ii. First preference for enrollment of new students shall be given to children of current full-time SCA staff and faculty.
 - iii. Second preference for enrollment of new students shall be given to siblings of current SCA students.
 - iv. Preference for new students is then given to children who reside in District 70, then residents of District 60, and then students who

reside in an area outside Pueblo County, but live elsewhere in the state of Colorado.

- v. If at any time the enrollment reaches the classroom capacity at SCA, all subsequent applications for enrollment will be placed on a waiting list.
 - vi. A parent may submit an application to enroll his/her child at SCA at any time after the child is born and has a name. The date of the letter of intent shall determine the child's priority for enrollment. Only full-time students will be accepted. It is solely the parent's or guardian's responsibility to ensure that SCA has current contact information on file for children on the waiting list.
 - vii. Multiple waiting lists shall be maintained for each present or future grade/academic year group based on the enrollment priorities addressed above. Students on the highest priority list will be admitted first before admitting students on a lower priority list. Priority within each list is according to earliest date and time of letters of intent.
- E. Admission of applicants with an IEP or Section 504 Plan shall comply with District requirement and procedures concerning the education of students with disabilities. Every student who is admitted with an IEP or Section 504 Plan from his/her previous school shall be placed in a comparable program(s) until SCA either: 1) adopts the IEP or Section 504 Plan developed by the student's prior school or district; or 2) develops, adopts, and implements a new IEP or Section 504 Plan.
- F. When an applicant has an IEP or Section 504 Plan, prior to enrollment, a screening team consisting of the School Director or designee, the School special education coordinator, and a District representative, shall review the IEP or Section 504 Plan, and, if deemed appropriate, confer with staff at the student's previous school, and shall make a determination whether the services and space available at the School are sufficient to deliver the program required by the IEP or to provide the accommodations required in the Section 504 Plan. If the screening team cannot reach consensus, the District representative shall convene a complete IEP Team to make the final determination. The School shall not be required to make modifications to the School's facility.
- G. When a student who has intensive service needs as identified by an IEP Team applies for admission into the School, the School Director shall convene an IEP Team meeting, which shall include a District representative. The student's enrollment is contingent upon the determination by the IEP Team that the student can receive a Free Appropriate Public Education ("FAPE") in the least restrictive

environment (“LRE”) at the School in its existing programs with or without reasonable modifications. If the determination is that FAPE is not available, the student will not be permitted to enroll and the student’s current placement shall remain as determined by the prior IEP Team meeting. Representatives from the student’s prior school shall be invited to participate in the IEP Team meeting at the School. Additionally, an application for attendance at the School may be denied for a student seeking placement in the School in the same manner and for the same reasons as such application may be denied for a student without disabilities. The School shall have the responsibility to defend such a denial.

- 5.7 Participation in other District Programs. No student may be jointly enrolled in the School and another District school or program without the written permission of the District and the School. Such written permission shall include the manner in which the costs of instruction shall be divided between the School and the District. Payment by the School to the District, if any, pursuant to any such agreement shall be deemed payment for a purchased service under the Act. The charge is determined by dividing the per pupil revenue by seven (7) and multiplying the result by the number of courses taken at such other district school or program. The District shall pay the School in the same manor for any student(s) taking classes at the School while enrolled at another school.
- 5.8 Non-Resident Admissions. Subject to its enrollment guidelines, the School shall be open to any child who resides within the District and to any child who resides outside the District, subject to compliance with applicable Colorado public schools of choice statutes, Board policy, and this Contract. If the School has more applicants than it has space, preference shall be given to those students who reside within the District, and then to students who are new to the District, subject to its overall enrollment guidelines. Once accepted for enrollment, a non-District resident student may re-enroll for subsequent school years until completing his or her schooling at the School.
- 5.9 Student Movement after October 1. After October 1, any movement of students between the School and any District school, including the school serving the student’s resident address that is not operated pursuant to a charter school contract is subject to an agreement between the School and the Superintendent or designee. The School agrees to use the standard District administrative transfer process. Requests for transfer to a District school shall not be unreasonably denied.
- 5.10 Expulsion and Denial of Admission. The authority to hold expulsion hearings shall remain with the District Board of Education. ~~However~~ The Charter Board, or its designee, shall make findings of fact and make recommendations to the District superintendent. A decision to expel a student from ~~the District, excluding~~ SCA, may be appealed to the District Board. Any decision to expel a Charter School student by the District Board shall specify which District schools the

student is expelled from attending and which schools, if any, the student may attend as an alternative, with permission from the District. Any general education services required by law to be provided to suspended or expelled students shall be the sole responsibility of the District, in cooperation with the School. Any special education and related services required by law to be provided to suspended or expelled students shall be the sole responsibility of the District. The authority to deny admission and/or re-admission to the School shall be vested in the School's Board. For any SCA student who is expelled and who then attends another District 70 school will have the PPOR pro-rated; any District student who is expelled and who then attends SCA will have PPOR pro-rated.

- 5.11 Attendance. School students' attendance shall comply with Colorado's compulsory attendance laws, including but not limited to the required number of instructional hours and the distinction made between excused and unexcused absences. The District shall be responsible for enforcing Colorado's compulsory attendance laws, in cooperation with the School. The School agrees to pay the actual costs incurred by the District in enforcing the attendance provisions of Colorado's compulsory attendance laws, with respect to the School's students.
- 5.12 Continuing Enrollment. Students/parents who choice into the School shall remain enrolled in the School through the highest grade served by the School, absent expulsion, denied re-admission, graduation, court ordered placement, or IEP placement. Students wishing to transfer from the School to another school in the District may do so only through the District's within-District transfer procedures.
- 5.13 School Year and Calendar. In accordance with state requirements, the School shall determine its own school year and school calendar. The School shall also decide when conditions warrant school closing or delay.

6.1 Educational Program.

- 6.2 Vision. Swallows Charter Academy envisions a community working to produce lifelong learners who are: problem solvers, well-rounded citizens, critical thinkers, team players, good decision makers, and leaders of tomorrow.
- 6.3 Mission. The mission of Swallows Charter Academy is to encourage all students to strive for academic excellence by providing a content-rich and rigorous curriculum in a safe and respectful environment that nurtures character development and supports creative expression.
- 6.4 Prekindergarten, GED and Online Programs. The School's educational program as contained in the 2001 Application does not include a Prekindergarten, or GED or online program pursuant to C.R.S. § 22-30.7-101 et seq.; however, the School may offer a Prekindergarten, GED and/or online programs at its discretion, so long as such programs meet the state and District standards that have not been waived.
- 6.5 Curriculum, Instructional Program, and Pupil Performance Standards. The

School shall have the authority and responsibility for designing and implementing its educational program, subject to the conditions of this Contract. The educational program, pupil performance standards, and curriculum designed and implemented by the School shall meet or exceed any content standards adopted by the District, shall be designed to enable each pupil to achieve such standards, and shall be consistent with the School's vision and mission. The School shall have a maximum of 24 students in each elementary classroom in which subjects are taught and tested by state-mandated testing. The School may have more students in classrooms for subjects not tested by the State so long as all building occupancy restrictions are followed (e.g. music, physical education, etc.).

- 6.6 Graduation Requirements. The School shall follow the District's graduation requirements unless it develops and submits to the District for approval a policy setting forth differing graduation requirements. The District's approval shall not be unreasonably withheld.
- 6.7 English Language Learners. The School shall provide resources and support to English language learners to enable them to acquire sufficient English language proficiency to participate in the mainstream English language instructional program. The School shall follow the District's procedures for identifying, assessing and exiting English language learners and the School shall provide its own programs which meet the requirements of all federal and State laws and regulations, unless waived.
- 6.8 Gifted and Talented Students. The School shall follow the District's procedures for identifying, assessing and providing services to gifted and talented students, and the School shall provide its own programs which meet the requirements of all federal and State laws and regulations, unless waived.
- 6.9 Education of Students with Disabilities:
 - A. The District shall provide special education support services to students at the School, except that the School shall hire its own special education teacher(s) and paraprofessional(s) subject to review of licensing, and with the approval of the District's Executive Director of Exceptional Student Services (ESS), such approval shall only be withheld for cause. As part of the central administrative overhead costs the District is permitted to retain in accordance with C.R.S. § 22-30.5-112(2)(a)(II)(A), SCA shall pay its proportionate share, based on the percentage of District students enrolled at the School, of the salary and benefits of District Administrator for ESS and ESS Administration Support staff which shall only include staff dedicated to the overall administration of ESS for the District and not the oversight of a particular school or providing services to individual students. A description of the special education services to be provided by the District pursuant to Section 6.10.A above is provided in Attachment 3. Defense of any and all charges, complaints, or investigations concerning special education by the Office for Civil Rights (OCR), the Department's

Federal Complaints Officer, or IDEA due process proceedings shall be the responsibility of the School. The District and the School agree that enrollment at the School is a choice and as such students with disabilities are generally not eligible for transportation services. The School shall not be required to make any alterations to its facilities or hire more staff in order to provide special education services, except for special education teacher(s) and supervisor and except as may be required by State or Federal law.

- B. The School agrees to comply with all Board policies and regulations and the requirements of federal and state laws and regulations concerning the education of children with disabilities, and shall provide for the attendance of any School employees who should be present at any meetings at which IEPs are developed or modified. If the School and the District disagree as to the correct interpretation or application of a statute or regulation concerning the education of students with disabilities, the District's position shall control.
- C. The District and the School shall jointly direct the development and/or modification of any IEP for special education students of the School. The District's Director of Exceptional Student Services, or designee, shall maintain the same administrative responsibilities and authority in the School as in all other District special education programs and services. The School shall use District special education forms and procedures and shall document compliance with the requirements of federal and state law, including procedural due process. The District shall respect the School's curriculum, instructional program, and mission in the development of IEPs for students enrolled in the School.
- D. The District or the School may identify from time to time changes to the educational program of the School that (a) are reasonably necessary to comply with applicable law for educating students with disabilities, or (b) provide cost savings or other benefits in connection with educating students with disabilities. After good faith discussion of these changes with the School, the District shall have the right to require such changes necessary to comply with law, and shall have the right to request other changes on behalf of students with disabilities.

- 6.10 Special education programs and services shall be available to each student as part of the regular school day in accordance with the least restrictive environment mandate of federal and state law. The District and School agree that some students may be better served at another District School. School Goals and Objectives. The School agrees to make reasonable progress towards meeting State academic standards as defined by the Colorado School Performance Framework as well as making reasonable progress toward meeting state standards across subgroups and sub indicators. Reasonable progress will be established

through the implementation of annually revisited and agreed-upon academic targets, developed through use of the Unified Improvement Plan process. In the event that the School does not meet its annually agreed-upon targets, the School must work with the District utilizing the School's interim assessment results to develop benchmark targets in addition to their UIP targets. The School's success shall be measured as compared to the other public schools in the District. The School commits that its students will, at a minimum, take the required state assessments and the same standardized tests administered by the District. The School reserves the right to administer other standardized tests in the School's discretion, such as, but not limited to the Star, Accuplacer, Plan, Explore, and/or NWEA assessments.

7.1 Financial Matters.

7.2 Revenues:

- A. District Per Pupil Revenue ("PPR") Funding. In each fiscal year during the term of this Contract, the District shall provide one hundred percent (100%) of PPR provided to the schools through the State of Colorado School Finance Act minus the following:

The actual amount of the School's per pupil share of the central administrative overhead costs (up to five (5) percent of PPR) as provided by law or as agreed to, in writing, by both parties in any subsequent written agreement, less deductions for purchased services (which may be purchased from the District, performed by the School, or purchased from a third party), less categorical state aid unless the School has qualified for such aid, less other deductions as provided herein and adjusted as provided herein. District per pupil revenues shall have the meaning defined in C.R.S. § 22-30.5-112(2)(a.5). Any subsequent CDE audits of District pupil counts and per pupil revenue that impact the funding received by the School, shall be reflected as an adjustment to subsequent payment from the District to the School.

The District, upon request of the School, shall allow the School to contest any adverse count audit in the name of the District through the administrative appeals process. The District may make financial adjustments effective as of the date of any final audit report, notwithstanding an administrative appeal.

The District agrees to provide detailed information on the calculation of central administrative costs.

- B. Mill Levy Funds. The District shall pay, if applicable, the School its proportionate share of the Mill Levy Override Funds for which it is

eligible. The School agrees to use such funds in accordance with District guidelines. Funds shall be made available to the School on the same schedule that they are made available to other District schools. At present, no override exists. In any dispute over eligibility for mill levy funding and appropriate use of funds, the procedure outlined in Section 2.5 of this Contract shall be followed.

- C. Federal Categorical Aid. Each year the District shall provide to the School the School's proportionate share of applicable federal Elementary and Secondary Education Act (ESEA) funding or related services (e.g. Title I, Title II, Title III, Title IV, and Title V) received by the District for which the School is eligible. Schools are eligible for such funds and/or services upon approval of their plans for such funds either by the District or the Colorado Department of Education as required. Distribution of funds will follow District/Federal processes and procedures.
- D. State Categorical Aid. On or before January 15 of each year, the District shall provide to the School the School's proportionate share of applicable state categorical aid (e.g., READ Act, English Language Proficiency, Gifted and Talented, Amendment 23 capital construction funds, or Transportation funding) received by the District for which the School is eligible. Schools are eligible for such funds upon approval of their plans for such funds either by the District or the Colorado Department of Education as required.
- E. The District shall pay, if applicable, the School its proportionate share of any new bond funds ~~and from additional funds generated through refinancing existing bonds~~. The District shall also pay, if applicable, the School its proportionate share of new bond funds that are generated by refinancing or restructuring existing bond debt. Funds shall be made available to the School based on the percentage of District students enrolled in the School. In any dispute over eligibility for bond funding and appropriate use of funds, the procedure outlined in Section 2.5 of this Contract shall be followed.
- F.

7.3 Per Pupil Revenue:

- A. Disbursement of Per Pupil Revenue. If the School establishes its own bank accounts, which the District agrees it may do, commencing on July 1 of each fiscal year of the Contract term, District per pupil revenue funding as described in Section 7.1.A shall be disbursed to the School in monthly installments, subject, however, to annual appropriation and the District's receipt of funding. July through December funding shall be based on the School's enrollment projections submitted in accordance with Section 7.4. Funding for January and subsequent months of each fiscal year shall be adjusted in accordance with Section 7.2.B. Funds shall be disbursed

within five (5) days of being received by the District.

B. Adjustment to Funding. The District's disbursement of funds shall be adjusted as follows: December 31 of each year, funding may be revised based on the number of FTE pupils actually enrolled at the School as determined at the October 1 count and included in the official membership count, and to reflect any change in PPR, positive or negative, so that the overall funding for the year is equal to PPR provided for in the District and not otherwise deducted. Funding may also be adjusted for any services provided by the Contract. In addition, to the extent that the District experiences any reduction or increase in state equalization support by a legislative rescission or other action, proportionate reductions or increases shall be made to the School's funding.

7.4 Budget. On or before June 30 of each year, the School shall submit to the District proposed balanced budget for the following school year for District review, for statutory compliance and compliance with the terms and conditions of this Contract. The final budget shall be prepared in accordance with the state-mandated chart of accounts. The budget as approved by the Charter Board and any subsequent approved revisions shall be submitted to the District along with the Charter Board resolution approving the budget or budget revision by November 30. A material violation of this may result in the District initiating remedies described in Section 2.6.

7.5 Enrollment Projections. The School shall provide the District with its latest and best estimates of its anticipated enrollment for the next school year by March 1, along with any discussion or plans under consideration for any increase or decrease of enrollment greater than ten percent (10%) of the official membership for the current school year. It is agreed upon by the Parties that the purpose of this Section is to provide information to allow the District to prepare its future budgets, and that any information provided under this Section shall not be used by the District for the purpose of restricting the School's enrollment or otherwise inhibiting the growth of the School, other than to require compliance with minimum or maximum enrollment (Paragraph 5.3).

7.6 TABOR Reserve. The School shall recognize the requirement of the TABOR reserve. The School shall be charged, as an allocated cost, its pro-rated share of any required TABOR Reserve increases. Alternatively, the School may maintain its own TABOR reserve.

7.7 Contracting. The School shall not extend the faith and credit of the District to any third person or entity. The School acknowledges and agrees that it has no authority to enter into a contract that would bind the District, and the School's authority to enter into a contract is limited by the same provisions of law that apply to the District. Unless otherwise agreed in writing by the District, each contract or legal relationship entered into by the School shall include the

following provisions:

- A. The contractor acknowledges that the School is not an agent of the District, and accordingly, contractor expressly releases the District from any and all liability under this agreement.
- B. Any financial obligations of the School arising out of this agreement are subject to annual appropriation by the Charter Board and the District.

- 7.8 Annual Audit and Trial Balance. The School shall undergo an independent financial audit conducted in accordance with governmental accounting standards performed by a certified public accountant each fiscal year. The District will provide to the School any information or documentation exclusively in the District's possession and needed for the School's audit by September 1st of each year. The School shall have at least forty-five (45) days to provide its audit to the District after the School receives the information from the District. The results of the audit shall be provided to the District in written form by the deadline in Section 2.2 (D). The School shall pay for the audit. In addition, the School shall transmit the final trial balance to the District in a formatted Excel spreadsheet compatible with the CDE Data Pipeline and with School codes with the submission of the annual independent financial audit. If such audit is not received each year by the deadline in Section 2.2 (D), it shall be considered a material breach of Contract and the School shall have ten (10) business days, or such other time as the Parties may agree, to cure such breach. However, if the audit is not received because the District has not provided the School information or documentation exclusively in the District's possession and needed for the School's audit, the District and not the School, shall have materially breached this Contract and shall have ten (10) business days, or such other time as the Parties may agree, to cure such breach.
- 7.9 Quarterly Reporting. If the School has not contracted with the District to provide financial services, the School shall prepare quarterly financial reports for the District in compliance with C.R.S. § 22-45-102(1)(b) and post required reports pursuant to CRS § 22-44-301 et seq. Such reports shall be submitted to the District no later than forty-five (45) days following the end of each quarter except that all fourth quarter and year end reports shall be submitted with the annual independent financial audit. If the School has contracted with the District to provide financial services, the reporting and posting requirements shall be the responsibility of the District.
- 7.10 No Commingling. Assets, funds, liabilities and financial records of the School shall be kept separate from assets, funds, liabilities, and financial records of any other person, entity, or organization including a tuition based pre-k program.
- 7.11 Encumbrances and Borrowing. The School may collateralize or encumber any of its assets without the permission of the District. However, no commitment of the School shall violate TABOR or be considered an obligation of the District.

- 7.12 Loans. No loans may be made by the School to any person or entity (other than an “Affiliated Entity”) for any purpose without District approval. An “Affiliated Entity” shall include an entity formed to support the School through fundraising, holding property, or incurring debt for School purposes and entities formed for the purpose of starting another charter school within the State of Colorado.

7.12 Purchased Services. June 1st of each year, SCA will provide the District updated enrollment projections and a list of the purchased services it would like to purchase from the District for the upcoming fiscal year. By June 15th of each year the District will inform SCA what purchased services it can provide SCA and the pricing for such services. SCA and the District shall negotiate in good faith and shall have until July 22nd of the applicable year to enter into a purchased services agreement. If no agreement is signed by such date, SCA shall become responsible for providing the services. The parties may agree to change these deadlines at any point and may choose to enter into a purchased services agreement at a later time through mutual agreement.

8.1 Personnel.

- 8.2 Employment Matters. The Employee Section of the Application concerning employment matters and specific personnel policies are accepted to the extent specifically described below and subject to the following conditions and other provisions of this Contract:

- A. Hiring of Personnel. The District agrees that SCA may select its personnel directly without prior authorization from the District, subject to compliance with all federal and state laws, rules, and regulations, including, without limitation, requirements concerning the recruitment of applicants, the use of background and criminal checks, and certification and/or licensure requirements for teachers and the Director, except as may be waived by the State Board. SCA agrees and understands that it has a duty to comply with the applicable requirements of the Every Child Succeeds Act, and implementing regulations, and any laws or regulations which may replace it in the future.. If necessary and appropriate, the District shall endorse applications for alternative certification or licensing by SCA teachers; provided, however, that SCA shall be responsible for any costs associated with such application and approval process. The SCA Board may terminate the employment of any personnel for any reason deemed sufficient by the SCA Board subject to compliance with all federal and state laws, rules, and regulations for which a waiver has not been obtained from the State Board of Education.
- B. Employee Compensation, Evaluation, and Discipline. The District agrees to cooperate with SCA in considering the waiver of Board or Superintendent-approved policies and regulations concerning the hiring, compensation, evaluation, promotion, discipline, and termination of employees at SCA, subject to compliance with all applicable state rules and regulations, unless specific waivers are obtained from the State Board of Education. District policies will remain in effect and be followed by

the SCA Board until the adoption of policies regarding these matters that are in compliance with applicable law and approved by the District.

SCA shall adopt its own written policies in compliance with federal and state law, concerning the recruitment, hiring, promotion, discipline, and termination of personnel; methods for evaluating performance; and a plan for resolving employee-related problems, including complaint and grievance procedures. District policies shall remain in effect until the adoption by the SCA Board of policies regarding these matters that are in compliance with applicable law and approved by the District. SCA shall notify the District and other appropriate authorities, in accordance with state law, of discipline of employees at SCA arising from misconduct or behavior that may have resulted in harm to students or others or that constituted violations of law or policy.

- C. Benefits. SCA is entitled to provide its own benefits program to its employees, but may purchase benefits through the District at cost.
- D. PERA Membership. Employees of SCA shall be members of the Public Employees' Retirement Association and subject to its requirements. SCA shall be responsible for the cost of District's/employer's respective share of any required contributions. SCA will budget a proportionate share of its total payroll for PERA contributions as required by state law. If this amount changes in subsequent years, the SCA budget will be adjusted to reflect the change. SCA further recognizes that under state law, only public employers assigned to the municipal division may terminate their association with PERA, and that the District and SCA are in the school division.
- E. Employee Welfare, Safety, and Training. Unless and until SCA adopts its own set of written policies that are approved by the District, SCA shall comply with all District Board or Superintendent-approved policies concerning employee welfare, safety, and training. All policies shall comply with applicable federal and state laws, concerning employee welfare, safety, and health issues, including, without limitation, the requirements of federal law for a drug-free workplace, and statutorily required training concerning the Child Protection Act of 1987, C.R.S. §§ 19-3-301 et seq. All policies previously approved by the District are to remain in effect.
- F. Employee Records. Unless and until SCA adopts its own set of written policies that are approved by the District, SCA shall comply with all District Board or Superintendent-approved policies concerning employee records. All policies must comply with all applicable federal and state laws, concerning the maintenance and disclosure of employee records, including, without limitation, the requirements of the Colorado Public

Records Law, §§ 24-72-201 *et seq.* All policies previously approved by the District are to remain in effect.

- G. Employee Conflicts of Interest. All employees at SCA shall comply with the Board's policy and regulation, or SCA replacement policy approved by the District and applicable state law, concerning employee actual and potential conflicts of interest.

9.1 Service Contracts with the District.

9.2 Direct Costs. The School and the District agree to negotiate payment to the District of the School's share of the direct costs incurred by the District for charter schools pursuant to C.R.S. § 22-30.5-112(2)(a.9) and (b.5). Such negotiations shall be concluded by June 15 of the year preceding that to which the costs apply.

9.3 District Services. Except as is set forth in Attachment 3 which provides for the purchase of special education services, and any subsequent written agreement between the School and the District, or as may be required by law, the School shall not be entitled to the use of or access to District services, supplies, or facilities. Such agreements by the District to provide services or support to the School shall be negotiated annually and subject to all terms and conditions of this Contract, except as may be otherwise agreed in writing.

10.1 Facilities.

10.2 Location. The School shall be responsible for the construction/renovation and maintenance of any facilities owned or leased by it.

10.3 Use of District Facilities. The School may not use District facilities for activities and events without prior written consent from the District. The consent of the District shall not be unreasonably withheld. Applicable fees for use may apply.

10.4 Impracticability of Use. If use by the School of a facility is rendered impracticable by any cause whatsoever, or if the funds necessary to construct/renovate or upgrade a facility cannot be secured, the District shall not be obligated to provide an alternative facility for use by the School to operate the School.

10.5 Long-Range Facility Needs. When the District considers the submittal of ballot issues to its voters regarding future tax increases for either bonded indebtedness or capital construction, it shall invite the School to participate in discussions regarding such possible ballot issues to also meet the long-range capital facility needs of the School. Such invitation shall be made no later than six (6) months before the relevant bond(s) or ballot issue(s) shall be voted on.

11.1 Charter Renewal, Revocation and School-Initiated Closure.

- 11.2 Renewal Timeline and Process. The School shall submit a proposed charter contract which shall be considered the School's renewal application by September 1 of the year before the School's Contract expires. The District Board shall act on the renewal application (proposed charter contract) by resolution no later than November 1 after the renewal application is submitted following a public hearing where the School shall have the opportunity to address the District Board about its renewal request. If the District Board decides not to renew the Contract, it shall detail the reasons in its resolution. The Board may agree to accept an early application or proposed contract for continued and/or expanded operation of this charter.
- 11.3 Renewal Application Contents. The Parties agree that they will meet throughout the Contract term and that the School will provide updates to the District at least once a year. As such, the School is not required to submit a renewal application and may instead only submit a proposed contract as addressed in Section 11.1 herein.
- 11.4 Criteria for Renewal or Non-Renewal and Revocation. The District may terminate, revoke or deny renewal of the Contract for any of the grounds provided by state law, C.R.S. § 22-30.5-110(3), as they exist now or may be amended, or for material breach of this Contract. Grounds for termination, revocation, or denial also include but are not limited to the following:
- A. Pursuant to C.R.S. § 22-11-210(1)(d), the School is accredited with a priority improvement plan or turnaround plan for a combined total of five (5) consecutive years or any lesser number of years established by the State Board after which closure or restructuring is required.
 - B. The School is accredited with a turnaround plan and does not attain a higher accreditation rating at its next performance review in accordance with C.R.S. § 22-11-406(3).
- 11.5 Termination and Appeal Procedures. The District shall provide the School written notice of the grounds for termination, which may be considered by the District Board after receiving the written recommendation of the Superintendent. Termination shall not take effect until the School has exhausted its opportunity to appeal such decision to the State Board of Education.
- 11.6 School-Initiated Closure. Should the School choose to terminate this Contract before the end of the Contract term, it may do so in consultation with the District at the close of any school year and upon written notice to the District given at least ninety (90) days before the end of the school year.
- 11.7 Dissolution. In the event the School should cease operations for whatever reason, including the non-renewal or revocation of this Contract, the School agrees to continue to operate its educational program until the end of the school year or another mutually agreed upon date. The District shall supervise and have

authority to conduct the winding up of the business and affairs for the School; provided, however, that in doing so, the District does not assume any liability incurred by the School beyond the funds allocated to it by the District under this Contract. Should the School cease operations for whatever reason, the District maintains the right to continue the School's operations as a District facility until the end of the school year. The District's authority hereunder shall include, but not be limited to, 1) the return and/or disposition of any assets acquired by purchase or donation by the School during the time of its existence, subject to the limitations of Section 11.7, below, and 2) reassignment of students to different schools. School personnel and its charter school governing board shall cooperate fully with the winding up of the affairs of the School including convening meetings with parents at the District's request and counseling with students to facilitate appropriate reassignment.

11.8 Return of Property. In the event of termination or dissolution, all property owned by the School that was purchased in whole or in part with funding provided by the District, including, but not limited to, real property, shall be returned to and shall remain the property of the District. Notwithstanding the above, the District shall not have the right to retain property leased by the School, unless the District chooses to comply with the terms of that lease. All non-consumable grants, gifts and donations or assets purchased from these revenue sources shall be considered the property of the School unless otherwise identified by the donor in writing. Assets purchased exclusively with tuition paid by parents for a preschool program operated by or in conjunction with the School shall not be subject to this paragraph. Assets not purchased with public funding provided by the District may be donated to another mutually agreeable not-for-profit organization. If the School transfers to the Colorado Charter School Institute or another lawful charter school authorizer the School shall be allowed to keep all of its then current assets as part of said transfer.

12.0 General Provisions.

12.1 Order of Preference. In the event of any conflict between the documents and practices defining this relationship, it is agreed that this Contract shall take precedence over policies of either party and the Application; applicable policies of the Board of Education that have not been waived shall take precedence over policies and practices of the School and the Application; and, policies of the School and mutually-acceptable practices developed during the term of the charter contract shall take precedence over the Application.

12.2 Amendments. No amendment to this Contract shall be valid unless ratified in writing by the Board and the School's governing body and executed by authorized representatives of the Parties.

12.3 Merger. This Contract contains all terms, conditions, and understandings of the Parties relating to its subject matter. All prior representations, understandings, and discussions are merged herein and superseded by this Contract.

- 12.4 Assignment. Neither party to this Contract shall assign or attempt to assign any rights, benefits, or obligations accruing to the party under this Contract unless the other party agrees in writing to any such assignment. Such consent shall not be unreasonably withheld, conditioned or delayed.
- 12.5 Governing Law and Enforceability. This Contract shall be governed and construed according to the Constitution and laws of the State of Colorado. If any provision of this Contract or any application of this Contract to the School is found contrary to law, such provision or application shall have effect only to the extent permitted by law. Either party may revoke this Contract if a material provision is declared unlawful or unenforceable by any court of competent jurisdiction or the Parties do not successfully negotiate a replacement provision. The Parties agree, upon the request of either, to meet and discuss in good faith any material changes in law that may significantly impact their relationship.
- 12.6 No Third-Party Beneficiary. The enforcement of the terms and conditions of this Contract and all rights of action relating to such enforcement shall be strictly reserved to the District and the School. Nothing contained in this Contract shall give or allow any claim or right of action whatsoever by any other or third person. It is the express intent of the Parties to this Contract that any person receiving services or benefits hereunder shall be deemed an incidental beneficiary only.
- 12.7 No Waiver. The Parties agree that no assent, express or implied, to any breach by either of them of any one or more of the provisions of this Contract shall constitute a waiver of any other breach.
- 12.8 Notice. Any notice required, or permitted, under this Contract, shall be in writing and shall be effective upon personal delivery (subject to verification of service or acknowledgement of receipt) or three (3) days after mailing when sent by certified mail, postage prepaid to the Administrator for notice to the School, or to the designated District representative for notice to the District, at the addresses set forth below. Either party may change the address for notice by giving written notice to the other party.

Notice to the District shall be sent to:

Superintendent
Pueblo County School District 70
301 28th Lane,
Pueblo, CO 81001

With a copy to:

Brad Miller
Miller Farmer Carlson Law
5665 Vessey Rd.
Colorado Springs, Colorado 80908
brad@millerfarmercarrlson.com

Notice to the School shall be sent to:

Executive Director
Swallows Charter Academy
101 Civic Center Dr.
Pueblo West, CO 81007

With a copy to:

Dustin Sparks
Charter School Law Group
8585 Criterion Dr., # 62124
Colorado Springs, CO 80920
dustin.sparks@charterschoollawgroup.c
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- 12.9 Severability. If any provision of this Contract is determined to be unenforceable or invalid for any reason, the remainder of the Contract shall remain in full force and effect, unless otherwise terminated by one or both of the parties in accordance with the terms contained herein.
- 12.10 Interpretation. In the event of any disagreement or conflict concerning the interpretation or enforcement of this Contract, the Application, and Board of Education policies, procedures, regulations, or other requirements, unless waived, compliance by the School shall be required and measured in the same manner as may be applied and expected by the District of otherwise-comparable District schools.

This Charter School Contract has been approved by the District and the School. Its effective date is set out at the beginning of the Contract.

Pueblo County School District 70

Board of Education, President

Swallows Charter Academy

Board of Directors, President