

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

**CHARTER AGREEMENT**

**BY AND BETWEEN**

**THE METROPOLITAN BOARD OF  
PUBLIC EDUCATION OF NASHVILLE  
AND DAVIDSON COUNTY**

**AND**

**Martha O'Bryan Center**

## **CHARTER AGREEMENT**

This Charter Agreement is entered into this, the \_\_\_\_ day of \_\_\_\_\_, 2010, by and between the Metropolitan Board of Public Education for Nashville and Davidson County (the “Chartering Authority”) and Martha O’Bryan Center (the “Sponsor”), a Tennessee non-profit (collectively, the “Parties”).

### **Recitals:**

WHEREAS, the State of Tennessee has enacted the Tennessee Public Charter Schools Act of 2002 (Tenn. Code Ann. § 49-13-101 et seq.) effective July 4, 2002 (the “Act”) authorizing the establishment of independent, publicly supported schools known as public charter schools;

WHEREAS, the Act specifies the method for establishing such charter schools and the requirements that must be met by charter schools;

WHEREAS, the Act authorizes the Chartering Authority to grant charters to operate public charter schools within its district;

WHEREAS, the Sponsor has submitted an Application, attached hereto as Exhibit 1 and incorporated herein by reference, to the Chartering Authority in accordance with the Act and has requested that the Chartering Authority formally grant the Sponsor a charter to allow the Sponsor to operate the \_\_\_\_\_, a public charter school, within the Chartering Authority’s local school district;

WHEREAS, the Chartering Authority has approved the Sponsor’s Application and has agreed to formally grant the Sponsor a charter to allow the Sponsor to operate the \_\_\_\_\_, within the Chartering Authority’s local school district in accordance with the Act and pursuant to the terms and conditions as set forth in the Sponsor’s Application and this Charter Agreement;

WHEREAS the Parties desire to set forth the terms and conditions of the Charter in writing as required by the Act;

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

### **1. Grant of Charter**

#### **1.1 Grant and Issuance of Charter**

Pursuant to the Act, and based on and in reliance upon the information and representations of the Sponsor in the Application and/or Amended Application, the Chartering Authority hereby grants and issues to Sponsor a charter for the creation, maintenance, and operation of a public charter school known as East End Prep (the “Charter School”). The operation of the Charter School by the Sponsor shall be subject to the terms and conditions of

this Charter Agreement and the Act. As required by TCA § 49-13-110, this Charter Agreement includes all components of the Sponsor's Application, which is incorporated herein by reference and attached hereto as Exhibit 1.

## **1.2 Type of Charter**

The Chartering Authority authorizes the Sponsor to form the Charter School pursuant to TCA § 49-13-106(a) (1).

## **1.3 Student Population and Enrollment**

Also pursuant to TCA §49-13-106(a) (1), the Chartering Authority authorizes the Sponsor to enroll students in the Charter School. Enrollment in the Charter School shall be open to any student within the Metropolitan Nashville Public School System who:

- Were previously enrolled in a charter school
- Who are assigned to, or were previously enrolled in, a school failing to make adequate yearly progress, as defined by the state's accountability system, giving priority to at-risk students
- Students who, in the previous school year, failed to test proficient in the subjects of language arts/reading or mathematics in grades three through eight (3-8) on the Tennessee Comprehensive Assessment Program (TCAP) examinations
- Students who, in the previous school year, failed to test proficient on the Gateway examinations in language arts/reading or mathematics
- Students who are eligible for free or reduced-price lunch
- Students who are under the jurisdiction of a Juvenile Court and who, in the court's judgment would benefit from a work experience and career exploration program, provided that the proposed charter school shall, in addition to complying with the application requirements of §49-13-107, apply to the Commissioner of Education for approval of its proposed work experience and career exploration program
- Students who are eligible for free or reduced-price lunch and who are enrolled in LEA's that have an average daily membership (ADM) of fourteen thousand (14,000) students or more and three (3) or more schools which have missed the same benchmark for adequate yearly progress for two (2) or more consecutive years resulting in such schools being designated as high priority schools.

The Sponsor shall enroll students as set forth in TCA § 49-13-113 and according to the deadlines and timetables set forth in policies and administrative rules and regulations of the Chartering Authority, specifically SBO 1.107. The Sponsor shall not discriminate with respect to admissions on the basis of race, creed, color, national origin, religion, ancestry, or the need for special education and related services as set forth in the Application and the Act.

Students must be enrolled according to the numbers and grades included in the Charter Applicant Information Sheet in the Final Amended and Approved Charter Application. Enrolled students must be residents of Davidson County and of eligible ages to attend as set forth in State Board Policy. Increases in total enrollment numbers greater than 5% or 25 students, whichever is

less, constitute material changes in this Charter Agreement, and are not permitted unless formal amendment to this Charter Agreement is secured in advance according to the provisions outlined in TCA § 49-13-110(b). Reductions in total enrollment greater than 15% or 50 students must be reported to the Office of Charter and Private Schools and evaluated to determine if they are material, and enrollment changes in successive years or changes that will be for the life of the charter are usually material, requiring Charter amendment.

The Sponsor will make preliminary enrollment projections by grade for the following school year no later than December 15, subsequently adjusted projections for use in setting lottery and waitlist cut lines no later than February 15, and official start of school projections no later than July 15<sup>th</sup>. The Sponsor will also submit its annual Enrollment Report as required by TCA 49-13-106(a)(3) including the list of students who applied, date of application, all students accepted and priority category of each accepted student, number, names, and priority category of admitted students, number, names, and priority category of enrolled students, number and names remaining on waitlist, number of applications received after the lottery deadline.

Waitlists are constructed annually at the admission lottery, and applications from eligible students, received after the lottery deadline, must be entered at the bottom of the existing waitlist.

Students enrolled by the Charter School may not be discharged to another District school without the collaboration of appropriate District personnel. However, since charter schools are schools of choice, students may freely withdraw to their school of original residential zone. Charter Schools must demonstrate parental consent or District authorization for each student who leaves the Charter School during the year.

## **2. Roles and Responsibilities**

### **2.1 Of Sponsor**

The Sponsor shall ensure that the Charter School is governed and operated as set forth in the Application and in accordance with this Charter Agreement, the Act, and all other applicable laws and regulations. The Sponsor shall be accountable to the Chartering Authority for ensuring the implementation of the terms and conditions of this Charter Agreement.

To the extent that applicable law or this Charter Agreement renders any obligations the responsibility of the Governing Body, the Charter School, or any other third parties, the Sponsor shall ensure that the responsible entity fulfills those obligations. If the Sponsor fails to ensure such obligations are fulfilled, the Sponsor shall be deemed to have committed the act or omission itself for the purposes of determining whether the Chartering Authority may revoke or terminate the Charter or impose sanctions as provided for herein.

The Sponsor will carry out its roles and responsibilities, as detailed in this Charter Agreement, in a professional and responsible manner. The Sponsor will use reasonable, good faith efforts to govern the activities of the Charter School and oversee the Governing Body.

## **2.2 Of Governing Body**

The Governing Body shall ensure that the Charter School's activities are conducted in compliance with this Charter Agreement and all applicable law, including specifically TCA § 49-13-111. The Governing Body shall report and be accountable to the Sponsor for the implementation of this Charter Agreement and the achievement of the performance objectives and goals stated in this Charter Agreement.

The Governing Body has conducted, or will conduct within ninety (90) days of the Effective Date: national, and state and local criminal background on each current member of the Governing Body to the fullest extent permitted under applicable law. Any person who has been convicted of the following acts shall be prohibited from serving on the Governing Body, unless such prohibition is expressly waived by the Chartering Authority in writing: a felony or other criminal offense involving dishonesty, fraud or moral turpitude.

The Governing Body will conduct, at least fourteen (14) days prior to the approval of any new member: national, state and local criminal background checks on the prospective member to the fullest extent permitted under applicable law. Any person who has been convicted of the following shall be prohibited from serving on the Governing Body, unless such prohibition is expressly waived by the Chartering Authority in writing: a felony or other criminal offense involving dishonesty, fraud or moral turpitude.

As required by TCA § 49-13-111(g), the Governing Body shall be subject to the conflict of interest provisions contained in TCA § 12-4-101 and TCA § 12-4-102.

The Governing Body shall carry out its roles and responsibilities, as detailed in this Charter Agreement, in a professional and responsible manner. The Governing Body will use reasonable, good faith efforts to manage the activities of the Charter School and oversee the operation of the Charter School and the implementation of this Charter Agreement.

The Governing Body shall be the first avenue for response in case of any complaints or grievances filed against the Charter School or its employees. The Governing Body will ensure that the Charter School establishes policies and procedures for receiving and addressing complaints or grievances directed toward the Charter School or its employees and will make those policies available to students, parents/guardians, school employees, the Office of Charter and Private Schools (OCPS) and any other persons who request it. If grievances persist following the actions of the Governing Body, those complaints will be investigated and resolved by the Office of Charter and Private Schools on behalf of the Chartering Authority, and the Governing Body is responsible for informing complaining parties of this avenue for redress should initial action by the Governing Body fail to satisfy. Investigation and sanctions by the Office of Charter and Private Schools is limited to alleged violations of laws or the Charter Agreement.

## **2.3 Of Charter School**

Under the governance of the Sponsor and the management oversight of the Governing Body, the Charter School shall ensure that 1) the school employs and/or contracts with necessary personnel; 2) the organizational structure of the school after such hiring is consistent with the organizational structure in the Final Amended and Approved Charter Application (Exhibit 1); 3) the school shall notify the Office of Charter and Private Schools (OCPS) in writing within 5 days of hiring, firing, resignation or other removal of the school leader; and 4) the faculty, staff and administration successfully implement the terms of this Charter Agreement.

The Charter School shall carry out its roles and responsibilities, as detailed in this Charter Agreement, in a professional and responsible manner. The Charter School will use reasonable, good faith efforts to educate children and demonstrate progress in achieving the goals and objectives outlined in this Charter Agreement.

#### **2.4 Of Chartering Authority**

The Chartering Authority shall allocate one hundred percent (100%) of state and local funds to the Sponsor on a per pupil expenditure as provided in TCA § 49-13-112 and as calculated by the formula provided by the Tennessee State Department of Education. The Chartering Authority shall allocate funds to the Sponsor after each and according to the nine (9) attendance-reporting intervals. If the Sponsor elects to provide transportation for Charter School students, the Chartering Authority shall provide to the Charter School the funds that would otherwise have been spent to provide transportation as provided in TCA § 49-13-114.

The Charter School shall include in its annual reports the transportation plans that are in effect, and shall communicate information regarding transportation to parents or guardians at the time a pupil enrolls.

The Chartering Authority will hold the Sponsor accountable for the performance of the Charter School through (i) the review of reports filed by the Sponsor and/or Governing Body and publication of accountability information and (ii) the Charter Agreement renewal process.

The Chartering Authority shall carry out its roles and responsibilities, as detailed in this Charter Agreement and the Act, in a professional and responsible manner. The Chartering Authority will use reasonable, good faith efforts to oversee the activities of the Sponsor and the performance of the Charter School.

### **3. General Terms and Conditions of the Charter Agreement**

#### **3.1 Definitions**

The following are definitions of terms used in this agreement as defined in state law (TCA 49-13-104).

**Chartering Authority** – the local board of education which approves, renews or decides to revoke a public charter school application or agreement.

**Governing Body** – the organized group of persons who will operate the public charter school by deciding matters including, but not limited to, budgeting, curriculum

and other operating procedures for the public charter school and by overseeing management and administration of a public charter school. The membership of a charter school's governing board shall include at least one (1) parent representative whose child is enrolled in the charter school. Such parent representative shall be appointed by the governing body within six (6) months of the school's opening date.

**Local Education Agency (LEA)** – any county, city or special school district, unified school district, school district of any metropolitan form of government or any other school system established by law (TCA 49-3-302). For purposes of this agreement, the LEA is defined as Metropolitan Nashville Public Schools (MNPS).

**Sponsor** – any individual, group or other organization filing an application in support of the establishment of a public charter school, provided, however, that a sponsor cannot be a for-profit entity, a private elementary or secondary school, a post-secondary institution not accredited by the Southern Association of Colleges and Schools, a religious or church school, or promote the agenda of any religious denomination or religiously affiliated entity. (Acts 2002, chap. 850, §4; 2005, chap. 414 §1; 2008, chap. 1101, § 1).

**Public Charter School** - a public school in the state of Tennessee that is established and operating under the terms of a charter agreement.

Capitalized terms used herein not otherwise defined herein shall have the meaning set forth in the Act. Whenever the term "Chartering Authority" is used herein, such term shall mean the Metropolitan Board of Public Education for Nashville and Davidson County and the Director of Schools of the Metropolitan Nashville Public Schools ("MNPS") as an agent to carry out and implement the policies of the Chartering Authority. The terms "charter," "Charter Agreement," "Agreement" and "Charter School Agreement" are used interchangeably herein and have the meaning set forth in the Act for "Charter agreement."

All defined terms used in this Charter Agreement shall be deemed to refer to the masculine, feminine, neuter, singular and/or plural, in each instance as the context and/or particular facts may require. Use of the terms "hereunder," "herein," "hereby," and similar terms refer to this Charter Agreement.

### **3.2 Recitals**

The recitals to this Charter Agreement are incorporated herein by reference and made a part hereof.

### **3.3 The Application**

The Application, as attached hereto as Exhibit 1, sets forth the overall goals, standards, and general operational policies relating to the Charter School; the Application is not a complete statement of each detail of the operation of the Charter School. To the extent that the Sponsor, Governing Body or Charter School desires to implement specific policies, procedures, or other specific terms of operation that supplement those set forth in the Application, they shall be permitted to implement such policies, procedures, and specific terms of operation, provided that

such policies, procedures, and terms of operation (i) are not otherwise prohibited or circumscribed by applicable law or this Charter Agreement, and (ii) are not materially different from those set forth in the Application.

To the extent there is a conflict between the terms of this Charter Agreement and the Application, the terms of this Charter Agreement shall govern.

Neither this Charter Agreement nor the Application may be amended without prior written approval of the Chartering Authority, except that, pursuant to TCA § 49-13-112(a), the Governing Body may revise the budget submitted in this Charter Agreement, subject to the requirements of state and federal law. If the Sponsor seeks to amend this Charter Agreement or the Application, it shall petition the Chartering Authority as set forth in TCA § 49-13-110(b).

All changes from the finally amended and approved Charter Application (Exhibit1), must be reported to the Office of Charter and Private Schools for review prior to implementation. The Office (OCPS) will assess the changes to determine whether they constitute material changes that must be approved through the Charter Amendment process as set forth in TCA § 49-13-110(b). Material changes made unilaterally may result in the Governing Body's being found in violation of the Charter, assigned a corrective action plan, placed on probation, and/or required to reverse the change.

Changes that are almost always material and which require Charter Amendment include but are not limited to:

- adding grades not included in the school's Charter Agreement;
- enrollment changes beyond the limits established in Section 1.3 of this Charter Agreement—increases of no more than 5% or 25 students, *whichever is less, or* decreases of up to 15% or down to 50 students;
- changes to curriculum, pedagogical approach or staffing structure that are inconsistent with the Charter Agreement (Charter Application, Exhibit 1);
- school calendar changes that reduce the calendar at all in the first year of operation, by more than ten (10) days in subsequent years, in the absence of timely notification of parents or below the requirement to provide at least the same equivalent time of instruction as required in regular public schools in TCA § 49-13-105 (12);
- changes to student disciplinary code(s) that are inconsistent with state and federal law
- changes in the operational specifications found in the Charter Application including but not limited to transportation plans, facility plans, etc.
- substantial changes in the makeup of the Governing Board from those listed in the Final Amended and Approved Application (Exhibit 1).

#### **3.4 Relationships Not-for-Profit, Nonsectarian, Non-Religious, and Non-Cyber Based**

The Sponsor shall ensure that the Charter School is nonsectarian and non-religious in its curriculum, programs, admission policies, employment practices, governance, and all other

operations. The Sponsor shall comply with the requirements of the United States and Tennessee Constitutions, including those provided by the establishment clause of the First Amendment of the United States Constitution. The Sponsor shall not use any of the funds to operate the Charter School for the benefit of any religious or theological institution. The Charter School shall not be cyber-based.

Any decision by the Charter School Board to contract with any education service provider (such as a Charter Management Organization (CMO)) must be reviewed and approved by OCPS prior to execution of the contract. All such contracts are limited to non-profit organizations. Proposed contracts must be submitted to OCPS for review no later than 30 days prior to the intended execution date. If the School has not yet opened, proposed contracts must be submitted for review no later than May 1<sup>st</sup> of the year immediately preceding the intended opening of school.

The contract must be accompanied by a letter from the School's outside attorney stating that the contract has been reviewed by counsel to the School's Board. OCPS has 30 days to review the contract and communicate any reasons for disapproval. OCPS may also ask for more information or other assurances. The School must provide a copy of the fully executed contract to OCPS immediately after it is signed.

### **3.5 Compliance with Applicable Laws and Regulations**

By signing this Charter Agreement, the Sponsor warrants that it has made a detailed review of the Act, and that it has specific knowledge of its rights and responsibilities under the Act. Further, Sponsor shall comply with all federal, state and local laws applicable to the provision of public education.

### **3.6 Monitoring, Inspection and Certification of Records**

The Chartering Authority may designate a representative or representatives to enter the premises of the Charter School at reasonable times with reasonable notice, to monitor whether the Charter School is operating in compliance with applicable law and the terms and conditions of this Charter Agreement, and to evaluate whether the Sponsor is satisfying state standards of accountability. During such monitoring visits, any representative(s) of the Chartering Authority shall not unreasonably interfere in the operation of the Charter School.

The Charter School shall designate a representative to serve as the point person for ensuring compliance, reporting, and other communications related to the School's compliance with local, state, and federal laws and policies in keeping with oversight responsibilities of the Office of Charter and Private Schools.

Sponsor shall ensure that the following information is maintained at the Charter School and make such information available to the Chartering Authority or its representative upon request no later than the fourth (4<sup>th</sup>) business day following such request: (1) the Sponsor's Articles of Incorporation; (2) the Sponsor's bylaws; (3) the enrollment and admissions process

for the Charter School; (4) a list of all formerly and currently enrolled students and, for each student, the following information: full legal name, student identification number (for purposes of state testing), birth date, address, local school zone in which the student resides, names and address of legal guardians; required documentation relevant to the student's special needs status (if applicable); results on assessments required by applicable law and the Application, and documentation of a student's suspension or expulsion (if applicable); (5) list of all former and current staff members and teachers who work at the Charter School and, for each one, the following information: name, social security number, birth date, address, compensation, certification and evidence of highly qualified status; (6) evidence of insurance; (7) leases; (8) documentation of loans and other debt of the Sponsor related to the Charter School; (9) detailed accounting of school expenditures and sources of income received that are current through the preceding month, within twenty (20) days after the last day of such month; and (10) copies of all required certifications, and health and safety-related permits for occupancy of the physical plant for the purposes of the Charter School. Such information shall be used by the Chartering Authority to evaluate whether the Charter School is meeting its goals under this Agreement, the Application and the Act. The Sponsor shall ensure that copies of these records are maintained for the amount of time required by applicable law, but in no event less than two (2) years after the expiration, non-renewal, or revocation of the Charter Agreement, during which period, the Sponsor shall make such records available to the Chartering Authority upon request no later than the fifth (5<sup>th</sup>) business day following such request.

### **3.7 Regulatory and Statutory Requirements**

The Sponsor acknowledges the regulatory and/or statutory requirements listed in TCA § 49-13-105(b), which **cannot** be waived. The Sponsor shall ensure that these requirements are met. Any waivers of rules, regulations, policy, or statutory requirements of the State of Tennessee must be granted by the Tennessee State Board of Education.

#### **3.7.1 Waivers granted for duration of Agreement; waivers not granted.**

The Sponsor shall not request or be granted a waiver regarding class size or of the promotion/retention policy.

### **3.8 Reporting**

#### **3.8.1 Annual Progress Report**

Pursuant to TCA § 49-13-120, the Governing Body of the Charter School is required to make at least an annual progress report to the Sponsor, the Chartering Authority, and the Commissioner of Education. The Sponsor shall ensure that this annual report is made and that the report meets the requirements of TCA § 49-13-120 and TCA § 49-13-114(d).

#### **3.8.2 Annual Financial Report**

Pursuant to TCA § 49-13-111(m), the Charter School is required to prepare and publish an annual financial report that encompasses all funds. The Sponsor shall ensure that this annual financial report is made and that the report meets the requirements of TCA § 49-13-111(m).

Sponsor shall comply with the State of Tennessee Department of Education audit timeline in order to submit its budget estimate with the Chartering Authority's budget to the State Department.

### **3.8.3 Quarterly Reports**

The Sponsor shall submit to the Chartering Authority within forty-five (45) days after each quarter of each Accounting Year financial statements prepared in accordance with the accounting standards of the State Board of Accounts.

### **3.8.4 Monthly Reports**

The Sponsor shall also submit a monthly report to the Chartering Authority by the fifteenth (15th) day of each month containing:

- a. List of students suspended out of school or during the prior month;
- b. List of students transferred in collaboration with District personnel for disciplinary reasons or in order to provide a Free Appropriate Public Education in the Least Restrictive Environment.
- c. Documentation of changes during the prior month in (i) the Sponsor's certificate of occupancy for the Charter School's physical plant or (ii) other health and safety-related certifications or permits;
- d. Applications, filings, or Internal Revenue Service determinations made during the prior month related to seeking and maintaining the Sponsor's tax-exempt status;
- e. Applications, filings or state determinations made during the prior month related to seeking and maintaining the Sponsor's not-for-profit corporation status;
- f. Lists and contact information of any individuals who leave or join the Sponsor's Board and/or Governing Body during the prior month;
- g. Lists and contact information of any individuals who, during the prior month, resign from or are hired to a leadership position in the operation of the Charter School, including any administrative position;
- h. Documentation of any non-compliance by Sponsor, Governing Body or Charter School with the Charter or applicable law, in connection with the operation of the Charter School during the prior month; and
- i. Any conflict of interest issues that arose during the prior month and the resolution of such issue, if any.
- j. List of students who voluntarily transfer during the previous month from the Charter School including evidence of parental consent, and to the extent practical, the name of school to which the student transfers.

### **3.8.5 Projections**

The Sponsor shall also provide the following projections to the Chartering Authority and the Commissioner of Education :

- a. The projected budget no later than one (1) month prior to the upcoming Accounting Year;
- b. The projected student enrollment, specifying expected number of students by grade level on a preliminary basis by December 15<sup>th</sup>, for execution of the admission lottery by February 15<sup>th</sup>, and for certification of eligibility by July 15<sup>th</sup>.

### **3.8.6 Enrollment Reports**

Not later than the date established by the Tennessee State Department of Education (the “Department”) for determining average daily membership, the Sponsor shall submit to the Department, with a copy to the Chartering Authority, the following information:

The number of students enrolled in the Charter School.

An Annual Enrollment Report pursuant to TCA 49-13-106(a)(3) is due by September 30<sup>th</sup> of each year including at least the following information:

- List of students who applied, date of application,
- All students accepted and priority category of each accepted student,
- Number, names, and priority category of admitted students,
- Number, names, and priority category of enrolled students,
- Number and names remaining on waitlist,
- Number of applications received after the lottery deadline
- Details of the School’s student recruiting policies.

The Sponsor shall ensure that student enrollment count records are maintained electronically on a system that is mutually acceptable to the Sponsor and the Chartering Authority.

### **3.9 Curriculum, Instruction, and Benchmarks**

The curriculum and instructional methods used at the Charter School shall be as described in the Application, this Charter Agreement and any reports submitted under the terms of the Charter. The curriculum and instructional materials will be modified, as necessary and appropriate, to implement any student’s Individual Education Program (IEP) as required by federal and state law.

The benchmarks and indicators of performance for measuring academic progress of students attending the Charter School shall be as described in the Application, this Charter Agreement and any reports submitted under the terms of the Charter.

#### **3.9.1 Graduation Requirements**

Sponsor will not request a waiver of graduation requirements.

#### **3.9.2 Credit Requirements**

Students will be required to pass 22 credits (or Chartering Authority credits required when Sponsor enrolls high school students) to include 4 English, 4 math, 3 lab sciences, 1.5 physical education/wellness, 2 of the same foreign language, and 3.5 social studies to include United States History, economics/government, and 1 elective social studies class, plus electives required to meet credit requirements.

### **3.9.3 Honors Diploma**

To receive an Honors Diploma, students will meet the number of honors and advanced placement courses required.

### **3.9.4 Promotion/Retention**

Sponsor will issue 9 week report cards with a mandatory progress report and other contact as Sponsor determines.

Sponsor will follow the State Department of Education standard grading policy for courses receiving high school credit.

### **3.10 School Calendar and Daily Attendance**

The Sponsor shall operate the Charter School according to the academic calendar submitted to the Chartering Authority no later than April 1 of each preceding school year, ensuring that the instructional time is at least equivalent to time of instruction as required in regular public schools in TCA § 49-13-105 (12), and reporting at least daily attendance using the Chartering Authority's Student Management System (Chancery SMS),

Copies of the School Calendar and Hours of Operation must be made available to families of students at the time of enrollment.

### **3.11 Staff Responsibilities and Personnel Plan**

#### **3.11.1 Employee Benefits**

The Chartering Authority shall comply with the provisions of TCA § 8-35-242 in the provision of retirement benefits to the teachers and employees of the Charter School.

The Chartering Authority shall allow employees of the Charter School to participate in group insurance plans to the same extent and in the same manner as employees of the Chartering Authority in accordance with the provisions of TCA §8-27-302 and §8-27-303.

#### **3.11.2 Employee Numbers and Qualifications**

The Charter School shall employ sufficient number of personnel to carryout the full program as provided in the Final Amended and Approved Charter Application (Exhibit 1). The Charter School shall ensure that personnel hired for instructional duty (including teachers as well as paraprofessionals) possess appropriate qualifications for the duties assigned to them including but not limited to Tennessee certification and licensure (TCA 49-13-111(i)), appropriate subject

matter qualifications, and federally required qualifications including highly qualified, exceptional education certified, and ESL certified according to federal requirements.

### **3.11.3 Employment Applications**

All applicants for employment with the Sponsor related to the Charter School and/or with the Charter School shall be required to submit employment applications on a form that is acceptable to the Chartering Authority and that complies with all applicable law. All current and prospective employees of the Sponsor who have or who will have contact with children at the Charter School within the scope of the individuals' employment, and employees of contractors or sub-contractors of the Sponsor who have contact with children within the scope of the individuals' employment, shall be subject to national, state and local criminal background checks to the fullest extent permitted under applicable law.

### **3.11.4 Bargaining Limits**

Employees of the Charter School will be non-unionized unless and until such employees may elect to organize as permitted by TCA § 49-13-118.

## **3.12 Physical Plant**

The Sponsor shall ensure that the Charter School grounds and facilities comply with: (a) all applicable law, including the federal Americans with Disabilities Act, building, fire, health and safety, and zoning and land use codes; (b) this Charter Agreement; and (c) the Application.

The Sponsor shall notify the Chartering Authority immediately as to any of the following: (a) Any material change in the availability or condition of the physical plant, such as through flood, fire, or other unanticipated circumstance; (b) Any allegation that the Sponsor or the lessor has breached any lease, deed or other land use agreement concerning the physical plant; and (c) any proposal to move the Charter School from its current facility to another or from its current location to another.

## **3.13 Program**

The Sponsor shall ensure that the Code of Behavior and Discipline described in the Application is implemented at the Charter School. The Sponsor shall develop, implement, and maintain a school safety plan to provide for a safe learning environment at the Charter School for students, staff, volunteers, and visitors. No student shall be expelled or transferred involuntarily from the Charter School except in collaboration with appropriate District personnel and in accordance with applicable law governing the conduct and discipline of students.

## **3.14 Financial Matters**

### **3.14.1 Audits; Procedures; Timing**

Audits of the Charter School shall be made in compliance with TCA § 49-13-127.

### **3.14.2 No Tuition**

The Sponsor shall not charge tuition for any student. The Charter School may charge for preschool and/or before-and-after-school programs, unless prohibited under applicable law.

### **3.15.1 Insurance**

The Sponsor shall maintain the following insurance:

- a. General Liability/Automobile Liability Policy: must be equal to or greater than \$5,000,000. This insurance shall be primary insurance. Any insurance or self-insurance programs covering the Metropolitan Government, its officials, employees, and volunteers shall be in excess of this insurance and shall not contribute to it. The first one million dollars must be with a company licensed to do business in the state of Tennessee. The remaining \$4,000,000 can be covered under an excess liability policy (also known as an “umbrella” policy). The policy must name the Metropolitan Government as an additional insured. The policy must cover contractual liability. Automobile coverage shall cover vehicles owned, hired, and non-owned.
- b. Professional Liability Policies: Directors and Officers Policy equal to or greater than \$5,000,000. Teachers Professional Liability Policy equal to or greater than \$1,000,000.
- c. Workers Compensation and Employers Liability Policy: The amount of coverage required for Workers Compensation is determined by statute. Sponsor must comply with state statutes. Employers Liability must be a minimum of \$100,000.
- d. Property and Boiler Insurance Policy: If Sponsor purchases the property that will be used by the Charter School, it shall purchase “all risks” property and boiler insurance. Insurance shall be for the full replacement cost of the property and contents with no coinsurance penalty provision.

Certificates of insurance, in a form satisfactory to the Chartering Authority, evidencing coverage shall be provided to the Chartering Authority prior to commencement of performance of this Charter Agreement. Throughout the term of this Charter Agreement, Sponsor shall provide updated certificates of insurance upon expiration of the current certificates.

### **3.16 Survival of Representations and Warranties**

All representations and warranties hereunder shall be deemed to be material and relied upon by the Parties with or to whom the same were made, notwithstanding any investigation or inspection made by or on behalf of such Party or Parties. The representations and warranties covered in this Agreement will survive the termination or expiration of this Agreement.

### **3.17 Indemnification and Hold Harmless**

The Sponsor shall indemnify and hold harmless the Chartering Authority, its officers, agents and employees from:

- a. Any claims, damages, costs and attorney fees for injuries or damages arising, in part or in whole, from the negligent or intentional acts or omissions of the Sponsor, its officers, employees and/or agents, including its sub- or independent contractors, in connection with the performance of this Charter Agreement, and,
- b. Any claims, damages, penalties, costs and attorney fees arising from any failure of the Sponsor, its officers, employees and/or agents, including its sub- or independent contractors, to observe applicable laws, including, but not limited to, labor laws and minimum wage laws.
- c. The Chartering Authority will not indemnify, defend or hold harmless in any fashion the Sponsor from any claims arising from any failure, regardless of any language in any attachment or other document that the Sponsor may provide.
- d. The Sponsor shall pay the Chartering Authority any expenses incurred as a result of the Sponsor's failure to fulfill any obligation in a professional and timely manner under this Charter Agreement.

### **3.18 Attorneys Fees**

The Sponsor agrees that, in the event either party deems it necessary to take legal action to enforce any provision of the contract, and in the event the Chartering Authority prevails, the Sponsor shall pay all expenses of such action including the Chartering Authority's attorney fees and costs at all stages of the litigation. The Chartering Authority agrees that, in the event either party deems it necessary to take legal action to enforce any provision of the contract, and in the event the Sponsor prevails, the Chartering Authority shall pay all expenses of such action including the Sponsor's attorney fees and costs at all stages of the litigation.

### **3.19 Services Provided by Local Education Agency (LEA)**

The parties agree that fees for any service provided by the LEA to the Charter School shall be assessed according to the appropriate fee schedule (Exhibit 3) at the beginning of each school year. The parties further agree that the actual cost and the assessed cost will be reconciled at the end of each school year (within 45 days of the close of the LEA's schools) to reflect the actual cost to the LEA. This reconciliation may result in monies owed to either party as an over payment or underpayment. Services selected by the Charter School are identified below:

#### **3.19.1 Food Service** [select appropriate option in negotiations]

##### **Option 1**

The Charter school will apply with the State Department of Education and if approved can operate National School Lunch and Breakfast programs under the State Department of Education supervision. The charter school will retain all revenue received from meal reimbursements and cash sales. The charter school will assume total responsibility for supplying meals to the students and covering all operating costs associated with school meals. **The Food Service Department will not provide any services.** If processing meal applications to determine students' meal status (free, reduced, full price) is desired by the charter school, a fee of \$2.00 per application reviewed may be invoiced to the charter school by the Food Service Department.

##### **Option 2**

The Food Service Department will provide food services to the charter school in the same manner as it provides food service to the rest of the district. Meals will be provided under federal guidelines and federal reimbursement claims for meals will be made by the Food Service Department. All revenue will be retained by MNPS food service to cover all operating costs associated with student meal preparation and service. If operating costs exceed total revenue the charter school will be invoiced for costs not covered by total revenue. The charter school will be kept informed of the profit and loss status throughout the year. Payment for any losses will be made at the end of the fiscal year.

Food Service will not make an investment in a Charter School regarding equipment, construction, tables, chairs etc.

Charter Schools will provide or be invoiced for hardware and software to support food service reporting needs.

Food service will supply contact names for kitchen equipment, food items etc.

Food service will provide contact names at the State level if the Charter School operates its own service.

Food service has an option to not supply service to a Charter School.

Food service selects staff and supervises the cafeteria operation.

Food Service and the Charter School contact will work together to provide proper service to the students.

### **3.19.2 Exceptional Education**

#### **3.19.2.1 Collaboration**

Exceptional Education services are provided by the Local Education Administration (LEA) of which the Charter School is legally a part. The Charter School acknowledges the importance of cooperating with the Chartering Authority in the provision of exceptional education services for students enrolled in the Charter School. The Charter School agrees to respond to all Chartering Authority inquiries, comply with reasonable Chartering Authority directives, and to allow the Chartering Authority access to Charter School students, staff, facilities, equipment and records as required to fulfill all Chartering Authority obligations under this Agreement or imposed by law. Except as otherwise provided herein, the Chartering Authority and the Charter School agree to allocate responsibility for the provision of services (including but not limited to [referral evaluation](#), identification, assessment, case management, Individual Education Plan (IEP) development, modification, and implementation) in a manner consistent with the Chartering Authority's allocation of exceptional education services to all of its schools sites.

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#### **3.19.2.2 Staffing**

All exceptional education services at the Charter School will be delivered by individuals or agencies qualified to provide exceptional education services required by

Tennessee’s Education Law and the IDEA. Charter School teaching and administrative staff shall hold appropriate credentials and non-public agencies providing services to Charter School student’s certified for exceptional education services shall meet all state requirements and be approved by the Chartering Authority. Charter School staff shall participate in all mandatory Chartering Authority professional development related to exceptional education. The Charter School shall be responsible for hiring, training, and employment of site staff necessary to provide exceptional education services to its students, including without limitation, exceptional education teachers, paraprofessionals, and resource specialists. The Charter School agrees to promptly notify the Chartering Authority of any staffing or contract issues that would preclude implementation of any student’s IEP.

### 3.19.2.3 Identification and Referral

**The Chartering Authority is committed to Charter Schools that serve students in the least restrictive environment, providing ~~them with students~~ an appropriate level of support in order for them to achieve maximum benefit from the general education program.**

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The Chartering authority and the Charter School shall share responsibility and work collaboratively to locate, identify, and ~~refer~~evaluate, Charter School students who are suspected of having needs that qualify them to receive exceptional education services. The Charter School will implement Chartering Authority policies and procedures to ensure timely identification and referral of students who have, or may have, such exceptional needs. The Chartering Authority shall provide the Charter School with any assistance that it generally provides its other schools in the identification and referral process. The Chartering Authority will ensure that the Charter School is provided with notification and relevant files of all students with an existing IEP and who transfer to the Charter School from another school. The Chartering Authority shall provide the Charter School with such records within 10 days of receipt of a request by the Charter School for the records, The Chartering Authority shall have unfettered access to all Charter School student records and information in order to serve all of the Charter School’s students’ exceptional needs

### 3.19.2.4 Assessments and IEP Meetings

The term “assessment” shall have the same meaning as the term “evaluation” in the IDEA, as provided in Section 1414, Title 20 of the United States Code. The Chartering Authority will determine what assessments, if any, are necessary and arrange for such assessments for referred or eligible students in accordance with the Chartering Authority’s general practice and procedures and applicable laws. The Charter School shall work in collaboration with the Chartering Authority to obtain parent/guardian consent to assess Charter School students. The Charter School shall not conduct exceptional education assessments without prior written approval from the parent/guardian and the Chartering Authority. However, nothing in this Agreement shall be construed to prohibit the Charter School from conducting non-exceptional education assessments consistent with its educational program. The Chartering Authority shall be responsible for supporting the Charter School in properly noticing and arranging necessary IEP meetings and IEP team membership shall be in compliance with state and federal law. The Charter School shall be responsible for ensuring attendance of the following people at IEP meetings: the principal and/or Charter School designated representative; the student’s

exceptional education teacher; the student's general education teacher; the student, the parent/legal guardian and any parent representatives, if appropriate; an interpreter, if necessary; and other Charter School representatives who are knowledgeable about the general education program at the Charter School and/or about the student; necessary staff including, but not limited to, a speech therapist, psychologist, resource specialist, and behavior specialist. ~~The Chartering Authority shall arrange for attendance or participation of a consulting special education teacher (CSET) and assume responsibility for documentation of the IEP meeting and provision of notice of parental rights.~~

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### 3.19.2.5 IEP Development and Implementation

Decisions regarding eligibility, goals/objectives, program, services, placement, and exit from exceptional education shall be the decision of the IEP Team of the Charter School, pursuant to the Chartering Authority's IEP process ~~and the parent/legal guardian. However, decisions that materially change the Charter School's educational program, as provided in the final amended and approved Charter Application (Exhibit 1), shall require Charter School approval.~~ Programs, services and placements shall be provided to all eligible Charter School students in accordance with the policies, procedures, and requirements of the Chartering Authority. The Chartering Authority has a strong preference that special education services be delivered in inclusive settings. In exceptional circumstances, when a student's academic progress so warrants the Charter School may utilize pull-out services. Services should, whenever possible, be provided at the Charter School location.

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The Charter School shall promptly notify the Chartering Authority of all requests it receives for assessment, services, IEP meetings, parental requests for reimbursement, compensatory education, mediation, and/or due process.

The Charter School shall be responsible for ~~all school site implementation~~ of the IEP. As part of this responsibility, the Charter School shall provide the Chartering Authority and the parents with timely reports on the student's progress as provided in the student's IEP, and at least quarterly or as frequently as progress reports are provided for the Charter School's general education students, whichever is more frequent. The Charter School shall also provide all home-school coordination and information exchange. The Charter School shall also be responsible for providing all curriculum, classroom materials, classroom modifications, and assistive technology.

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### 3.19.2.6 Initial, Interim, and Alternative Placements

For students who enroll in the Charter School from another school district with an existing IEP, the Chartering Authority and the Charter School shall conduct an IEP meeting as soon as possible but no later than 30 days. The certifying specialist from the Chartering Authority must determine the adequacy of the evaluation to ensure that the evaluation standards required by the Chartering Authority and the State Department of Education are met. Prior to such meeting and pending agreement on a new IEP, the Chartering Authority and the Charter School shall implement the existing IEP to the extent practicable or comparable services to the existing IEP. However, this agreement shall not require the Charter School to substantially modify its service delivery model in order to implement an interim placement at the Charter School site. The Chartering Authority will provide consultative assistance to the Charter School

to help transition the student whether the student is transferring to the Charter School from the Chartering Authority or from another school district. The Chartering Authority shall be responsible for selecting, contracting, and overseeing all non-public schools and non-public agencies used to serve exceptional education students. The Charter School shall not hire, request services from, or pay any non-public school or agency to provide exceptional education services to students without the explicit collaboration and approval of the Chartering Authority. Any contract for special education services must be approved prior to implementation by the Chartering Authority. The Charter School shall immediately notify the Chartering Authority of all parental requests for services from non-public schools or agencies, unilateral placements, and/or requests for reimbursement.

### **3.19.2.7 Non-Discrimination**

It is understood and agreed that all children will have access to the Charter School, and no student shall be denied admission nor counseled out of the Charter School due to the nature, extent, or severity of his/her disability or due to the student's request for, or actual need for, exceptional education services. Section 504 of the Rehabilitation Act of 1973 requires that schools receiving federal funds, including Charters, provide students with challenges appropriate educational services to the same extent as the needs of students without special needs are met. Most students with challenges come under both IDEA and 504 protections, but some students with challenges don't qualify for special education are protected under 504. The Chartering Authority and the Charter are under the same obligation to develop a 504 plan for student requiring one as they are for the development of an IEP and to implement any agreed on modifications.

### **3.19.2.8 Due Process and Compliance Complaints**

The Charter School shall follow Chartering Authority policies as they apply to all Chartering Authority schools for responding to parental/guardian concerns or complaints related to exceptional education services. The Charter School shall instruct parents/guardians to raise concerns regarding exceptional education services, related services, and rights to the Chartering Authority. In addition, each party shall immediately bring to the other's attention any concern or complaint by a parent/guardian that is in writing and/or which involves a potential violation of state or federal law.

The Chartering Authority's designated representative, in consultation with the Charter School's designated representative, shall investigate as necessary, respond to, and address the parent/guardian concern or complaint. The Charter School shall allow the Chartering Authority access to all facilities, equipment, students, personnel, and records necessary to conduct such an investigation. Each party shall timely notify the other of any scheduled meetings with parents/guardians or their representatives to address parent/guardian concerns or complaints so that a representative of each entity may attend. The Chartering Authority, as LEA, shall be ultimately responsible for determining how to respond to parent concerns or complaints, and the Charter School shall comply with the Chartering Authority's decisions.

The Chartering Authority and the Charter School shall cooperate in responding to any complaint to or investigation by the Tennessee Department of Education, the United States

Department of Education, or any other agency, and shall provide timely notice to the other upon receipt of such a complaint or request for an investigation.

### **3.19.2.9 Due Process Hearings**

In the event that the parents/guardians file for a due process hearing, or request mediation, the Chartering Authority and the Charter School shall work together to defend the case. In the event that the Chartering Authority determines that legal representation is needed, the Chartering Authority and the Charter School shall be jointly represented by legal counsel of the Chartering Authority's choosing, unless there is an actual conflict of interest. The Parties acknowledge that, because of their potential adverse interests, their joint representation presents a potential conflict of interest, which must be disclosed to them in writing. If the Chartering Authority, its counsel, or the Charter School determines that an actual conflict of interest exists, then the Charter School shall retain separate legal counsel at its own expense.

The Chartering Authority shall have sole discretion to settle any matter in mediation or due process, which settlement shall be binding upon the Charter School except in those cases when modifications or accommodations materially change the education program at the Charter School as provided in the Fully Amended and Approved Charter Application (Exhibit 1), in which case a Charter School representative must be consulted. The Chartering Authority shall also retain sole discretion to file an appeal from a due process hearing or take other legal action involving any Charter School student necessary to protect its rights.

### **3.19.2.10 Funding**

The Parties agree that the Charter School is a Chartering Authority school for the purposes of exceptional education services and funding, and the Chartering Authority has agreed to work collaboratively with the Charter School to ensure provision of exceptional education services in a manner consistent with the services it provides at its other public schools.

Federal funding will be flowed from the Chartering Authority to the Charter based on the per pupil allocation received from The State Education Department. Funding is provided at the end of the first semester for all eligible students on roll and served at the end of the first attendance period. The allocation for the second semester will be based on the number of eligible students on roll and served on the December 1 census of exceptional students

The Chartering Authority is financially responsible for child find and student identification and initial assessment expenses. The Charter School shall bear the financial responsibility for reevaluations and the provision of all services consistent with student IEP's. The Charter may elect to have the Chartering Authority provide some special educational services at a cost that covers the actual salary benefit and mileage expenses incurred by the Chartering authority. The expenses incurred in providing these services will be deducted from the IDEA flow thru funds. The Charter School may contract with outside agencies to provide exceptional education service but all these contracts must be pre-approved by the Chartering Authority. Services that exceed agreed upon site-based capability, constitute a material change in the educational program of the Charter School as provided in the Fully Amended and Approved Charter Application (Exhibit 1), or require alternative placement (including but not limited to other Chartering Authority schools, other public school districts, County Office or Education Programs, non-public schools, homes, hospitals, or residential programs) in order to ensure the

provision of a free and appropriate public education in the least restrictive environment shall be assumed at the discretion of the Chartering authority consistent with its ultimate responsibility as the LEA of record. In such circumstances, the Chartering Authority shall be entitled to retain the pro rata share of all funding received for such student, including but not limited to all IDEA funds based on the number of instructional days or minutes per day that the student is not at the Charter School site.

### **3.19.3 Transportation**

The Chartering Authority cannot offer transportation to and from the Charter School on a daily basis. However, Chartering Authority can provide field trip services on an availability contingent basis. Charges for field trip and other temporary bus services are established by the MNPS Department of Transportation and available on request. Prior to using MNPS buses, Charter Schools must file a request form, a hold harmless agreement, a copy of the Certificate of Insurance, and a copy of its IRS letter 501(c)(3). Forms and additional requirements are available through the MNPS Department of Transportation.

### **3.19.4 Network Services**

The Chartering Authority shall provide two (2) computers, one (1) printer, and minimal network connectivity to ensure connection with MNPS Network services sufficient to access Chancery SMS, Easy IEP and other resources required by itinerant teachers assigned to the school, and student application data entry and reporting software only. Equipment provided by the Chartering Authority must be accessible to itinerant personnel and sufficiently isolated to ensure privacy of student records when itinerant personnel use the equipment, and reserved for the exclusive uses for which the equipment is provided. All other networking, communication technology, instructional technology, student technology, repair and technical support, etc, that are associated with a complete educational program remain the full responsibility of the Charter School.

### **3.19.5 Financial Services**

## **4. Representations and Warranties**

### **4.1 Of Sponsor**

#### **4.1.1 Organization**

The Sponsor is, and at all times during the Term of this Charter Agreement shall be, duly organized, properly existing, and in good standing in its state of incorporation. The Sponsor is, and at all times during the term shall be, a not-for-profit organization with exemption from federal taxation under IRC § 501(c) (3). Sponsor is not, and shall not be, a for-profit corporation.

#### **4.1.2 Tax-Exempt, Non-Profit Status**

The Sponsor must have received a determination of tax-exempt status from the Internal Revenue Service before the Sponsor may provide instruction to any students attending the Charter School. The Sponsor shall immediately inform the Chartering Authority if its tax-exempt status is questioned, modified, or revoked by the Internal Revenue Service or if its non-profit corporation status is questioned, modified, or revoked by the state of incorporation.

#### **4.1.3 Authority**

The Sponsor warrants that it has all requisite power and authority to execute and deliver this Charter Agreement, to perform its obligations hereunder, and to otherwise consummate the agreements contemplated hereby and thereby. This Charter Agreement constitutes a valid and binding obligation of the Sponsor, enforceable against the Sponsor in accordance with its terms.

#### **4.1.4 Litigation**

There is no suit, claim, action or proceeding now pending or threatened before any court, grand jury, administrative or regulatory body, Government agency, arbitration or mediation panel or similar body to which the Sponsor is a Party or which may result in any judgment, order, decree, liability, award or other determination which will or may reasonably be expected to have an adverse effect upon the Sponsor. No such judgment, order, decree or award has been entered against the Sponsor nor has any liability been incurred which has, or may reasonably be expected to have, such effect. There is no claim, action or proceeding now pending or threatened before any court, grand jury, administrative or regulatory body, Government agency, arbitration or mediation panel or similar body involving the Sponsor which will or may reasonably be expected to prevent or hamper the consummation of the agreements contemplated by this Agreement.

#### **4.1.5 Full Disclosure**

No representation or warranty of the Sponsor herein and no statement, information or certificate furnished or to be furnished by the Sponsor pursuant hereto or in connection with the agreement contemplated hereby contains any untrue statement of a material fact or omits or will omit to state a material fact necessary in order to make the statements contained herein or therein not misleading.

#### **4.1.6 Reputation of Officers, Directors and Employees**

No member of the Sponsor's Board of Directors, officer of the Sponsor, employee of the Sponsor, member of the Governing Body, or employee of the Charter School has been convicted of a felony or other criminal offense involving dishonesty, fraud or moral turpitude.

No person may continue to be a member of the Sponsor's Board of Directors, officer of the Sponsor, employee of the Sponsor, member of the Governing Body, or employee of the Charter School if that person is convicted of a felony or other criminal offense involving dishonesty, fraud or moral turpitude.

#### **4.1.7 Conduct of Sponsor and the Governing Body**

The Sponsor/Governing Body has complied, and at all times during the Term will comply, with all local, state and federal laws and regulations governing that are applicable to the Sponsor/Governing Body, which may include, but are not limited to the internal revenue code, the non-profit corporation law of the State, and the open records and public meetings laws of the State. The Sponsor/Governing Body has maintained and will maintain adequate records of the activities and decisions of the Sponsor/Governing Body to ensure and document compliance with all such laws and regulations. The Sponsor/Governing Body agrees to provide Chartering Authority with copies of all such records and to allow Chartering Authority to, at Chartering Authority's discretion, assist with the preparation and retention of such records.

#### **4.1.8 Due Authorization**

Upon execution of a Charter Agreement by the Sponsor and the Chartering Authority, the Sponsor will be authorized to organize and operate the Charter School and will be vested with all powers necessary to carry out the educational program outlined in the Charter Agreement.

The Charter School may not commence instruction until and unless the Office of Charter and Private Schools issues a letter to the school (known as the "Opening Authorization Letter") stating that the school has completed the Pre-Opening Actions on the *Pre-Opening Actions Checklist* (attached as Exhibit 2) in this Charter Agreement to the satisfaction of the Office of Charter and Private Schools.

Specific items from the Pre-Opening Action Checklist that are included in the Opening Authorization Letter must be addressed in full no later than August 1 of the second year of operation, the School will be found in violation of its Charter Agreement and will be recommended for revocation of the Charter according to the provisions of TCA § 49-13-122(a)(1).

### **4.2 Of Chartering Authority**

#### **4.2.1 Organization**

Chartering Authority is a local board of education under the laws of the State of Tennessee, with the purpose and legal ability to grant and issue this Charter Agreement pursuant to the provisions of the Act.

#### **4.2.2 Authority**

Chartering Authority has all requisite power and authority to execute and deliver this Charter Agreement, to perform its obligations hereunder, and to otherwise consummate the transactions contemplated hereby. This Agreement constitutes a valid and binding obligation of Chartering Authority, enforceable against Chartering Authority in accordance with its terms.

#### **4.2.3 Litigation**

There is no claim, action or proceeding now pending or threatened before any court, grand jury, administrative or regulatory body, Government agency, arbitration or mediation panel or similar body involving the Chartering Authority which will or may reasonably be expected to prevent or hamper the consummation of the agreements contemplated by this Charter Agreement.

#### **4.2.4 Full Disclosure**

No representation or warranty of Chartering Authority herein and no statement, information or certificate furnished or to be furnished by Chartering Authority pursuant hereto or in connection with the transactions contemplated hereby contains any untrue statement of a material fact or omits or will omit to state a material fact necessary in order to make the statements contained herein or therein not misleading.

### **5. Term; Post-Term Events**

#### **5.1 Term**

Pursuant to TCA § 49-13-121, the initial term (the “Initial Term”) of the Charter shall commence on the Effective Date and end on the thirtieth (30<sup>th</sup>) day of June following the tenth (10<sup>th</sup>) anniversary of the Effective Date, subject to an interim review conducted during the fifth (5<sup>th</sup>) year of the Term according to guidelines developed by the Department of Education. Also as provided by TCA § 49-13-121, unless the Charter is revoked or terminated, the term shall be extended for subsequent ten (10) year terms (each a “Renewal Term” and the Renewal Term(s), if any, together with Initial Term, the “Term”), provided the Sponsor submits a renewal application that conforms to requirements in TCA § 49-13-121 and guidelines promulgated by the Department of Education no later than October 1 of the year prior to the year in which the Term of this Charter Agreement expires.

#### **5.2 Events Following Non-Renewal, Revocation, or Expiration**

Events following the dissolution of the Charter School shall be as described in TCA § 49-13-110(c).

### **6. Termination, Revocation, Non-renewal and Intermediate Sanctions**

Any action taken to terminate the Charter, revoke the Charter, or impose intermediate sanctions on the Sponsor shall be undertaken in accordance with all applicable law and this Charter Agreement. In the event of a condition or circumstance that poses an immediate threat to the health or safety of students or staff of the Charter School, either Party may require the Charter School to suspend operations until appropriate corrective action(s) can be undertaken.

#### **6.1 Termination, Revocation, Non-renewal**

The Chartering Authority may elect not to renew this Charter Agreement pursuant to TCA § 49-13-121. The Chartering Authority may revoke or terminate this Charter Agreement for any reason set forth in TCA § 49-13-122, and/or for breach of any of the terms and conditions of this Charter Agreement.

If the Chartering Authority determines that any grounds for revocation, termination or non-renewal exist, it may revoke, terminate or non-renew this Charter Agreement according to the procedures set forth in TCA § 49-13-121 and TCA § 49-13-122.

## **6.2 Intermediate Sanctions**

In the event the Chartering Authority determines that Sponsor is not complying with the terms of this Charter Agreement and/or the Act, Chartering Authority may, but is not required to, provide notice to Sponsor of the non-compliance and may also, but is not required to, give the Sponsor an opportunity to cure the non-compliance prior to instituting termination proceedings pursuant to TCA § 49-13-121 and TCA § 49-13-122.

## **7. General Provisions**

### **7.1 Governing Law and Venue**

The validity, construction and effect of this Charter Agreement and any and all extensions and/or modifications thereof shall be governed by the laws of the State of Tennessee. Tennessee law shall govern regardless of any language in any attachment or other document that the Sponsor may provide. Any action between the parties arising from this Agreement shall be maintained in the courts of Davidson County, Tennessee.

### **7.2 Waiver of Charter Agreement Provisions**

No waiver of any provision of this Charter Agreement shall affect the right of any Party thereafter to enforce such provision or to exercise any right or remedy available to it in the event of any other default.

### **7.3 No Third Party Beneficiary Rights**

No third party, whether a constituent of the Charter School, a member of the community, a student or parent/guardian of a student of the Charter School or otherwise, may enforce or rely upon any obligation of, or the exercise of or failure to exercise any right of the Sponsor or the Chartering Authority in this Charter Agreement. This Charter Agreement is not intended to create any rights of a third party beneficiary.

### **7.4 Delegation of Authority**

Sponsor acknowledges that: (a) Chartering Authority's obligations and responsibilities with respect to the Charter School are limited to those obligations and responsibilities set forth in the Tennessee Public Charter Schools Act and as set forth herein; (b) Sponsor, Governing Body

and the Charter School, including their respective directors, officers and employees, do not have authority to act as an agent for Chartering Authority or to enter into any contracts with third parties that purport to impose any obligations or responsibilities on Chartering Authority or which otherwise bind Chartering Authority in any manner whatsoever; and (c) by agreeing to authorize the Charter School, Chartering Authority does not assume any obligation with respect to any director, employee, agent, parent, guardian, student, or independent contractor of the Charter School, the Governing Body, or the Sponsor.

The Chartering Authority acknowledges that Chartering Authority including its directors, officers and employees, do not have authority to act as an agent for Sponsor, Governing Body or Charter School, except as provided herein in **Section 3.14.1 Fiscal Agent** or when acting as billing agent for a service provided at the request of the Charter School as referenced in Section 3.19, or to enter into any contracts with third parties that purport to impose any obligations or responsibilities on Sponsor or which otherwise bind Sponsor, Governing Body or the Charter School in any manner whatsoever.

#### **7.5 Notices**

All notices, consents and other communications (“Notices”) which either Party may be required or desire to give the other Party shall be in writing and shall be hand-delivered or given by telecopy, or nationally recognized overnight courier service to the other Party at its respective address or telecopy telephone number set forth below.

**The Chartering Authority:**

**Metropolitan Nashville-Davidson County Board of Public Education  
2601 Bransford Avenue  
Nashville, TN 37204  
Tel: 615/259-8762  
Fax: 615/259-8769**

**The Sponsor:**

Notices shall be deemed delivered upon receipt of the Party receiving such notice. The Parties agree to ensure that any notice provided under the Agreement is done in a manner that will allow the delivering Party to establish the date of delivery to the receiving Party.

## **7.6 Section Headings**

The headings in this Charter Agreement are for the convenience of the Parties only, and shall have no effect on the construction or interpretation of this Charter Agreement and are not part of this Charter Agreement.

## **7.7 Exhibits and Schedules, Attachments and Addenda**

Each exhibit, schedule, attachment, and addenda to this Charter Agreement to which reference is made in this Agreement is hereby incorporated in this Charter Agreement as an integral part thereof. In the event of a conflict between the terms and provisions of this Charter Agreement and the terms and provisions of any exhibits, attachments, addenda or schedules, the terms and provisions of this Charter Agreement, absent the exhibits, schedules, attachments and addenda shall control.

## **7.8 Entire Agreement**

This Charter Agreement sets forth the entire agreement between the Parties with respect to the subject matter hereof and shall govern the respective duties and obligations of the Parties. Any and all prior understandings and agreements, expressed or implied, written or oral, between the Parties are superseded hereby.

## **7.9 Modifications and Amendments**

This Agreement may be modified only by written amendment executed by all parties and their signatories hereto.

## **7.10 Assignment**

The provisions of this Agreement shall inure to the benefit of and shall be binding upon the respective successors and assignees of the parties hereto. Neither this Charter Agreement nor any of the rights and obligations of the Sponsor hereunder shall be assigned or transferred in whole or in part without the prior written consent of the Chartering Authority. Any such assignment or transfer shall not release the Sponsor from its obligations hereunder.

## **7.11 Counterparts**

This Agreement may be executed in Counterparts, each of which shall be deemed to be an original and both together shall be deemed to be one and the same Agreement.

## **7.12 No Partnership/Joint Venture**

Nothing herein shall in any way be construed or intended to create a partnership or joint venture between the Parties or to create the relationship of principal and agent between the Parties. None of the Parties hereto shall hold itself out in a manner contrary to the terms of this paragraph.

No Party shall become liable for any representation, act or omission of any other party contrary to the terms of this paragraph.

### **7.13 Severability**

Should any provision of this Charter Agreement be declared to be invalid by any court of competent jurisdiction, such provision shall be severed and shall not affect the validity of the remaining provisions of this Charter Agreement.

### **7.14 Negotiated Agreement**

The provisions of this Charter Agreement were negotiated by the Parties and this Charter Agreement shall be deemed to have been drafted by the Parties, notwithstanding any presumptions at law to the contrary.

### **7.15 Chartering Authority Property**

Any Chartering Authority property, including but not limited to books, records and equipment, that is in the Sponsor's possession shall be maintained by the Sponsor in good condition and repair, and shall be returned to the Chartering Authority by the Sponsor upon termination of this Charter Agreement.

### **7.16 Employment**

The Sponsor and the Governing Body shall not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to race, creed, color, national origin, age, sex, or which is in violation of applicable laws concerning the employment of individuals with disabilities.

### **7.17 Non-Discrimination**

It is the policy of the Chartering Authority not to discriminate on the basis of age, race, sex, color, national origin, or disability in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities. With regard to all aspects of this Charter Agreement, the Sponsor certifies and warrants it will comply with this policy. No person shall be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in the programs or activities that are the subject of this Charter Agreement, on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal or Tennessee State Constitutional or statutory law; nor shall they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of contracts with the Sponsor or in the employment practices of the Sponsor's contractors. Accordingly, the Sponsor shall, upon request, be required to show proof of such nondiscrimination and to post in conspicuous places that are available to all employees and applicants, notices of nondiscrimination.

**7.18 Contingency Fees**

The Sponsor hereby represents that it has not been retained or retained any persons to solicit or secure this Agreement with the Chartering Authority upon an agreement or understanding for a contingent commission, percentage, or brokerage fee. Breach of the provisions of this paragraph is, in addition to a breach of this Charter Agreement, a breach of ethical standards which may result in civil or criminal sanction and/or termination of this Charter Agreement.

**7.19 Effective Date**

This Agreement shall not be binding upon the parties until it has been signed first by the Sponsor and then by the authorized representatives of the Chartering Authority and has been filed in the office of the Metropolitan Clerk. When it has been so signed and filed, this Agreement shall be effective as of filing in the office of the Clerk.

**THE METROPOLITAN GOVERNMENT  
OF NASHVILLE AND DAVIDSON  
COUNTY:**

**RECOMMENDED:  
Metropolitan Board of Education**

\_\_\_\_\_  
**Chairperson**

**APPROVED AS TO AVAILABILITY OF  
FUNDS:**

\_\_\_\_\_  
**Director of Finance**

**APPROVED AS TO INSURANCE:**

\_\_\_\_\_  
**Director of Insurance**

**APPROVED AS TO FORM AND  
LEGALITY:**

\_\_\_\_\_  
**Metropolitan Attorney**

**FILED IN THE OFFICE OF THE  
METROPOLITAN CLERK:**

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

**SPONSOR**

**BY:** \_\_\_\_\_

**Title:** \_\_\_\_\_

Sworn to and subscribed to before me, a  
Notary Public, this \_\_\_\_\_ day  
of \_\_\_\_\_, 200 \_\_, by  
\_\_\_\_\_, the  
\_\_\_\_\_ of  
Contractor and duly authorized to execute  
this instrument on Contractor's behalf.

\_\_\_\_\_  
**Notary Public**  
**My Commission Expires** \_\_\_\_\_

Exhibit 1 – Fully Amended and Approved Charter Application

Exhibit 2 – Pre-Opening Checklist

Exhibit 3 – Annually Agreed Fee Schedule

- Financial Services Fee

- Annual Admission Lottery Service Fee

- Fees for services rendered (assessed at time of service)

  - Transportation

  - Exceptional Education