

AGREEMENT BETWEEN
THE MT. DIABLO UNIFIED SCHOOL DISTRICT
AND THE EAGLE PEAK MONTESSORI CHARTER SCHOOL
REGARDING SPECIAL EDUCATION

THIS AGREEMENT (herein after "Agreement") is made and entered into as of the ____ day of April, 2019 by and between the Eagle Peak Montessori School, a California public charter school (hereinafter "School" or "Charter School") and the Board of Education of the Mt. Diablo Unified School District, a school district organized and existing under the laws of the State of California (hereinafter the "District"). The District and the School are collectively referred to as "the parties".

Recitals

1. The District granted a charter to the School on March 28, 2000 pursuant to the terms of the Charter Schools Act of 1992, as amended (The "Act"), (Education Code 47600, et seq.).
2. The District and the School have entered into a Financial and Operational Memorandum of Understanding and Supplemental Charter Agreement outlining the operational and oversight arrangements between the District and the School with the exception of special education.
3. This Agreement outlines the parties' responsibilities and obligations to provide special education and related services to students attending the School in accordance with Education Code Section 47640 et seq.
4. Education Code Section 47607 (a) (2) provides the procedure for a material revision of an existing charter. Upon the execution of this Agreement by the parties and upon ratification and approval by the Board of Education of the District this Agreement shall be considered a material revision of the Charter and shall become a fully incorporated part of the Charter previously approved by the District. To the extent that this Agreement is inconsistent with any of the terms of the Charter, this Agreement shall supersede the terms of the Charter

NOW, THEREFORE, in consideration of the promises and mutual covenants and agreements herein set forth, the School and the District agree as follows:

Statutory Obligation per EC Section 47640 et seq.

The School has chosen to be a school of the local education agency (LEA/school district) that granted its charter for special education purposes. In accordance with the federal Individuals with Disabilities Education Act, as reauthorized in 2004, EPMS, as a public school of MDUSD, must be treated in the same manner as other public schools in the District. The MDUSD will be responsible for ensuring that all children with disabilities

enrolled in EPMS, regardless of district of residence, receive special education and designated instructional services in a manner that is consistent with their IEP and in compliance with the IDEA and all applicable provisions of state and federal law.

As a school of the MDUSD, for the provision of special education services, EPMS seeks to cooperate with the MDUSD to ensure that special needs students receive all of the appropriate special education services required by law. EPMS also recognizes MDUSD's obligation to Education Code Section 47646(a), and seeks to facilitate MDUSD in meeting its obligation under the code. In order to do so, EPMS, with the assistance and oversight of MDUSD, agrees to comply with all provisions of state and federal law and District and SELPA policies with regard to the provision of special education services, in order to maintain compliance as further outlined below.

Funding

State and Federal special education funding will be allocated to the District's Special Education Local Plan Area (SELPA), not the charter school. The District shall retain all revenue, which is generated by the School for the delivery of special education and related services and shall be solely responsible for the financial costs of services and responsibilities as set forth above. In addition, EPMS will contribute an equitable share of special education encroachment determined as follows: To the extent that district-wide (including Charter School) special education and related services costs exceed District-wide (including Charter School) special education funding, the encroachment shall be charged to Charter School on a prorated basis. The proration shall be based on the number of students enrolled at Charter School compared to District-wide enrollment. The numbers and calculations shall be recalculated annually and shall be reviewed with Charter School upon request

For the period running concurrent with the school's charter the fee for Special Education will be calculated as follows:

1. Fee will be \$800/student starting in 2014/15.
2. Fee would adjust school each year by the adjustment to the CPI in the San Francisco Oakland San Jose Metropolitan area. For example, if the CPI went up 1%, then the fee would increase by \$8.
3. At the end of the school year, the cost of Special Education services provided to Eagle Peak would be calculated by the District. This would include the proportional cost of any employee assigned to provide services to EPMS. For example, if the total compensation of a Resource Specialist is \$70,000, and she works half time at EPMS, then her cost would be \$35,000. This calculation would be done for all staff providing services to EPMS. The calculation would also include the cost of all materials and equipment purchased for special education students at EPMS. EPMS requests that District provide quarterly reports of special education costs, and District will make a good faith effort to do so.

4. The total cost of special education services in the school year would then be compared to the amount generated by the special education fees paid by EPMS that year.
5. If the total cost is less than the total expense, the fee would remain as described in 1 and 2 above.
6. If the total cost exceeds the total expense, the fee for that year would be increased to the amount needed to pay for the expense. The fee would not be increased beyond the amount resulting from the application of the proportionate formula that currently projects a fee of \$1197/student. If the fee is increased for a given year and the same students needing special education services continue next year, then the fee for the following year would equal the fee calculated for the prior year plus the CPI adjustment described in 2. If the students generating the increased costs do not continue in the program, then the fee for the following year would be calculated as described in 1 and 2.
7. Absent termination by either party, the term of the agreement shall be for five (5) years.

Division and Coordination of Responsibility:

- A. School Responsibility for Section 504 and ADA Compliance** - It is agreed that this agreement covers only the delivery of special education services under IDEA and does not cover services or accommodations required under Section 504 of the Rehabilitation Act nor under the Americans with Disabilities Act. The School agrees to assume sole responsibility for compliance with Section 504 and the ADA for all students who are enrolled in the School. The District agrees that it retains responsibility for all responsibilities not assigned to the School by this MOU. The District's designated representative shall be the Coordinator of Special Education/Special Services who shall have the authority to act on behalf of the District. The School's representative shall be the School Administrator who shall have the authority to act on behalf of the School.
- B. Identification and Referral of Students with or Who May Have Exceptional Needs** - The School has the responsibility to make referrals of any students enrolled in the charter school who are believed to be eligible for special education assessment and/or services in accordance with applicable State and District established timelines. Prior to making such referral, the School staff shall conduct a Student Study Team meeting to determine if alternative interventions are appropriate. A copy of all referrals shall be delivered to a District-designated representative within 2 school days. Prior to making such a referral, the School shall consult with the District representative. The District will invite School staff to any applicable District or SELPA-offered in-service opportunities. At least one member of the School staff shall attend any such in-service training.

If any Charter School student eligible for special education services requires transportation, then the parties shall meet to discuss transportation-related issues. The

District shall not be responsible for transportation unless the student would be entitled to transportation under state and federal law regarding the provision of special education services.

- C. Pre-placement Evaluation and Assessment** - The District will determine what assessments, if any, are necessary for initial evaluations, annual reviews, and triennial reviews, and arrange for such assessments for all referred students. The District may elect to have assessments conducted by public or private individuals or agencies. The School shall not conduct or contract for assessments without written approval from the District.
- D. Individual Education Plan Development** - The District shall be responsible for arranging the necessary written individualized education plans (hereinafter "IEPs") and IEP meetings in accordance with all applicable state and federal law. The School shall be responsible for having the designated School representative of the School in attendance at the IEP meetings. All IEPs shall be developed, maintained, and reviewed in a form and format as required by the SELPA. District responsibility shall include the documentation of the IEP meeting and provision of parent rights.

Decisions regarding eligibility, goals/objectives, program, placement and exit from special education shall be the decision of the IEP team. Team membership shall be in compliance with applicable state and federal law and shall include a School representative (or designee) and a District representative (or designee). Services and placement shall be provided to all eligible School students in accordance with the policies, procedures and requirements of the District and the SELPA.

The District may not develop or cause to be developed an IEP that specifies that a student shall be placed in the School without the consent of the School. The School may not develop or cause to be developed an IEP that specifies that a student shall be placed in another District program or school. In the event that either party believes that a placement in a school or program of the other party may be an appropriate provision of an IEP, such a placement shall not be made without the consent of the other party and the student's parent or legal guardian.

For students who enroll in the School with a current IEP, it is the responsibility of the School to implement the existing IEP to the extent possible within the general program and to notify the District's designated representative, in writing, as soon as possible and no later than 1 school day upon learning of the student's eligibility for special education services.

The School shall adopt Student Registration forms for admitting that include questions about whether the student is currently or has ever received special services (e.g., accommodation plan, 504 plan, IEP or special education).

The School shall request all educational records, including a specific request for all special education and/or special services records, from each student's previous school upon the student's expression of an intent to enroll in the School.

The School shall notify the District's designated representative of every new student after admission but prior to enrollment, with any history of receiving special education or special services no later than 1 school day upon learning of the student's history of receiving special education or special services.

- E. Provision of Special Education and Related Services** - The District shall provide or contract for the provision of all special education and related services that are contained within or required by the terms of the IEP of any student who is enrolled in the School. The District will also provide appropriate and timely interim placements for students eligible for special education who are new to the School in cases in which the general program cannot adequately meet the interim needs of the student.
- F. Parent/Guardian Concerns** - The School shall direct parent/guardian concerns regarding special education services, related services and rights to the designated representative of the District within 1 school day.
- G. Complaints and Due Process Hearings** - In consultation with the School, the District shall address/respond/investigate all complaints received under the Uniform Complaint procedure involving special education.

In consultation with the School, the District may initiate a due process hearing on behalf of a student enrolled in the School as the District determines is legally necessary to meet a school agency's responsibilities under federal and state law. In the event that parents/guardians file for a due process hearing, both the School and the District shall be named respondents. The District and the School shall work together to defend the case. In the event that the District determines that legal counsel representation is needed, legal counsel shall jointly represent the District and School, unless the School elects to retain its own counsel. If the School elects to obtain its own counsel the School shall be responsible for all costs of its own counsel.

- H. SELPA Representation** - As part of district representation duties at SELPA meetings, the District Administrator of Special Education/Special Services shall represent the School. Reports to the School regarding SELPA decisions, policies, etc. shall be communicated to the School as they are to all other schools within the District. To the extent that the District and/or SELPA provide training opportunities and/or information regarding special education to site staff and administrators, such opportunities and/or information shall be made available to the School staff and administrators and school staff and administrators shall be required to attend. To the extent that site staff has the opportunity to participate in committee meetings of the SELPA as representatives of their District, such opportunities shall be made available to the School staff.

I. Indemnification - The District shall, to the fullest extent permitted by law, indemnify, defend, and hold harmless the Charter School, its officers, directors, and employees, attorneys, agents, representatives, volunteers, successors and assigns (collectively hereinafter "Charter School and Charter School Personnel") from and against any and all actions, suits, claims, demands, losses, costs, penalties, obligations, acts, errors, omissions, or liabilities, including legal costs, attorney's fees, and expert witness fees, whether or not suit is actually filed, and/or any judgment rendered against Charter School and/or Charter School Personnel that may be asserted or claimed by any person, firm, or entity arising out of or in connection with the District's performance of its obligations under this Agreement or any acts or errors or omissions by the District, its board of directors, administrators, employees, agents, representatives, volunteers, subcontractors, invitees, successors, and/or assigns.

Notwithstanding anything to the contrary contained in this Agreement, no indemnification shall be provided under this Agreement from the District to the Charter School based on, arising out of, or relating to any of the following:

- (a) Any liability expressly assumed by the Charter School in writing expressly referencing this provision;
- (b) Any negligent or intentional misconduct of any Charter School officer, director, employee, agent, attorney, representative, volunteer, successor or assign; or
- (c) Any violation by the Charter School, its officers, directors, employees, agents, attorneys, representatives, volunteers, successors or assigns of any applicable laws of the United States or any state of the United States, including, without limitation, the California Charter School Act.

K. Cooperative Arrangements - The District and the School pledge to work in cooperation to ensure that students with exceptional needs are served. These cooperative arrangements may include, but are not limited to the following:

1. Open communication between the School, the District, any other districts of residence, the SELPA of residence and the County Office of Education to ensure that students with exceptional needs are identified and that their needs are evaluated and served in compliance with any and all applicable laws.
2. Delivery of special education services at the site of the School, sites maintained by the District or private contractors. These arrangements will be developed on a case-by-case basis and reviewed and modified on a regular basis and in coordination with applicable laws and individual education plans.
3. Agreement to review these special education issues and agreements annually, or as often as needed as determined by either party, in order to ensure continual

compliance with all the appropriate regulations pertaining to special needs students. This will allow for any necessary adjustment to the current Memorandum of Understanding, to guarantee the desired compliance with all legal requirements.

IN WITNESS WHEREOF, the Charter School and the District have executed this Agreement as of this day and year first above written.

Eagle Peak Montessori Charter School

Mt. Diablo Unified School District

By: 
Michelle Hammons,
Administrative Director

By: _____
Nellie Meyer, EdD.
Superintendent

APPROVED AND RATIFIED by the following vote of the Board of Education of the Mt. Diablo Unified School District called on this ____ Day of _____ 2014.

AYES: _____

NOES: _____

ABSENT: _____

Dr. Nellie Meyer,
Secretary to Board
Mt. Diablo Unified School District

APPROVED AND RATIFIED by the following vote of the Charter School Governing Board called on this 2nd Day of April 2019.

AYES: 6

NOES: 0

ABSENT: 6


Emily Pollard, Secretary to Board
Eagle Peak Montessori Charter School