

**FINANCIAL AND OPERATIONAL
MEMORANDUM OF UNDERSTANDING
AND SUPPLEMENTAL CHARTER AGREEMENT
BETWEEN THE MT. DIABLO UNIFIED SCHOOL DISTRICT
AND
THE EAGLE PEAK MONTESSORI CHARTER SCHOOL**

This agreement (hereinafter “Agreement”) is made and entered into as of April __, 2019, and supersedes all prior Financial and Operational agreements between the Eagle Peak Montessori School, a California public charter school (hereinafter “EPMS”) 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 EPMS are collectively referred to as “the Parties.”

RECITALS

- A. The District granted a charter to EPMS on March 28, 2000, pursuant to the terms of the Charter Schools Act of 1992, as amended (Education Code 47600, et seq.) (The “Act”). The Act authorizes the formation of charter schools for the purpose of, among other things, developing new, innovative, and more flexible ways of educating children within the public school system. Neither EPMS nor the District intends by entering into this Agreement to waive any of the rights, responsibilities, and privileges established by the Act.
- B. The Parties wish to enter into a mutually-agreeable memorandum of understanding (“MOU”) regarding: (1) the funding entitlements of EPMS pursuant to the Local Control Funding Formula (“LCFF”); (2) to define operational and oversight arrangements between EPMS and the District; and (3) the resolution of other matters of mutual interest.
- C. Education Code § 47607 (a)(2) provides the procedure for the 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.

PURPOSE OF THIS AGREEMENT

This Agreement outlines the specific funding sources anticipated to be available to EPMS as well as describes operational relationships.

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

Article 1: Terms and Renewal

- 1.1 **Term.** This Agreement shall commence on the date of ratification and approval by the District and shall continue in effect until such time that the Parties modify or enter into a subsequent Agreement.
- 1.2 **Renewal.** This Agreement will be reviewed and amended as necessary.
- 1.3 **Incorporation into Charter.** The terms of this Agreement are intended by both parties to become part of the conditions, standards and procedures set forth in the Charter document (“Charter”) as if expressly set forth therein.
- 1.4 **Termination.** This Agreement shall automatically terminate upon the: (a) termination or revocation of the EPMS charter; (b) cessation of EPMS operations for any reason through the exhaustion of EPMS’s administrative, non-judicial appeals pursuant to Education Code section 47605 or 47607; or (c) replacement of the Agreement by a new MOU between the Parties.

Article 2: Designation of School

- 2.1 **Designation of School.** EPMS is a California Non-Profit Public Benefit Corporation pursuant to The Act and § 5110 of Division 2 of Title 1 of the Corporations Code.
- 2.2 **Average Daily Attendance (“ADA”).** ADA shall mean the attendance of EPMS pupils while engaged in educational activities required of them by EPMS and as provided for in Education Code § 47612, and defined in § 11960, Article 1, Subchapter 19, Title V, of the California Administrative Code of Regulations. EPMS will be responsible for its daily and monthly attendance accounting and shall submit reports in accordance with the District’s format in a timely manner.

Article 3: Organization/Governance of EPMS

- 3.1 **Daily Operations.** The day-to-day operations of EPMS shall be conducted by the Principal/Executive Director by the power delegated to him/her by the EPMS governing board. All powers, rights and obligations not otherwise reserved herein to the District are hereby delegated to EPMS consistent with its Charter, any policies and procedures, this Agreement, and all applicable laws. EPMS shall be allowed to carry on any activity in order to effectuate its goal of educating students that is not inconsistent with an express provision of its Charter and applicable California law.
- 3.2 **EPMS Employees.** All employees shall be hired “at will” under contract or on a fixed term basis on an annual basis with express provisions outlining salary, deductions, holidays, etc. and incorporating by reference any personnel policies developed or to be developed by EPMS. All persons hired by EPMS shall be its employees and not those of the District.

- 3.3 **No Express or Implied Authority.** No officer or employee of EPMS shall have the express, implied or ostensible power or authority to bind the District to any contract or agreement unless authorized herein.
- 3.4 **Obligations as to Delivery of Services.** With the assistance of the District as agreed to herein, it shall be the Principal/Executive Director's duty and obligation, at EPMS' expense and cost and under the direction of the EPMS governing body to manage, operate, and administer EPMS. The Parties agree that, at all times, EPMS remains accountable and subject to the oversight of the District as provided for in the Charter Schools Act, the Charter, this Agreement, and District policy and procedures. EPMS's duties and obligations shall include, but not be limited to: (a) providing educational and instructional programs to students who attend EPMS; (b) all personnel functions; (c) maintenance and operation functions; (d) professional development for all employees; (e) acquisition of all instructional materials, equipment, and supplies; and (f) financial management and accounting, budget development, and all payroll functions; and (g) all other obligations established under the Charter and law.
- 3.5 **Other Programs.** EPMS intends to offer a Before and After School Childcare Program.

Article 4: The District's Administrative Services

- 4.1 **"Supervisory Oversight"** (Describes the administrative support offered by the District to EPMS). The 1998 Charter Act Amendment limits the amount to be charged to be the lesser of "actual costs" or 1% of EPMS revenue (block grant funding excluding lottery and grants, etc.) and up to 3% if EPMS obtains "substantially rent free" facilities from the District. These supervisory oversight services shall include, but are not necessarily limited to:
- Initial drafting, negotiating, and approval of this Agreement;
 - Good faith efforts to develop any needed additional agreements to clarify or implement this charter;
 - Regular review, analysis, and dialogue regarding the annual performance report of EPMS;
 - Annual review of EPMS Local Control Accountability Plan;
 - Monitoring performance and compliance with the Charter and with applicable laws, including, without limitation, by way of the following:
 - Identifying at least one staff member as a contact person for the Charter School;
 - Visiting Charter School at least once per year;
 - Monitoring the fiscal condition of Charter School;
 - Notifying the State of California upon the occurrence of any of the events described in Education Code section 47604.32(a)(5).
 - Receiving and reviewing the reports required by Education Code section 47604.33:
 - (1) On or before July 1, a preliminary budget.
 - (2) On or before July 1, an annual update required pursuant to Section 47606.5.

- (3) On or before December 15, an interim financial report. This report shall reflect changes through October 31.
- (4) On or before March 15, a second interim financial report. This report shall reflect changes through January 31.
- (5) On or before September 15, a final unaudited report for the full prior year.
- Monitoring of compliance with the terms of this charter and related agreements; and
- Good faith efforts to implement the dispute resolution and related processes described in the charter.

In lieu of the supervisorial oversight fee under Education Code § 47613, the District shall charge the indirect cost rate set forth in Section 4.2 of this Agreement.

4.2 **Additional Administrative or other Goods or Services.**

The following services shall be provided by the District to the Charter School for the fees set forth below:

- Access to information regarding EPMS on the District's financial software system;
- Access to input journal entries and budget entries regarding EPMS on the District's financial software system;
- Access to the information from District's chart of accounts;
- Access to and assistance from the District's purchasing, warehouse, and delivery services regarding EPMS;
- The benefit of the District's accounts payable process;
- The benefit of the District's Personnel Department including TB screening and fingerprinting (there shall be a direct charge for the actual administrative and clerical costs of fingerprinting employee applicants and administering TB screening);
- Access to staff development (as appropriate);
- Assistance with student data information management regarding EPMS pupils (tracks ADA, enrollment, standardized and alternative assessment data, emergency contacts, race/ethnicity, age, address, parent/guardian, immunizations, discipline);
- Vision and hearing screening; and
- Categorical programs management and grant development and compliance services.

EPMS will process its payroll and file the related taxes. EPMS will provide the District with payroll and payroll related journal entries and all supporting documentation. The District will process retirement benefits and other statutory benefits based on information provided by EPMS.

EPMS shall provide the necessary information in accordance with state guidelines and timetables in order for the District to complete the various reports required by the state for charter schools such as the Attendance Report, Annual Budget, Interim Financial Reports, and Local Control Accountability Plan.

The District shall establish a separate fund to account for EPMS financial transactions. The interest earned on the average daily balance shall accrue to that fund. If the fund has a negative balance, the negative interest charged by the County Treasurer's Office will be applied to the EPMS fund. If the fund continues with a negative balance, EPMS shall provide a financial plan to the District outlining how the budget deficit will be rectified.

EPMS agrees not to open any checking accounts other than those authorized by the District. The authorized checking accounts are limited to a student body account, payroll account, clearing account, and revolving cash account. EPMS agrees to adhere to the internal controls established by the District for the authorized checking accounts.

EPMS shall, at its own expense, provide free or reduced priced meals to eligible students.

The cost for the administrative services provided by the District shall be based on the District's indirect cost rate as calculated by the State Cost Accounting Report (J380). The indirect cost rate shall be applied to all expenditures (except for those exempted) in the EPMS fund on a monthly basis. The following expenditures shall be exempt from the indirect cost rate: any expenses related to the special education encroachment, depreciation expense, and any expenses related to acquiring a loan, including interest expense. This amount includes the District's charge for oversight responsibilities described in 4.1.

- 4.3 **Special Education Services.** The scope and cost of Special Education Services shall be contained in separate, written agreement.
- 4.4 **Utilities.** EPMS shall pay the full monthly costs of sewer, water, electrical, gas, garbage, internet connection, and phone services. EPMS's payment of such costs shall be in lieu of facilities costs under Education Code § 47614.

Article 5: Financial Arrangements

5.1 Anticipated Funding.

- A. **Principal Apportionments.** Assembly Bill 97 (Chapter 47, Statutes of 2013), as amended by Senate Bill (SB) 91 (Chapter 49, Statutes of 2013) and SB 97 (Chapter 357, Statutes of 2013), established the LCFF, which represents how California's kindergarten through grade twelve (K-12) local educational agencies (LEAs), including county offices of education, school districts, and charter schools, are funded. The goal of the LCFF is to significantly simplify how state funding is provided to local educational agencies (LEAs). Under the funding system, revenue limits and most state categorical programs are eliminated. LEAs will receive funding based on the demographic profile of the students they serve and gain greater flexibility to use these funds to improve outcomes of students. The LCFF creates funding targets based on these student characteristics. For school districts and charter schools, the LCFF funding targets consist of grade span-specific base grants plus supplemental and concentration grants that reflect

student demographic factors. Charter schools will continue to be funded based on current-year ADA.

B. **Lottery Funds.** EPMS shall also be entitled to a per-ADA share of funds from the California lottery. The Parties recognize that lottery funds are highly variable, depending on lottery sales, and that funding of lottery funds may also be in arrears, and that EPMS should account for their potential unavailability when creating its annual budget.

5.2 **Application-based Funding and Other Funding Sources.** The District will assist EPMS to the fullest extent allowed by law in its applications for funding from other sources. EPMS shall receive funding from new or “one-time” funding sources available to schools or school districts provided by the State of California in the state budget and/or subsequent relevant legislation to the extent that EPMS and its students generate such entitlements. EPMS may also receive local operational revenue sources (this may include without limitation basic aid, and excess local property taxes. . The District and EPMS may mutually agree to the sharing of these funds on a per unit ADA basis. EPMS may also receive parcel taxes and facility bond funds to the extent that those funding sources identify EPMS as a recipient of such funds.

5.4 **Cash Flow and Transfer.** The District shall provide a per-ADA share of property tax funds to EPMS on a monthly schedule (by the 15th day of the month), pursuant to the schedule in Table 1.

Table 1				
Monthly Property Tax Cash Flow Schedule				
August 6%	September 12%	October-February 8%	March 14%	April-July 7%

The state aid cash flow schedule is supposed to follow the schedule most commonly used in California school districts, as displayed in Table 2.

Table 2				
Monthly State Funding Cash Flow Schedule				
July 6%	August 12%	September-January 8%	February 14%	March-June 7%

The percentages listed in Tables 1 and 2 were reached using the methodology set forth in Education Code § 47635. The District reserves the right to verify that the rates for March-June are consistent with those reached by the methodology in Education Code § 47635(b)(2); and those for July are consistent with Education Code § 47635(b)(3). The District will fund EPMS as provided by law including any deficits or deferrals imposed by the State of California. The above diagrams are illustrative only.

- 5.5 **Financial Statement and Records.** The District shall provide to EPMS at least monthly statements of all revenue allocable to EPMS received by the District and a statement of all expenditures and costs allocable to EPMS. The District shall provide monthly County Ledger reports to EPMS. EPMS will be given access to the District's financial software in order to access EPMS's detailed financial information.
- 5.6 **Maintenance Services.** EPMS shall be responsible for providing its own maintenance services, including custodial, pursuant to Section 8 of the "Charter Facilities Agreement" between the Parties. Should EPMS request services from the District's Maintenance Department, the District will bill EPMS for such services on a time and materials basis.

Article 6: Legal Compliance

- 6.1 **General Compliance.** EPMS shall comply with all applicable state and federal laws and agrees to perform any and all necessary actions as requested by the District to provide for complete legal compliance.
- 6.2 **Brown Act.** EPMS and its administrative bodies shall comply with all applicable provisions of the open meetings law (commonly referred to as the Brown Act (Government Code § 54950, *et seq.*).
- 6.3 **Records.** Except to the extent expressly waived by the District or state authorities, EPMS shall comply with all District policies and regulations and applicable federal and state laws concerning the maintenance and disclosure of student records, including, without limitation, the Education Code § 49060, *et seq.*, and the Family Education Rights and Privacy Act of 1974, 20 U.S.C.A. 1232g. EPMS agrees to comply with the provisions of Title 5 regarding the retention and destruction of school records. EPMS shall prepare an index of all records it intends to destroy in accordance with state regulations that must be approved by the District before the records are destroyed.
- 6.4 **Family Education Rights and Privacy Act.** Each party hereby designates the other as having a legitimate educational interest such that they are entitled to access education records under 20 U.S.C.A. § 1232g, The Family Educational Rights and Privacy Act. EPMS and its employees shall comply with the Family Educational Rights and Privacy Act at all times.
- 6.5 **Welfare and Safety.** EPMS shall comply with applicable federal and state laws, concerning welfare, safety and health of students, employees, visitors, volunteers and others. EPMS shall also comply with all applicable state and federal laws on reporting child abuse and neglect. Unless otherwise noted herein or specifically adopted as such, District policies and procedures shall not be applicable to EPMS.
- 6.6 **State Waivers.** The District may, with EPMS's assistance, apply for and support the waiver of any federal and state rules and regulations even if such rules and regulations interfere with EPMS's educational program.

- 6.7 **Educational Employment Relations Act.** For the purposes of this collective bargaining act, the Parties acknowledged that EPMS's employees are employees of EPMS and not the District.
- 6.8 **Media/Public Relations.** EPMS shall discuss with the District all questions regarding provisions of this Agreement and/or the Parties' relationship prior to making any public statements absent the same. This practice is to maintain consistency in relating information to third-parties including the news/media.
- 6.9 **Indemnification.** EPMS shall be fiscally responsible for its own operations and shall manage them efficiently and economically within the constraints of its annual budget. It is the intent of the California Legislature that any authority that grants a charter to a charter school to be operated by or as a non-profit public benefit corporation shall not be liable for the debts and obligations of the charter school. EPMS shall continue to maintain California non-profit public benefit corporation status. The District shall not be liable for the debts or obligations of EPMS.

EPMS shall have no authority to enter into a contract that would bind the District, or to extend the credit of the District to any third-person or entity.

EPMS shall clearly indicate to any party it contracts with that the obligations of such contract are solely the responsibility of the EPMS and not the District.

EPMS shall, to the fullest extent permitted by law, indemnify, defend, and hold harmless the District, its officers, directors, and employees, attorneys, agents, representatives, volunteers, successors and assigns from and against any and all actions, suits, claims, demands, losses, costs, penalties, obligations, errors, omissions, or liabilities (collectively "claims"). Such claims include legal costs, attorneys' fees, and expert witness fees, whether or not suit is actually filed, and/or any judgment rendered against the District. This indemnity provision includes any claim that may be asserted by a person, firm or entity arising out of or in connection with the performance under the Charter or any acts or errors or omissions by EPMS, its board of directors, administrators, employees, agents, representatives, volunteers, successors and assigns. This provision also includes indemnity for claims arising out of EPMS' occupation or use of the facility located at 800 Hutchinson Road, Walnut Creek, CA. This provision expressly excludes actions brought by third-parties directly against the District and relating to the validity or constitutionality of the Charter or chartering process, or arising out of acts of willful misconduct or the negligence of the District.

The District shall, to the fullest extent permitted by law, indemnify, defend, and hold harmless the EPMS, its officers, directors, and employees, attorneys, agents, representatives, volunteers, successors and assigns from and against any and all actions, suits, claims, demands, losses, costs, penalties, obligations, errors, omissions, or liabilities arising out of or in connection with the acts or omissions of the District occurring in the course of performing its duties under this Agreement or Charter (collectively, "claims"). Such claims include legal costs, attorneys' fees, and expert

witness fees, whether or not suit is actually filed, and/or any judgment rendered against the EPMS. This indemnity provision excludes actions brought by third-parties directly against EPMS relating to the validity or Constitutionality of the Charter or chartering process, or arising out of acts of willful misconduct or the negligence of the EPMS.

- 6.10 **Confidentiality.** Employee manuals, contact lists, student and parent information and other information the District makes available to EPMS may be considered confidential information which shall not be disclosed to the public. The District shall make every attempt to label such information confidential. If EPMS plans to release confidential information to the public it must receive written authorization from the District.
- 6.11 **Risk Management.** EPMS will carry liability and personal property insurance which will have an endorsement naming the District as an additional insured. EPMS will promptly provide certificates of endorsement to the District and shall be responsible for ensuring that its coverage does not lapse or otherwise terminate. The District shall carry fire insurance on the structures located on the Property.

Article 7: Educational Program and Curriculum.

- 7.1 **State Curriculum Requirement.** EPMS shall meet all statewide standards and conduct the pupil assessments required pursuant to Education Code § 60605.
- 7.2 **Oversight Responsibilities.** EPMS shall take any and all necessary actions to assist the District in effectuating its oversight responsibilities in the Charter Schools Act, the Charter, and this Agreement.

Article 8: Facilities.

- 8.1 **Facilities.** EPMS intends to occupy the site located at 800 Hutchinson Road, Walnut Creek, CA, subject to the terms of the separate “Charter Facilities Agreement” to be entered into between the Parties.
- 8.2 **Requirements.** All facilities shall meet all applicable fire and safety code requirements, shall conform with all applicable provisions of the Americans with Disabilities Act and any other applicable local, State and federal requirements. All facilities will be approved by the fire marshal for the use intended. EPMS shall only assume responsibility for compliance with ADA and FEHA access rights to the extent of any modifications or improvement made by EPMS. EPMS agrees to comply with Education Code Section 47610.5 with respect to compliance with the provisions of the California Building Standards Code.
- 8.3 **Indemnification.** See 6.9, above.

Article 9: Miscellaneous Provisions.

- 9.1 **Amendments.** Unless otherwise stated herein, this Agreement shall only be amended or otherwise modified by written agreement executed by a duly authorized representative of each of the Parties with a specific reference to this Agreement and to the section which it amends or modifies. The amendment(s) shall be approved and ratified in accordance with the Charter Schools Act for material revisions of Charters.
- 9.2 **Third-Party Beneficiary Rights.** This Agreement is not intended to create any rights of a third-party beneficiary.
- 9.3 **Construction and Enforcement.** This Agreement shall be construed and enforced in accordance with the laws of the State of California.
- 9.4 **Invalidity of Provisions of this Agreement.** If for any reason a provision hereof shall be determined to be invalid or unenforceable, the validity and effect of the other provisions hereof shall not be affected thereby.
- 9.5 **Administrative Services or Goods from Third-Party Vendors.** The District recognizes EPMS's ability to contract with third-party professionals and vendors as it deems prudent. These services and goods may include, but are not limited to, the items listed under Administrative Services (Section 4.2).
- 9.6 **Nondiscrimination.** EPMS covenants and agrees that it shall not discriminate against any person or group thereof upon the basis of race, color, religion, sex, sexual orientation, ancestry, physical handicap, marital status or national origin in the operation of EPMS. EPMS shall comply with District policies and federal and state laws, rules, and regulations pertaining to nondiscrimination of hiring and employment and as to admission of and treatment of students. EPMS shall at all times comply with, among other things, the Americans with Disabilities Act, Title VI, Title VII, Title IX and Section 504.

This represents the full and final agreement of the Parties and shall only be modified in writing by the mutual agreement of the Parties.

Dated: _____

Mt. Diablo Unified School District

Title

Dated: 4/3/19

Michelle J. Hammons
Eagle Peak Montessori School

Principal / Executive Director
Title