

**SPECIAL EDUCATION MEMORANDUM OF UNDERSTANDING
BETWEEN LODI UNIFIED SCHOOL DISTRICT
AND
PACIFIC CHARTER INSTITUTE**

This Special Education Memorandum of Understanding (“Agreement”) is entered into as of July 1, 2020, (“Effective Date”), by and between the Board of Trustees of the Lodi Unified School District (“District”) and Pacific Charter Institute (“Non-Profit”), a California non-profit public benefit corporation, operating Rio Valley Charter School (“Charter School”), a public charter school chartered by the District. This Agreement will set forth the responsibilities of the Parties with respect to the delivery of special education services to students enrolled in the Charter School. The Charter School and the District are collectively referred to as the “Parties.”

I. RECITALS

- A. The District is the granting agency of the Charter School. The District initially approved the charter on May 5, 2010 and previously renewed on November 4, 2014. The District renewed the Charter School’s charter on December 17, 2019, for a term of five years, beginning on July 1, 2020 and expiring June 30, 2025.
- B. The Charter School is a school operated by Non-Profit, a non-profit public benefit corporation. All obligations imposed hereby on the Charter School are equally imposed on Non-Profit.
- C. The Charter School has elected to be its own local educational agency (“LEA”) for special education purposes, pursuant to Education Code section 47641, subdivision (a). However, the Charter School’s charter renewal petition approved by the District on December 17, 2019 (“Petition”) erroneously indicates the Charter School will be a school of the District for Special Education purposes.
- D. On January 14, 2020, the District approved Amendment No. 1 to the Memorandum of Understanding between the District and Non-Profit (“Operational MOU”), first entered into effective July 1, 2012 and attached as Appendix 7 to the Petition. Amendment No. 1 clarified that, effective July 1, 2020, the Charter School shall be its own LEA pursuant to Education Code section 47641, subdivision (a).
- E. This Agreement has the purpose of further clarifying the roles and responsibilities of the Parties with regard to students who are enrolled and attend the Charter School and are or may be eligible for special education and related services under the Individuals with Disabilities Education Act (“IDEA”) (20 U.S.C. § 1400 et seq.)
- F. The Charter School will serve as LEA for the purposes of special education, and as such must ensure that all children with disabilities enrolled in the Charter School receive special education and designated instruction and services in

conformity with their individualized education plans (“IEP”) and in compliance with the IDEA, its implementing regulations and all applicable state and federal law.

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

II. USE OF TERMS

The Parties agree that unless otherwise stated herein, for the purposes of this Agreement, the terms “Charter School” and “Non-Profit” may be used interchangeably, with the duties and responsibilities of the Charter School and Non-Profit being the same under this Agreement.

III. PROVISION OF SPECIAL EDUCATION AND RELATED SERVICES, AND FUNDING

- A. The Charter School shall not be deemed a public school of the District for purposes of special education. Any and all references to the same within the Petition are void and superseded by this Agreement.
- B. It is the intent of the Parties that the Charter School shall be its own LEA pursuant to Education Code section 47641, subdivision (a). The Charter School shall participate as an independent LEA member of the Lodi SELPA (“SELPA”).
- C. The Charter School will serve as its own LEA for the purposes of special education, and as such, the Charter School is solely responsible, at its own expense, for ensuring that all children with disabilities enrolled in the Charter School receive special education and designated instruction and services in conformity with their IEPs and in compliance with the IDEA, its implementing regulations and all applicable state and federal law.
- E. The District shall incur no unreimbursed cost or expenses of any type whatsoever as a result of its relationship with the Charter School, including with regard to special education costs.
- F. Notwithstanding the Charter School’s status as its own LEA, the District shall provide the state and federal funding allocated for Charter School students through the Lodi SELPA to the Charter School and the Charter School shall provide all special education and related services to Charter School students as described in this Agreement, and pursuant to its obligations under the law. This funding arrangement shall not alter the Charter School’s status as its own LEA. Nor shall the District incur any special education obligations to the Charter School or its students, pursuant to Education Code 47646 or otherwise, as a result of this funding arrangement.

IV. TERM

The term of this Agreement shall be from the Effective Date to July 1, 2025. This Agreement may be amended by mutual written agreement of the Parties at any time. This Agreement is subject to termination during the term as permitted by law.

V. NONDISCRIMINATION IN ADMISSIONS

All students will have access to the Charter School and no student shall be denied admission due to his or her disability. (20 U.S.C. § 1412(a)(2); 34 C.F.R. § 300.209; Ed. Code, § 47605(d).)

VI. SECTION 504 OF THE REHABILITATION ACT OF 1973 AND THE AMERICANS WITH DISABILITIES ACT

The Parties agree that this Agreement is intended to address the responsibilities of the Parties with respect to the provision and financing of special education services under the IDEA and does not cover services or accommodations required under Section 504 of the Rehabilitation Act of 1973 (“Section 504”) (29 U.S.C. § 794 et seq.), or under the Americans with Disabilities Act of 1990 (“ADA”) (42 U.S.C. § 12101 et seq.). The Charter School shall be solely responsible, at its own expense, for compliance with Section 504 and the ADA.

VII. PROVISION OF SPECIAL EDUCATION AND RELATED SERVICES

A. General Provisions

1. **Intent of the Parties.** The Parties intend to ensure that all students with disabilities who attend the Charter School are provided a free appropriate public education (“FAPE”) in compliance with the IDEA and California Education Code section 56000, et seq.
2. **Provision of Services.** A full continuum of special education programs and related services shall be provided by the Charter School to its students as required by an individual student’s IEP.
3. **Days of Service.** Special education services shall be available to the Charter School for the number of days specified in each student’s IEP.
4. **Staffing Requirements.** All special education and related services must be provided by qualified personnel meeting state certification, licensing, registration or other applicable requirements. (34 C.F.R. § 300.156.) The Charter School shall be responsible for screening and hiring employees to provide special education services for students enrolled in the Charter School.

5. Student Records. The Charter School is responsible for obtaining the cumulative files, prior and/or current IEPs and other special education information for any student enrolling at the Charter School. The District will ensure that the Charter School is provided with notification and relevant files of all students transferring to the Charter School from a District school, who have an existing IEP, in the same manner that ensures the forwarding of such information between District schools. All records and files will be released with the signed permission of the Parent/Guardian.
6. Notice of Procedural Safeguards. The Charter School shall provide the Parent/Guardian with a notice of procedural safeguards when: a Parent/Guardian asks for a copy; the first time a child is referred for special education assessment; each time a child is reassessed; each time a Parent/Guardian requests a due process hearing; and each time a change of placement is implemented because of a violation of a code of student conduct. (20 U.S.C. § 1415(d)(1)(A); 34 C.F.R. §§ 300.504(a) and 300.530(h); Ed. Code, §§ 56301(d)(2), 56321, 56500.1 and 56502.)

B. Enrollment, Identification and Evaluation

1. Enrollment Information. The Charter School shall include on its enrollment form(s) a question regarding whether the student seeking to enroll in the Charter School is, or may be, a student eligible for special education and related services. The Charter School shall provide the District with a list of special education students enrolled in the Charter School at the beginning of each school year and shall update the list on a quarterly basis.
2. Identification and Referral. The Charter School shall comply with its obligations to identify and refer students who have or may have exceptional needs that qualify them to receive special education services. The Charter School will develop, maintain, and implement policies and procedures to ensure identification and referral of students who have, or may have, such exceptional needs. These policies and procedures will be in accordance with California and federal law.
3. Assessment. Charter School staff shall conduct all necessary special education assessments of Charter School students, including but not limited to initial assessments, annual assessments and triennial assessments. All such assessments will be conducted by qualified personnel and comply with state and federal law and regulations. (20 U.S.C. § 1414(a)-(c); 34 C.F.R. §§ 300.300-305; Ed. Code, § 56320; Cal. Code Regs., tit. 5, § 3023.) Except as provided by state and federal law, the Charter School may not conduct an assessment without first obtaining the written consent of the Parent/Guardian. (20 U.S.C. § 1414(a)(1)(D);

34 C.F.R. § 300.300; Ed Code, § 56321.)

4. Attendance Monitoring. The Charter School shall monitor attendance for related services on a monthly basis to ensure students are accessing all services outlined in their IEPs.

C. Individualized Education Programs (IEPs)

1. IEP Team Membership and Meetings. IEP team membership and conduct of meetings shall be in compliance with state and federal law. (20 U.S.C. § 1414(d)(1)(B); 34 C.F.R. § 300.321; Ed. Code, § 56341(b).)
2. IEP Contents. The Charter School shall use the SELPA forms to complete the IEPs. Each IEP must include, but is not limited to: a statement of the child's present levels of educational performance; measurable annual goals; the special education and related services and supplementary aids and services to be provided to the child; an explanation of the extent, if any, to which a child will not participate with non-disabled children; the dates, frequency, location and duration of services for the child; and a statement of how the child's progress toward his or her annual goals will be measured. (20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. § 300.320; Ed. Code, § 56345.)
3. Parental Consent to the IEP. The Charter School may not implement an IEP to which a Parent/Guardian does not provide written consent. If a Parent/Guardian consents to only part of an IEP, the Charter School must implement the portion of the IEP to which the Parent/Guardian consented. (Ed. Code, § 56346(e).)

D. Program and Services

1. Eligibility and Placement. Decisions regarding eligibility, goals/objectives, program, placement and exit from special education shall be the decision of the IEP team. Services and placements shall be provided to all eligible Charter School students in accordance with the policies, procedures and requirements of the Charter School, the SELPA and applicable law. Whenever the Charter School takes, proposes or refuses to initiate or change the identification, evaluation or educational placement of a Charter School student, the Charter School must provide the Parent/Guardian with prior written notice of such action. (34 C.F.R. § 300.503.)
2. Independent Study. No Charter School student eligible for special education and related services may participate in independent study, unless his or her IEP provides for such participation. The determination regarding the appropriateness of independent study for a particular student

shall be made by the IEP team. (Ed. Code, § 51745(c).)

3. Transition Services. The Charter School shall ensure the provision of appropriate transition services to Charter School students. (20 U.S.C. § 1414(d)(1)(A)(viii); 34 C.F.R. §§ 300.43 and 300.320; Ed. Code, § 56345.1.) Transition services shall be provided in conformity with applicable state and federal law. Transition services will be addressed in each charter school student's IEP no later than age 16.

VIII. DISCIPLINE OF SPECIAL EDUCATION STUDENTS

The Charter School shall have discipline policies that comply with all applicable portions of the California Education Code and Federal Code of Regulations, title 34 section 300.530, et seq. The Charter School shall provide a copy of such policies to the District. These include, but are not limited to policies regarding suspension, expulsion, conducting functional analysis assessments, drafting and reviewing behavior interventions plans, and conducting manifestation determination reviews.

IX. COMPLAINTS

In addition to the terms set forth in Section 45 of the Operational MOU, if either the District or the SELPA is named in any written complaint filed with the Charter School, including complaints filed with any governmental entity other than the District, the Charter School shall provide the named part(ies) with a copy of the complaint within two (2) working days of its receipt by the Charter School.

X. INDEMNIFICATION, INSURANCE, AND RISK MANAGEMENT

- A. Pursuant to its charter and Education Code section 47604, the Charter School is operated by the Non-Profit. The Charter School and the Non-Profit are separate legal entities from the District. As such, the District shall not be liable for the debts or obligations of the Charter School or the Non-Profit to the maximum extent permitted by applicable law. It is agreed that it is the Parties' intent that the District shall incur no unreimbursed cost or expenses of any type whatsoever as a result of its relationship with the Charter School.
- B. The Non-Profit shall, for itself and the Charter School, comply with the terms set forth in paragraph 13, Defense and Indemnity, of the Operational MOU, as amended on January 14, 2020, which terms are incorporated as if fully set forth herein.
- C. The Non-Profit shall, for itself and the Charter School, comply with the terms set forth in paragraph 14, Insurance Coverage, of the Operational MOU, as amended on January 14, 2020, which terms are incorporated as if fully set forth herein.

XI. MISCELLANEOUS PROVISIONS

- A. Venue. The validity of this Agreement and any of its terms or provisions as well as the rights and duties of the Parties shall be governed by the laws of the state of California, and venue shall lie only in San Joaquin County Superior Court.
- B. Modifications. No modifications, amendments, changes, or variations or any kind to this Agreement are authorized without written consent, evidenced by execution of an amendment by an authorized representative of each Party.
- C. Interpretation. The language herein shall be construed as jointly proposed and jointly accepted, and in the event of any subsequent determination of ambiguity, all Parties shall be treated as equally responsible for such ambiguity.
- D. Integrated Agreement. This Agreement is intended by the Parties as the final expression of their agreement with respect to such terms as are included herein and as the complete and exclusive statement of its terms and may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement, nor explained or supplemented by evidence of consistent additional terms. Each of the Parties acknowledges that no one has made any promise, representation or warranty whatsoever, express or implied, written or oral, not contained herein to induce them to execute this Agreement, and that this Agreement is not executed in reliance upon any such promise, representation or warranty.
- E. Non-Assignability. This Agreement may not be assigned by the Parties.
- F. Binding Effect. This Agreement is binding upon the successors and assigns of the Parties, subject to the non-assignability restrictions set forth in subsection E above.
- G. Survival of Covenants. Notwithstanding termination of the Agreement, the indemnification provisions shall survive and be fully enforceable notwithstanding the termination date of the Agreement.
- H. Notices. All notices required by this Agreement may be sent by United States mail; postage pre-paid, to the Parties as follows:

To the District at:

Lodi Unified School District
Attn: Superintendent
1305 East Vine Street
Lodi, CA 95240

To the SELPA at:

Lodi Special Education Local Plan Area
Attn: Paul Warren, Administrative Director
1305 East Vine Street
Lodi, CA 95240

To Non-Profit and Charter School at:

Paul Keefer, Executive Director
Pacific Charter Institute
1401 El Camino Ave., Ste. 510
Sacramento, CA 95815

Any notices required by this Agreement sent by facsimile transmission or electronic mail to the facsimile and electronic mail addresses above shall be considered received on the business day they are sent, provided they are sent during the receiving Party's business hours and provided receipt is confirmed by telephone, facsimile, or electronic mail, and further provided the original is promptly placed into the United States mail, postage pre-paid, and addressed as indicated above.

- I. Conflicts. If any provision of this Agreement is inconsistent with the terms of the charter, the terms of the Agreement shall prevail.
- J. Warranty. Each person below warrants and guarantees that s/he is legally authorized to execute this Agreement on behalf of the designated entity and that such execution shall bind the designated entity to the terms of this Agreement.
- K. Counterparts. This Agreement may be signed in counterpart such that the signatures may appear on separate signature pages. Facsimile or photocopy signatures shall have the same force and effect as original signatures.
- L. Severability. If any provision or any part of this Agreement is for any reason held to be invalid or unenforceable or contrary to law, the remainder of this Agreement shall not be affected thereby and shall remain valid and fully enforceable.

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M. Ratification. This Agreement shall not be effective until this Agreement has been ratified or approved by the governing boards of each of the Parties

Dated: _____

Paul Keefer
Executive Director
Pacific Charter Institute

Dated: _____

Cathy Washer
Superintendent
Lodi Unified School District