

**OPERATIONAL MEMORANDUM OF UNDERSTANDING BETWEEN
THE NEWCASTLE ELEMENTARY SCHOOL DISTRICT
AND
THE NEWCASTLE CHARTER SCHOOL**

This Operational Memorandum of Understanding (“Agreement”) is entered into on June 28, 2017 by and between the Newcastle Elementary School District (“District”) and the Newcastle Charter School (“Charter School”), a public charter school chartered by the District’s Board of Trustees (“Board”). The District and the Charter School are collectively referred to as the “Parties.” This Agreement shall be enforceable only following execution by the Parties and ratification by the Board.

RECITALS:

A. The District is the granting agency of the Charter School. The Board initially approved the Charter School’s charter (“Charter”) in May 2005. Most recently, the Board renewed the Charter on June 28, 2017, for a term of five years, beginning on July 1, 2017 and expiring June 30, 2022.

B. By approving the Charter, the District assumed certain oversight responsibilities over the Charter School pursuant to the California’s Charter Schools Act. (Ed. Code, § 47600, *et seq.*) This Agreement is intended to outline the Parties’ agreements governing their respective fiscal and administrative responsibilities, their legal relationship, and other matters of mutual interest not otherwise addressed or resolved in the terms of the Charter.

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

1. Term and Renewal. This Agreement shall commence on the date upon which it is executed by the Parties, but shall not be effective absent ratification or approval by the Board. The Agreement shall cover the remaining term of the Charter expiring on June 30, 2022. The Agreement is also subject to termination in accordance with the processes as set forth in this Agreement or as otherwise permitted by law. Renewal or extension of the Charter and this Agreement shall be based, in part, on compliance with the terms set forth in this Agreement, Board policy, and applicable law.

2. Designation of School. The Charter School shall be known as the Newcastle Charter School. The Charter School may not change its name, nor operate under any other name, without the prior express written approval of the Board. The Charter School shall be responsible for all functions of the Charter School pursuant to the terms and conditions set forth in this Agreement and its Charter. The Charter School shall not change locations without the prior express written approval of the Board. Any change of location shall be considered a material revision of the Charter under Education Code sections 47605 and 47607.

3. Operations. The Charter School is a public charter school that shall be operated pursuant

to the Charter and this Agreement. The Charter School will operate grades transitional kindergarten through twelfth grade (TK-12) and plans to serve an enrollment of approximately 300 students. The Charter School shall be responsible for implementing the program set forth in the Charter, subject to terms and conditions set forth in this Agreement and applicable law. The Charter School will use all revenue received from state and federal sources only for the educational services and related activities specified in the Charter and this Agreement for the benefit of the students enrolled and attending the Charter School. Other sources of funding must be used in accordance with applicable state and federal statutes, and the terms or conditions, if any, of any grant or donation.

4. School Accountability.

- (a) Annual LCAP. The Charter School shall comply with Education Code section 47606.5, as that statute may be amended from time to time, as well as its implementing regulations, if any. The Charter School's Local Control and Accountability Plan ("LCAP"), and annual updates thereto as required by law, shall be annually provided to the Board by July 1, unless a different date is established by law. The Charter School may utilize the State Board of Education's template to submit its LCAP pursuant to this section. To the extent practicable, the Charter School shall report LCAP data in a manner consistent with how information is reported on a school accountability report card.
- (b) Programmatic Audit. The Charter School will compile and provide to the District an annual performance audit. Each school year's performance audit will be delivered in final written form to the District by December 1 of the following school year. The audit will, at a minimum, include the following data:
 - i. Summary data from an annual parent and student satisfaction survey.
 - ii. Data regarding the number of staff working at the Charter School and their qualifications.
 - iii. A summary of any major changes to written school policies during the year.
 - iv. Information demonstrating whether the Charter School implemented the means set out in the Charter or this Agreement to achieve a racially and ethnically balanced student population.
 - v. An overview of the Charter School's admissions practices during the year and data regarding the numbers of students enrolled and the number on waiting lists.
 - vi. Analysis of the effectiveness of the Charter School's internal and external dispute mechanisms.
 - vii. A report on student discipline, including the number of students suspended or

expelled from the Charter School.

- viii. Any other information regarding the educational program and the administrative, legal, and governance operations of the Charter School relative to compliance with the terms of the Charter generally or as requested by the District.

5. Fiscal Relationship.

- (a) Funding. The Charter School will be locally funded in accordance with Education Code section 47630, et seq.
- (b) Fiscal Policies. The Charter School shall adopt and meet generally accepted accounting principles and shall adopt policies to ensure the Charter School's funds are used to most effectively support the Charter School's mission and to ensure that funds are budgeted, accounted for, expended, and maintained in an appropriate fashion.
- (c) Fiscal Operations. The Charter School will operate in a fiscally sound fashion. If the Charter School, with the prior approval of the Superintendent or designee, seeks any loans or advance receipt of funds, it shall establish a fiscal plan for repayment in advance of receipt of such loans, subject to the review and approval of the Superintendent or designee.
- (d) Budget Approval. Notwithstanding any term of the Charter to the contrary, the District shall have the authority to approve the Charter School's budget, subject to the review and comment of the Superintendent or designee. Such review may, if necessary, include providing any recommendations necessary to correct or modify the adopted budget. Notwithstanding the foregoing, the District retains the right to exercise its authority set forth in the Education Code to monitor and oversee the fiscal condition of the Charter School, as they would for any other charter school within their jurisdiction.
- (e) Financial Reporting. The District will work with the Charter School to prepare such periodic financial reports of revenues, expenditures, and reserves as are required by law, including Education Code section 47604.33. The Charter School shall provide all information requested by the District.
- (f) Reserves. The parties agree that maintenance of a sufficient level of funding reserve is in the best interest of the Charter School and its successful operation. Accordingly, the Charter School shall maintain reserves of no less than three percent (3%) based upon the total expenditures and other uses of the Charter School's adopted budget for the fiscal year. An explanation of any projected drop in reserves below the three percent (3%) level must be included in the assumptions.

- (g) Facilities. The Charter School shall pay the District an annual facilities use fee of forty-five thousand dollars (\$45,000). The annual facilities fee shall be paid in full at the end of each fiscal year covered by this Agreement, no later than June 30 of such year. The procedure for billing and payment shall be the same as for other departments of the District.
- (h) Monitoring and Oversight. The Parties agree that the District is not providing the Charter School with substantially rent-free facilities as referenced by Education Code section 47613, subd. (b). Therefore, the Parties agree that the actual cost of the District's supervisory oversight of the Charter School is one percent (1%) of all "Revenue of the Charter School" (excluding grants, loans, and private donations), as defined in Education Code sections 47613, 47632, subd. (a), 42238.02, and 42238.03. The annual oversight fee shall be paid in full at the end of each fiscal year covered by this Agreement, no later than June 30 of such year. The procedure for billing and payment shall be the same as for other departments of the District.

If the District provides substantially rent-free facilities during the term of this Agreement, the actual cost of the District's supervisory oversight of the Charter School will be three percent (3%) of all "Revenue of the Charter School."

- (i) Contracted Administrative and Fiscal Services. The Charter School agrees to purchase from the District the administrative and fiscal services set forth below. The District agrees to provide and be solely responsible for, and deliver to the Charter School, the services set forth below, at the same level and to the same extent as that provided to other District programs and schools:
- i. Human Resources Services, including but not limited to employee support, credential management, and employee relations.
 - ii. Fiscal/Business/Back Office Services, including but not limited to payroll administration, accounting, average daily attendance, enrollment reporting, compliance with external funding requirements, and annual fiscal audit support.
 - iii. Technology Services, including but not limited to District required systems, technician support, and a Director of Technology.
 - iv. Pupil Services, including but not limited to oversight of administration of CAASPP testing, provision of curriculum, GATE services, attendance, and other State and locally mandated support services to all Charter School students as offered by District personnel, and implementation of student discipline issues that require action and/or counsel by non-Charter School staff.

The District shall invoice the Charter School, and the Charter School shall pay the District for the actual cost of all administrative, fiscal, technology and pupil service provided by the District to the Charter School. Actual costs shall be in addition to the one percent (1%) oversight fee listed in section (5)(h). Actual costs shall be calculated based on the Charter School's fair share of the District's actual costs to provide those services to the Charter School, based on:

- A prorated share of the salaries of the four positions (Accounts Payable Clerk, Director of Fiscal Services, HR/Administrative Assistant, District Office Secretary) actually providing the financial and back office services to the Charter School, and the prorated share of the salary of the Technology Director providing technology services to the Charter School. The proration shall be based on the total ADA of the Charter School compared to the total ADA of the District (less those students enrolled in other charter schools authorized by the District). The District and the Charter School must mutually agree to any additional positions that will be subject to this pro-rata calculation. The District and Charter School, however, will not be required to mutually agree to cost of living adjustments to the salaries of the agreed to positions.
- Plus, 20% of the Superintendent's salary.

Such fees shall be invoiced to the Charter School at the end of each fiscal year covered by this Agreement, and the Charter School shall pay the District the invoiced amount no later than sixty (60) days after the Charter School's receipt of the invoice.

- (j) Advance of Funds. The District may in its sole discretion advance funds to the Charter School. In addition, the District may in its sole discretion provide a line of credit for the Charter School.
- (k) Other Fiscal Control Policies. The Charter School shall develop and maintain other fiscal control policies as recommended by independent certified public accountants retained by the Charter School to advise it on fiscal control policy matters. Updated fiscal policies of the Charter School shall be provided to the District annually.

6. Reporting to the District.

- (a) Enrollment and Attendance Data. The Charter School shall submit enrollment and attendance data as required to receive apportionment of funding according to the following schedule:
 - i. First Principal Apportionment (Attendance for all full school months between July 1 and December 31) due one week prior to the January date indicated by CDE.

- ii. Second Principal Apportionment (Attendance for all full school months between July 1 and April 15) due one week prior to the May date indicated by CDE.
 - iii. Annual Apportionment (Attendance for school year) due one week prior to the July date indicated by CDE.
 - iv. In addition to submission of the electronic data files, the Charter School shall make available for review to the Superintendent or designee all back up attendance documents and submit monthly summary reports, due the 15th of every month, that support the reported average daily attendance (“ADA”). District staff will review and certify the accuracy of the attendance data submitted by the Charter School only when all documentation has been submitted. Attendance data submitted without the requisite detail will not be processed and may result in a delay of funding to the Charter School. The Charter School is responsible for ensuring the accuracy and timeliness of all reports in order to receive regular and timely apportionment payments.
 - v. Weekly attendance sheets, signed and dated by teachers, and evidence of contact made with parents when students are absent from school, e.g. parent contact log, absence log, etc. shall be maintained by the Charter School, and will be timely provided to the District upon request.
- (b) Reporting to Public Agencies. The Charter School shall submit to the District a copy of all reports or other documents that the Charter School is required to submit to any state or other public agency in the State of California. Such reports will be submitted to the District, when submitted to the state or other public agency.
- (c) School Calendar and Schedules. The Charter School shall provide by August 1 of each year of the school calendar and bell schedule for the following school year, including calculation of instructional minutes. If summer school, extended day or intersession is offered, the Charter School shall provide calendars and bell schedules for such programs.
- (d) Performance Assessments. The Charter School shall forward results from statewide assessments to the District promptly upon receipt by the Charter School, but in no event later than thirty (30) days after such receipt.
- (e) Student Records. To the extent necessary to discharge its reasonable supervisory oversight activities, the Charter School hereby designates the employees of the District, the Superintendent and her designees, and employees of the District as having a legitimate educational interest such that they are entitled upon request access to the Charter School’s education records under the Federal Educational Rights and Privacy Act (“FERPA”) and related state laws regarding student

records. At a minimum, such records include emergency contact information, health and immunization data, attendance summaries, and academic performance data from all statewide student assessments pursuant to Education Code sections 60600, *et seq.* and 60851. The District, Charter School, and their officers and employees shall comply with FERPA and state laws regarding student records at all times.

7. Services for Students with Disabilities.

- (a) Public School of the District. The Charter School shall be deemed a “public school” within the District in conformity with Education Code section 47641, subdivision (b) for the purposes of special education. The Charter School shall not discriminate against any student with disabilities in the school admissions and enrollment process (20 USC § 1412(a)(2); 34 CFR § 300.209; Ed. Code, § 47605, subd. (d)). The District and the Charter School shall be responsible for ensuring that all students who are, or who may be, eligible to receive special education and are enrolled in the Charter School are referred, assessed, and served in the same manner as such students who are enrolled in any other public school within the territorial boundaries of the District. Special education referrals, assessments, and services must be provided in conformity with students’ individualized education plans (“IEP”) and in compliance with the Individuals with Disabilities Education Act (“IDEA”) (20 USC § 1400, *et seq.*), its implementing regulations, and all applicable state and federal law (Ed. Code, § 47646, subd. (a)).
- (b) Special Education Funding. The Charter School shall participate in state and federal funding in the same manner as any other public school within the territorial jurisdiction of the District. (Ed. Code, § 47646, subd. (a).) The Charter School shall owe the District a proration of the District’s unfunded special education costs (“Encroachment”). This Encroachment fee shall be in addition to the one percent (1%) oversight fee listed in section (5)(h). The Encroachment fee shall be calculated based on the Charter School’s fair share of the District’s actual costs to provide those services to the Charter School. The proration shall be based on the total ADA of the Charter School compared to the total ADA of all the student that the District currently serves as the LEA.
- (c) Identification and Referral. The Charter School shall have the same responsibility as any other public school in identifying and referring students who have or may have exceptional needs that qualify them to receive special education services.
- (d) Provision of Special Education and Related Services. Students attending the school, regardless of residence, who meet eligibility criteria under the IDEA and related California law shall receive special education and related services in accordance with their IEPs in the same manner as students who attend another public school of the District. (Ed. Code, § 56145.)
- (e) Assessment. The District shall make the determination as to what assessments

were necessary, including assessments for all referred students, annual assessments and triannual assessments, in accordance with the District's general practice and procedure and applicable law. The Charter School shall not conduct unilateral independent assessments without prior written approval of the District.

- (f) Individualized Education Plan. Responsibility for arranging necessary IEP meetings shall be allocated in accordance with the District's general practice and procedure and applicable law. The Charter School shall be responsible for having the designated representative of the Charter School in attendance at the IEP meetings in addition to representatives who are knowledgeable about the regular education program at the Charter School.
- (g) Eligibility and Placement. 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 state and federal law and shall include the designated representative of the Charter School and the designated representative of the District. Services and placements shall be provided to all eligible Charter School students in accordance with the policies, procedures and requirements of the District and of the Local Plan for Special Education.
- (h) Interim Placement. It is understood that in accordance with Education Code Section 51745, subdivision (c), no individual with exceptional needs may participate in independent study, unless his or her individualized education program specifically provides for that participation.
- (i) Educational Services and Programs. To the extent that the agreed upon IEP requires educational or related services to be delivered by staff other than the Charter School staff, the District shall provide and/or arrange for such services in the same manner that it would be legally obligated to provide to the students at its other District schools. The Charter School shall give input with the selection of staff who serve Charter School students. District services shall include consultative services by District staff to Charter School staff in the same manner that District staff consults with staff at other District schools.
- (j) Complaints. In consultation with the Charter School, the District shall address/respond/investigate all complaints received under the Uniform Complaint procedure involving special education.
- (k) Due Process Hearings. In consultation with the Charter School, the District may initiate a due process hearing on behalf of a student enrolled in Charter School as the District determines is legally necessary to meet a school agency's responsibilities under federal and state law. The District shall defend any due process hearing brought by a student enrolled in the Charter School. In the event that the District determines that legal counsel representation is needed, the District/Charter School shall be jointly represented by legal counsel and the

District shall pay the expenses of legal counsel, unless there is a conflict of interest. The Charter School shall pay a prorated share of the District's special education costs pursuant to section (7)(b) of this Agreement, and in so doing is paying a portion of these costs when appropriate. In the case separate counsel is needed by the Charter School, the Charter School shall be responsible for the separate costs of its legal counsel.

- (l) SELPA Activities and Meetings. The District shall represent the Charter School at all SELPA meetings as it represents the needs of all schools in the District. Reports to the Charter School regarding SELPA decisions, policies, etc. shall be communicated to the Charter 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, such opportunities/information shall be made available to Charter School staff. To the extent that District site staff have the opportunity to participate in committee meetings of the SELPA as representatives of their district, such opportunities shall be made available to Charter School staff.
- (m) School District of Residence. The District shall be responsible for providing all services under this Agreement to all students of the Charter School regardless of their school district of residence.
- (n) SELPA Requirements. The Charter School agrees to adhere to the policies and requirements of the Local Plan for Special Education and to District policies regarding services to special education students.

8. 504 and the ADA

- (a) The Parties agree that section 7 of 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 (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 Americans with Disabilities Act of 1990.

9. Human Resources Management.

- (a) Exclusive Employer: The District is the exclusive employer of the employees of the Charter School for the purposes of the Educational Employee Relations Act ("EERA") under Government Code Section 3540, *et seq.* The District will have sole responsibility for employment, management, dismissal, and discipline of the Charter School's employees.

- (b) Compliance with Fingerprinting Requirements. Throughout the term of the Charter and this Agreement, all employees of the Charter School, parent volunteers who will be performing services that are not under the direct supervision of a certificated teacher, and onsite vendors having unsupervised contact with students, will submit to background checks and fingerprinting in accordance with the provisions of Education Code section 45125.1. The Charter School will provide certification to the District that all employees and volunteers or vendors have clear criminal records summaries prior to their having any unsupervised contact with students. The Charter School will maintain on file and have available for inspection, during District site visits, evidence that the Charter School has performed criminal background checks for all employees and documentation that vendors have conducted required criminal background checks for their employees prior to any unsupervised contact with students.

10. Insurance and Risk Management. The District shall purchase and maintain for the Charter School adequate insurance coverage for property liability, general liability, workers compensation, automobile liability, and errors and omissions.

11. Compliance with Law Applicable to Public Agencies.

- (a) The Charter School agrees to comply at all times with laws which generally apply to public agencies and to comply with federal or state laws (which may be amended from time to time), including but not limited to the following:
- i. The Ralph M. Brown Act (“Brown Act”) (Gov. Code, § 54950, *et seq.*);
 - ii. The California Public Records Act (Gov. Code, § 6250, *et seq.*);
 - iii. State conflict of interest laws applicable to charter schools operated by nonprofit corporations, including but not limited to the Political Reform Act (Gov. Code, § 87100, *et seq.*);
 - iv. The Child Abuse and Neglect Reporting Act (Penal Code, § 11164, *et seq.*);
 - v. The Individuals with Disabilities Education Rights Act (“IDEA”) (20 U.S.C. § 1400, *et seq.*);
 - vi. The Americans with Disabilities Act (42 U.S.C. § 12101, *et seq.*);
 - vii. The U.S. Civil Rights Acts, including Title VII of the 1964 Civil Rights Act;
 - viii. The California Fair Employment and Housing Act (“FEHA”) (Gov. Code, § 12900, *et seq.*);
 - ix. The Age Discrimination in Employment Act (“ADEA”) (29 U.S.C. § 621, *et*

seq.);

- x. Section 504 of the Rehabilitation Act of 1973 (“Section 504”) (29 U.S.C. § 794, *et seq.*);
 - xi. Education Code sections 220 *et seq.*;
 - xii. The Uniform Complaint Procedure (5 Cal. Code Regs., tit. 5, § 4600 *et seq.*);
 - xiii. The Family Educational Rights and Privacy Act (“FERPA”) (20 U.S.C. § 1232g, *et seq.*);
 - xiv. Local Control Funding Formula (Ed. Code, § 42238, *et seq.*); and
 - xv. All applicable state and federal laws and regulations concerning the improvement of student achievement.
- (b) Public Records Act. The Charter School agrees that all of its records that relate in any way to the operation of the Charter School shall be treated as public records subject to the requirements of the Public Records Act (Gov. Code, § 6250, *et seq.*) as well as Education Code section 47604.3.

12. Transportation. Parents of Charter School students are responsible for all transportation to and from the Charter School site, field trips and other programs. If any student’s IEP requires transportation for services, the Charter School shall provide the same.

13. Amendments to Charter. Changes to the Charter deemed to be material amendments may not be made without Board consideration and approval. Amendments to the Charter considered to be material changes include, but are not limited to, the following:

- (a) Substantial changes to the educational program (including the addition or deletion of an educational program), mission, or vision;
- (b) Changing to (or adding) a non-classroom-based program, if originally approved as a classroom-based program;
- (c) Proposed changes in enrollment that differ by more than 10 percent +/- of the enrollment originally projected in the charter petition;
- (d) Addition or deletion of grades or grade levels to be served;
- (e) The addition of facilities and/or new sites not previously approved by the Board;
- (f) Admission preferences;
- (g) Governance structure; and

- (h) Name changes of the Charter School.

14. Amendments to Agreement. Any modification of this Agreement must be in writing and executed by duly authorized representatives of all Parties specifically indicating the intent of the Parties to modify this Agreement. No such modification or amendment shall be effective absent approval or ratification by the Board. In the event of changes in laws, the District and the Charter School agree to negotiate modifications to this Agreement as required by applicable law.

15. Dispute Resolution. Any and all disputes arising out of the interpretation or performance of this Agreement shall be subject to the following procedure:

- (a) In the event of a dispute between the Charter School and the District, Parties agree to first frame the issue in written format and submit it to the other Party.
- (b) The Superintendent and Charter School representative shall informally meet and confer in a timely fashion to attempt to resolve the dispute.
- (c) If the above meeting does not resolve the dispute, the District Superintendent shall, within three (3) business days following the meeting, meet with a Charter School representative to jointly identify a neutral, third party mediator from the Mediation and Conciliation Services. The format of the mediation session shall be developed jointly. Any findings or recommendations of the mediator shall be non-binding, unless the parties jointly agree to bind themselves.
- (d) If the Parties do not come to a resolution within five (5) calendar days of the mediation, the Parties will refer the issue to the Board for final resolutions.

Notwithstanding the foregoing or the terms of this section, if any such dispute concerns facts or circumstances that may be cause for revocation of the Charter, the District shall not be obligated by the terms of this section as a precondition to revocation.

16. 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.

17. Venue. The Parties agree that any legal action to enforce the terms of this Agreement shall be brought in the appropriate court in Placer County, California.

18. Governing Law and Authority. In the event of a conflict between the law and terms of this Agreement, the law shall prevail, and any such conflicting terms shall be severed from this Agreement and nullified. To the extent that this Agreement is inconsistent with any of the terms of the Charter, the terms of this Agreement shall supersede the terms of the Charter. The Parties further agree to jointly make any modification of this Agreement or the Charter needed to effectuate changes in state or federal laws following the execution of this

Agreement.

19. Notices. All notices, requests, and other communications under this Agreement shall be in writing and submitted in writing to the addresses set forth below. Notice shall be deemed given on the second day following the mailing of notice by certified mail.

To the District at:
Newcastle Elementary School District
P.O Box 1028,
Newcastle, CA 95658
Attn: Superintendent

To the Charter School at:
Newcastle Charter School
8951 Valley View Dr.
Newcastle, CA 95658
Attn: Principal

20. Terms of the Charter. The terms of this Agreement are hereby integrated as terms of the Charter. As such, any violation of this Agreement may be treated by the District as a violation of the Charter under Education Code section 47607.

21. Conflicts. If any provision of this Agreement is inconsistent with the Charter, the terms of the Agreement shall prevail.

22. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original. Facsimile or scanned emailed copies of signature pages transmitted to other Parties to this Agreement shall be deemed equivalent to original signatures on counterparts.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by duly authorized officers or representative set forth below and to be effective as of the Effective Date.

Date

Superintendent, Newcastle Elementary School District

Date

Principal, Newcastle Charter School