

Board Approved
6/17/2019
msf

**MEMORANDUM OF UNDERSTANDING BETWEEN THE
LUCERNE VALLEY UNIFIED SCHOOL DISTRICT AND
TRIUMPH ACADEMY CHARTER SCHOOL**

The governing board of the Lucerne Valley Unified School District ("District") granted a charter petition ("Charter") to the Triumph Academy Charter School (the "Charter School"). The Charter, among other matters, calls for the District and Charter School to enter into a mutually agreeable memorandum of understanding ("MOU") regarding the operation and funding entitlements of the Charter School pursuant to the Charter Schools Act. The Charter School and the District intend to use this MOU as the basis for developing similar understandings in future agreements.

This MOU shall serve to clarify the status of the Charter School and define the responsibilities of the parties. This MOU provides for oversight and direct and indirect services to be provided by the District to the Charter School and the remuneration to be paid by the Charter School to the District. To the extent that this MOU is inconsistent with any of the terms of the Charter, the Charter shall supersede the terms of this MOU. Both Parties agree to meet in good faith to negotiate necessary changes to align the Charter and the MOU. Education Code Section 47607(a)(2) provides the procedure for a material revision of an existing charter.

I. PURPOSE OF THIS MOU

- A. Outline specific funding sources anticipated to be available to the Charter School.
- B. Define the oversight responsibility and services the District will provide to the Charter School.
- C. Clarify responsibilities of each party.

II. TERM

This MOU is valid for the term of the Charter granted to the Charter School, (July 1, 2019 through June 30, 2024). It may be modified, terminated, or replaced with the written mutual consent of the governing bodies of the District and the Charter School.

This MOU is automatically terminated if the Charter School's charter is revoked or non-renewed in compliance with Education Code Section 47604.5 or 47607, or rescinded by the Charter School. The Charter School's obligations to maintain insurance coverage and to complete the school closure protocol shall remain in effect following the expiration, revocation, or termination of this MOU.

III. LEGAL RELATIONSHIP

- A. The Parties recognize that the Charter School is a separate legal entity and shall be operated by Triumph Academy, a non-profit public benefit corporation. In accordance with Education Code Section 47604(c), if the District complies with all oversight responsibilities required by law, the District shall not be liable for the debts or obligations of the Charter School or for claims arising from the performance of acts, errors, or

omissions by the Charter School.

- B. The Charter School is authorized to serve students in grades 9-12.
- C. With respect to its operations under this MOU, the Charter School shall, to the fullest extent permitted by law, hold harmless, indemnify, and defend the District, its officers, trustees, and employees from and against any and all claims, demands, actions, suits, losses, liability expenses and costs arising under this MOU caused by, connected with, or attributable to the willful misconduct, negligent acts, errors or omissions of the Charter School's directors, trustees, officers, employees, agents and consultants, including, without limitation, attorneys' fees and costs arising out of injury to any persons, including death or damage to any property. The District shall be named as an additional insured under general liability insurance carried on behalf of the Charter School.
- D. The Charter School shall operate autonomously from the District with the exception of supervisory oversight as required by law.
- E. The Charter School may, at its own choosing, utilize the services of a Charter Management Organization or Administrative and Educational service provider in its execution and operation of this petition.

IV. DISTRICT OVERSIGHT

- A. In accordance with Education Code Section 47613(a), the District shall charge for the actual costs of supervisorial oversight not to exceed one percent (1%) of the revenue of the Charter School. "Revenue" is defined in accordance with Education Code Section 47613(f) as the amount received in the current fiscal year from the local control funding formula calculated pursuant to Education Code Section 42238.02, as implemented by Education Code Section 42238.03.
- B. Charter School and the District agree that "supervisorial oversight," as used in Education Code Section 47613 and Education Code Section 47604.32, shall include the following:
 - 1. All activities related to the Charter revocation and renewal and processes as described in Education Code Sections 47607 and 47607.3.
 - 2. Activities relating to monitoring the performance and compliance of the Charter School with respect to the terms of its Charter, related agreements, and all applicable laws.
 - 3. Participation in the dispute resolution process described in the Charter.
 - 4. Review and timely respond to the Charter School's Annual Independent Fiscal and Performance Audit.
 - 5. Selection and maintenance of a representative to act as a liaison to the Charter School.
 - 6. Visiting the Charter School at least annually.
 - 7. Monitoring the Charter School's compliance with all reporting requirements,

- including the local control and accountability plan and annual updates.
- 8. Monitoring the fiscal condition of the Charter School.
- 9. Providing timely notification to the California Department of Education if any of the following circumstances occur:
 - (a) A renewal of the Charter is granted or denied;
 - (b) The Charter is revoked; or
 - (c) The Charter School will cease operation for any reason.

V. SERVICES

In addition to the supervisorial oversight described above, the District shall provide additional services to the Charter School as described in the chart below, and Charter School shall compensate District the fees as described therein. The timing of payment shall be agreed upon annually by the Parties.

Description of Service	Description of How Fee Shall Be Calculated
A. STRS/PERS, Reporting (if applicable)	Actual Costs (Education Code Section 47611.3)
B. The District and Charter School will work together to identify services that the District will provide to the Charter School for the following school year, which may be adjusted throughout the school year as necessary to support the Charter School. Such services may include, but are not limited to facilities use (See Section VI), professional development, in-service training, and transportation services. Such services shall also include the Designated Space. Additional services may be provided on a case by case basis for an additional fee.	Two percent (2%) of the revenue of the Charter School. For this purpose, "revenue" is defined as the amount received in the current fiscal year from the local control funding formula calculated pursuant to Education Code Section 42238.02, as implemented by Education Code Section 42238.03. The timing of payment for these services will be agreed upon by both parties by written agreement to be incorporated herein. This fee is in addition to the 1% oversight fee discussed above under "District Oversight," subsection A. The fees for any additional services shall be agreed upon in advance.

VI. FACILITIES USE

- A. Designated Space. The Parties agree that the Charter School shall have use of the designated space set forth by the District located at 8560 Alianto Road, Lucerne Valley, California 92356 (the "Designated Space").

- B. Fees. The District shall charge the Charter School as noted in Section V for use of the Designated Space, which shall cover all costs associated with utilities, District custodial, landscaping and maintenance services, and all other costs associated with the Charter School's use of the space.
- C. Facility Management. The Charter School will be responsible for having the appropriate staff to manage all of its activities happening at the facility.
- D. Mutuality of Cleanliness. Both parties agree to keep the agreed upon space clean and free from clutter, and at the end of use to put all furniture back in the agreed upon location. The District shall be responsible for any repairs, work, or maintenance, including major maintenance, for the Designated Space that are necessary to keep the Designated Space in good working order and repair, and in compliance with all applicable laws.
- E. Primary Use. It is understood that the general use of the designated space will be for the Charter School to provide educational support services to public school students. The Designated Space will also be used for testing and meetings pertaining to the Charter School programs.
- F. Keys and Codes. The Charter School may be given a certain number of keys and security codes to the building. The Charter School agrees to not make any unauthorized copies of such keys or codes and to return all District keys upon termination of this MOU. The Charter School must obtain District's prior written approval before providing anyone outside of the Charter School with any keys to the facility or any of its security codes.
- G. Secured Cabinets. The District understands that the Charter School will have locked cabinets, containing student information, at the facilities and agrees that no District staff will have access to these or any other Charter School designated files or storage lockers. The District shall not be responsible for the loss, destruction or theft of any items stored in secured cabinets or storage lockers.
- H. Communication Utilities. It is agreed that the Charter School may need to have a separate phone and data line installed on premises for the purpose of running its programs. The Charter School will pay for all costs associated with the procurement and removal of such services and equipment, including any costs associated with returning the space to its original condition.
- I. Charter School Equipment. The Charter School may be storing and using various audio, video and computer equipment at the facility. Should this MOU be terminated for any reason, the District shall allow reasonable and timely access to the Charter School for the retrieval of any such equipment. The District shall not be responsible for the loss, destruction or theft of any equipment stored on the premises. The Charter School will pay for all costs associated with the procurement and removal of such equipment.

- J. Improvements. If the Charter School wishes to make any improvements to the Designated Space (which shall be defined as any improvements to the structure of the Designated Space that are projected by the Charter School to cost more than \$5,000), the Charter School shall first receive written permission from the District to perform the improvements. The Charter School shall submit its request to the District in writing, and the District agrees to respond to the Charter School's request within thirty (30) calendar days. If the District does not respond to the Charter School's request within thirty (30) calendar days, the Charter School's request shall be deemed approved. The Charter School shall pay or cause to be paid all costs associated with such improvements to the premises. The Charter School shall keep the Designated Space free and clear of any mechanic's liens, materialmen's liens, or other liens or encumbrances related to work done or materials supplied in connection with improvements to District premises. The Charter School shall be responsible for obtaining any necessary permits or approvals for the improvements and ensuring such improvements are performed in compliance with any applicable provisions of the California Building Standards Code.

If the Designated Space is damaged or destroyed during the term of the MOU, the District shall provide the Charter School with alternative facilities that are substantially the same as the Designated Space to accommodate the Charter School's program, and that are located in close proximity to the Designated Space.

VII. DATA REPORTING

- A. Average Daily Attendance (ADA). The Charter School will develop an attendance-reporting calendar and maintain a system to record and account for ADA. The Charter School will report ADA figures to the District on a regular basis.
- B. California Basic Education Data System (Enrollment). The Charter School shall complete and submit enrollment and other necessary demographic information to the California Basic Education Data System (CBEDS).
- C. Other Data. The District and Charter School shall work cooperatively to supply any other information necessary to enable the Charter School and District to calculate entitlement to all available funding sources. This provision shall not obligate the District to prepare any grant proposals, funding applications, or other funding related documents on behalf of the Charter School.
- D. State Testing. The Charter School shall submit as required all data related to the mandated State testing programs.

VIII. BUDGET AND FINANCE

- A. Financial Reporting. The Charter School shall prepare and submit the following financial information to the District and County Superintendent of Schools:

1. On or before July 1, a preliminary budget.
 2. On or before July 1, 2019, and annually thereafter, an annual update (Local Control Accountability Plan) required pursuant to Education Code 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.
 6. Written contemporaneous records that document all revenues received by the Charter School, from all sources.
- B. Upon the District's request, the Charter School shall provide back-up data or information with regard to the Charter School financial reports required by law or under this MOU.
- C. Response to Inquiries. The Charter School shall respond to all reasonable inquiries regarding its financial records in a timely manner (Education Code Section 47604.3).
- D. Basic Funding. The Charter School has elected to be direct funded from the State, pursuant to Education Code Section 47651.
- E. Lottery Funding. The Charter School will receive lottery funding directly from the State.
- F. In Lieu Property Taxes. The District shall transfer funding in lieu of property taxes to the Charter School in monthly installments by no later than the fifteenth of each month in accordance with Education Code Section 47635.

The Charter School's annual audit will be completed and forwarded to the District, the County Superintendent of Schools, the State Controller and to the California Department of Education by December 15th each year. The Chief Financial Officer along with an audit committee will review any audit exceptions or deficiencies and report to the Charter Schools' Board of Directors with recommendations on how to resolve them. The Charter School Board will submit a report to the District describing how the exceptions and deficiencies have been or will be resolved to the satisfaction of the District along with an anticipated timeline for the same.

IX. SPECIAL EDUCATION SERVICES/SECTION 504

The following provisions govern the provision of special education services to Charter School students.

- A. No Denied Admission. It is understood that all children will have access to the Charter School and no student shall be denied admission due to disability.
- B. IDEA. The Charter School will ensure that no student is denied enrollment on the basis of special education status or disability. Except as otherwise provided by law, the Charter School is solely and independently responsible for its compliance with the IDEA and state special education laws, in regard to the determination, provision and financing of special education placement and services for all students seeking to and/or enrolled at the Charter School. The Charter School shall follow the plan for "Services for Students under the IDEA," as outlined in the Charter.
- C. Section 504. The Charter School shall comply with Section 504 of the Rehabilitation Act of 1973 ("Section 504"), the Americans with Disabilities Act ("ADA"), and all Office of Civil Rights mandates for students enrolled in the Charter School. The Charter School understands that it is solely responsible for its compliance with Section 504 and the ADA, and that this is not a special education service for which special education funds may be used, even though students at the Charter School may be eligible for such services under Section 504. The Charter School recognizes its legal responsibility to ensure that no qualified person with a disability shall, on the basis of the disability, be excluded from participation, be denied the benefits of, or otherwise be subjected to discrimination under any program of the Charter School. Any student who has an objectively identified disability which substantially limits a major life activity such as learning is eligible for accommodation by the Charter School. The Charter School shall adopt legally compliant Section 504 policies, procedures and forms.
- D. SELPA Membership. The Charter School shall become an independent local educational agency ("LEA") and join a special education local plan area ("SELPA") pursuant to Education Code Section 47641(a).
- E. While the Charter School elects to participate as an LEA in a SELPA, the following provisions will apply:
1. Notice. Upon acceptance in the SELPA, the Charter School will provide the District evidence of membership. In accordance with Education Code Sections 56195.3(b), notice of the Charter School's election of LEA status must be provided to the District and the Charter School's current SELPA at least one year before the effective date of the LEA status election.
 2. Funding. All special education funding due to the Charter School shall be apportioned through the allocation plan of the SELPA of which Charter School is an LEA member, and shall not be forwarded to the District. Charter School shall not be required to pay a contribution to the District for District-wide special education funding. The specific manner in which special education and related services will be provided and funded shall be set forth in a Memorandum of Understanding ("MOU"), delineating the respective responsibilities of the Charter

School and the SELPA. A copy of the MOU will be presented to the District upon execution.

X. AUDIT

- A. The Charter School will contract and pay for an independent annual audit of the Charter School's financial affairs. The audit will verify the accuracy of Charter School's financial statements, reporting practices and amounts paid to the District. The audit will be conducted in accordance with generally accepted accounting principles applicable to public schools and in compliance with the audit provisions of the Charter.
- B. The Charter School Board of Directors will review any audit exceptions or deficiencies and determine the means for resolving any such exceptions or deficiencies. Audit exceptions must be resolved to the satisfaction of the District governing board and in accordance with the procedures detailed in the Charter and Education Code Section 47605(b)(5)(I).

XI. RESOURCE CENTERS

The District and the Charter School understand and agree that the addition or deletion of charter school site locations requires a material revision of the charter. The Charter School shall annually provide to the District a list of its facility locations and, if applicable, a copy of the lease and any appropriate permits/clearances in accordance with Education Code Section 47610 for any new facilities. To the extent required by law, the Charter School shall be responsible for notifying any school district of the Charter School's intent to operate a facility within the boundaries of that district.

Following is a list of the Charter School's current possible resource center locations:

- 8560 Aliento Road, Lucerne Valley, California 92356

XII. INSURANCE AND RISK MANAGEMENT

A. Insurance Coverage

The Charter School shall purchase and maintain in full force and effect at all times during the term of the Charter insurance in such amounts and types as provided to the District's risk manager and as specified in this Section XII.

No coverage shall be provided to the Charter School by the District, including self-insured programs or commercial insurance policies. In the event Charter School adds locations, it shall continue to be the Charter School's responsibility, and not the District's, to monitor its vendors, contractors, partners, or sponsors for compliance with all insurance requirements.

The Charter School shall purchase and maintain in full force and effect at all times during the term of the Charter and this MOU or other agreement between the parties' insurance in such amounts

and types as provided to the District's risk manager and as specified below. The Charter School's obligations to acquire and maintain insurance as provided in this MOU shall survive the revocation, expiration, termination, or cancellation of the Charter or this MOU or any other agreement between the parties or any other act or event that would end the Charter School's right to operate as a charter school pursuant to its Charter or cause the Charter to cease operations until the Charter School has fully complied with the Closure Protocol set forth in the Charter and any closure or termination procedures or requirements in this MOU or other agreement between the parties and any additional closure procedures required by law or regulation, or required by the California Department of Education.

Without limiting the Charter, MOU, or other agreement between the parties and/or the defense, indemnity, and hold-harmless obligations of the Charter School, throughout the life of the Charter, MOU or other agreement between the parties, the Charter School shall obtain, pay for, and maintain in full force and effect insurance policies issued by an insurer or insurers admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A or A-VII" by A.M. Best Insurance Rating Guide, or, in the case of self-insurance, with a California Joint Powers Authority, a memorandum or memoranda of coverage providing coverage as follows:

- I. COMMERCIAL GENERAL LIABILITY insurance and/or coverage, which shall include coverage for: "bodily injury," "property damage," "advertising injury," and "personal injury," including, but not limited to, coverage for products and completed operations, with combined single limits of not less than \$5,000,000 per occurrence and \$10,000,000 in the aggregate. This coverage will be on an occurrence basis. Additionally, Excess Liability coverage shall be procured in the amount of \$10,000,000 per occurrence.
 - a. General Liability Insurance Endorsement Negligence Related to **Sexual Abuse or Molestation** providing coverage for allegations of wrongful acts or negligence should an injury occur as a result of sexual abuse with liability coverage of \$10,000,000 per occurrence. Such insurance must include coverage for sexual abuse perpetrated by any student, student in supervised internship program, employed school psychologist or counselor, employee, officer or director, business invitee, volunteer or representative, or agent for whose conduct the insured entity is responsible.
 - b. General Liability Insurance Endorsement Negligence Related to **Corporal Punishment** providing coverage for allegations of wrongful acts or negligence should an injury occur as a result of corporal punishment. Such coverage shall provide for defense with liability coverage of \$10,000,000 per occurrence. Such insurance must include coverage for corporal punishment perpetrated by any student in supervised internship program, employed school psychologist or counselor, employee, officer or director, business invitee, volunteer or representative, or agent for whose conduct the insured entity is responsible.

2. **EMPLOYEE BENEFITS LIABILITY** insurance and/or coverage which shall include coverage for errors and omissions in the administration of an employee benefit program. Such coverage shall be in an amount not less than \$1,000,000 per occurrence and \$3,000,000 in the aggregate.
3. **PROPERTY** insurance and/or coverage, which shall include: Fire Legal Liability, to protect against liability for portions of premises leased or rented, and Business Personal Property, to protect on a Broad Form, named peril basis, for all furniture, equipment and supplies of the Charter School. If any District property is leased, rented or borrowed, it shall also be insured by the Charter School in the same manner as above property section.
4. **COMMERCIAL AUTO LIABILITY** insurance and/or coverage, which shall include coverage for owned, non-owned, and hired autos, with bodily injury and property damage liability limits not less than \$10,000,000 per occurrence.
5. **WORKER'S COMPENSATION** insurance and/or coverage, as required by applicable law, with not less than statutory limits.
6. **ERRORS AND OMISSIONS** insurance and/or coverage providing coverage for educators' legal liability and error and omissions in an amount not less than \$2,000,000 per "claim" with an aggregate policy limit of \$2,000,000.
7. **CRIME & FIDELITY** coverage shall be maintained by the Charter School to cover all the Charter School employees who handle, process or otherwise have responsibility for the Charter School funds, supplies, equipment or other assets. Minimum amount of coverage shall be \$1,000,000 per occurrence.

All of the commercial liability insurance and/or coverage required by the foregoing provisions of this MOU other than workers compensation shall: (a) be endorsed to name the District, Board members, officers, Board appointed groups, committees, boards, and any other Board appointed body, and administrators, employees and attorneys, agents, representatives, volunteers, successors, and assigns (collectively hereinafter the "District and the District Personnel") as additional insureds; (b) shall be primary insurance, and any insurance and/or self-insurance or coverage maintained by the District and/or by the District Personnel shall be in excess of the Charter School's insurance and/or coverage required by the foregoing provisions of this MOU and shall not contribute with the primary insurance and/or coverage to be provided by the Charter School; (c) all insurance and coverage shall be on an "occurrence" basis rather than a "claims made" basis, excepting only educators' legal liability and errors and omissions insurance and/or coverage, which shall be on a "claims made" basis; and (d) all insurance and coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of liability set forth in the applicable policy or memorandum of coverage.

Each policy of insurance and/or memorandum of coverage required by the foregoing provisions of this MOU shall state that coverage shall not be suspended, rescinded, voided, cancelled, reduced in coverage or in limits, or non-renewed, or materially changed for any reason, without ten (10) days' prior written notice thereof given by the insurer to the District by U.S. Mail or by electronic delivery. The acceptance by the District of the insurance and/or coverage required by the foregoing provisions of this MOU shall in no way limit the liability or responsibility of the Charter School or of any insurer or joint powers authority to the District.

B. VERIFICATION OF COVERAGE

The Charter School shall provide to the District duplicate originals of each policy of insurance and/or each memorandum of coverage required by the foregoing provisions of this MOU, including all declarations, forms, and endorsements, which shall be received by the District's risk manager within thirty (30) days of the approval of the Charter and by July 1 and January 7 of each year thereafter, and at any other time that a policy of insurance and/or memorandum of coverage is changed and at any other time a request is made by the District for such documents. The duplicate originals and original endorsements required by this provision shall be signed by a person authorized by the insurer and/or joint powers authority to bind coverage on its behalf. The procuring of such insurance and/or coverage or the delivery of duplicate originals and endorsements evidencing the same shall in no way be construed as a limitation of the obligation(s) of Charter School to defend, indemnify, and hold harmless the District and the Indemnitees.

C. DEDUCTIBLES AND LIMITS OF LIABILITY

The limits of liability applicable to the policies of insurance and/or memoranda of coverage required by the foregoing provisions of this MOU shall not reduce or limit the obligation(s) of Charter School to defend, indemnify, and hold harmless the District and the District Personnel.

The limits of liability applicable to the policies of liability insurance and/or memoranda of coverage in place of liability insurance required by the foregoing provisions of this MOU shall not be reduced by or apply to defense costs or attorney's fees incurred to defend against covered claims.

Any deductible(s) or self-insured retention(s) applicable to the insurance and/or coverages required by the foregoing provisions of this MOU must be declared to the District.

The Charter School shall promptly respond to all inquiries from the District regarding any claims against the Charter School and/or any obligation of the Charter School under the foregoing provisions of this MOU and the Charter.

XIII. FURTHER INDEMNIFICATION

In addition to the indemnification obligations as set forth in Section III subsection C and except for the District's (including its officers, trustees, directors, employees, agents and contractors) own negligence or misconduct, the Charter School shall indemnify and defend (including by payment

of the District's attorneys' fees) the District to the fullest extent permitted by laws, from all reasonable expenses incurred by the District arising from any civil liability claims made against the District arising out of the Charter School's operations.

XIV. SCHOOL CLOSURE PROTOCOL

In the event of revocation or school closure, the Charter School shall ensure that the person(s) responsible for implementing the Charter School's closure protocol shall be experienced in dissolution and closure of public educational programs and such person(s) shall comply with all legal requirements regarding the confidentiality of student records. The Charter School's Senior Director shall serve as the official contact for purposes of implementing the closure protocol set forth in the Charter and its plan for maintaining and transferring student records, and payment of debts and liabilities and distribution of remaining net assets. At a minimum, the closure protocol shall contain the following:

- A. Identification of the Senior Director who will oversee and conduct the closure process; this provision shall include a process to ensure that it is updated no less than annually or when any change is made.
- B. Notification of students and families of the Charter School closure.
- C. Security of student and business records.
- D. Identification of all assets and liabilities and plan for transfer as detailed in the charter.
- E. Final audit to be paid for by the Charter School.
- F. Identification of funding to be used for closure expenses including the final audit.
- G. Dissolution of the Charter School and, if applicable, the nonprofit corporation.

The Charter School's procedures shall also satisfy the definition of "closure procedures" in Title 5, California Code of Regulations section 11962, to the extent that Section imposes, or is amended to impose, additional requirements.

Closure procedures will not begin until applicable appeal rights have been exhausted or have expired. If the Charter School is to close permanently for any reason (i.e., voluntary surrender, non-renewal, or revocation), the District shall serve written notice on the Charter School that the closure procedures have been invoked. The Charter School shall immediately identify the specific individual who is responsible for coordinating the Charter School's closure activities and shall notify the District. The District shall identify a staff person who shall work with the Charter School to confirm the completion of all closure activities.

XV. MISCELLANEOUS

- A. Amendments, Modification and Supplements. Amendments, modifications, and supplements to this MOU are allowed and will be binding on the parties after the effective date provided such amendments, modification and supplements (1) are in writing, signed by an authorized representative of each party, and (2) by reference incorporate this MOU and identify the specific sections or clauses contained herein which are amended, modified and supplemented or indicate that the material is new. The term, "this MOU" shall be

deemed to include any future amendments, modifications and supplements.

- B. Assignment. Neither party may assign or delegate its obligations under this MOU without the prior written consent of the other.
- C. Compliance with Laws and Regulations. The Charter School will comply with all applicable laws, including the Brown Act as indicated in the charter.
- D. Consent. Where consent, approval or mutual agreement is required of a party, it shall not be unreasonably withheld or delayed.
- E. Default. If either party refuses or fails in any material respect properly to perform its obligations under this MOU, or violates any material term or condition of the MOU, such refusal, failure, or violation shall constitute default. In such event, the non-defaulting party may notify the other party in writing of the default and may allow that party a period of thirty (30) calendar days to cure such default, provided the failure to cure the default would not present a danger to the safety or welfare of the charter school students or the public. If the defaulting party does not cure such default within said thirty (30) calendar days; the non-defaulting party shall have the right to terminate this MOU upon written notice to the other party. Termination of this MOU shall not equate to revocation of the charter which may only be accomplished in accordance with Education Code Section 47607 and its implementing regulations. Notwithstanding rights provided through this clause, all service fees for current month and previously certified student attendance shall still be due and payable per the terms of this MOU. If such default is for failure of the District to transfer funds that have already been received by the District from the State or other granting entity, then the District shall only be granted a period of ten (10) working days to cure such default.
- F. Dispute Resolution. Any and all disputes arising out of the interpretation or performance of this MOU shall be subject to the dispute resolution procedure set forth in the Charter.
- G. Employee Return Rights. No public school employee shall be required to work at the Charter School. Employees of the District who choose to leave the employment of the District to work at the Charter School will have no automatic rights of return to the District after employment by the Charter School unless specifically granted by the District through a leave of absence or other agreement. Charter School employees shall have any right upon leaving the District to work in the Charter School that the District may specify, any rights of return to employment in a school district after employment in the Charter School that the school district may specify, and any other rights upon leaving employment to work in the Charter School that the District determines to be reasonable and not in conflict with any law.

All employees of the Charter School shall be considered the exclusive employees of the Charter School and not of the District. Sick or vacation leave or years of service credit at the District or any other school district will not be transferred to the Charter School.

Employment by the Charter School provides no rights of employment at any other entity, including any rights in the case of closure of the Charter School.

- H. Entire MOU. Except for written amendments, supplements or modifications made after the execution of this MOU, this MOU and its attachments represent the entire agreement between the parties hereto with respect to the subject matter of this MOU and supersedes all prior renegotiations, representations and agreements, either oral or written.
- I. Forces Outside the Control of the Parties (Force Majeure). In the event performance of this MOU, or any obligations hereunder, is prevented, restricted or interfered with by reason of acts of God, wars, revolution, civil commotion, acts of public enemy, embargo, acts of the government in its sovereign capacity, or other circumstances beyond the reasonable control and without the fault or negligence of the party affected, the party affected, upon giving prompt notice to the other party, shall be excused from such performance on a day-to-day basis to the extent of such prevention, restriction, or interference (and the other party shall be excused from such performance on a day-to-day basis until the delay, restriction or interference has ceased), provided, however, that the party so affected shall use its best reasonable efforts to avoid and remove such cause of nonperformance and both parties shall proceed whenever such causes are removed or cease.
- J. Severability. If any provision or any part of this MOU is for any reason held to be invalid and/or unenforceable or contrary to public policy, law, or statute and/or ordinance, the remainder of this MOU shall not be affected and shall remain valid and fully enforceable.
- K. Governing Law. This MOU shall be governed by and interpreted or construed in accordance with the laws of the State of California, County of San Bernardino.
- L. Headings. The headings in this MOU are inserted for convenience and identification only and are in no way intended to define or limit the scope, extent, or intents of this MOU or any of the provisions hereof.
- M. Independent Contractor Relationship. Each party shall remain an independent contractor with respect to the other and shall be responsible for compliance with all laws, rules and regulations involving, but not limited to, employment of labor, hours of labor, health and safety, working conditions and payment of wages. The persons provided by each party shall be solely that party's employees and shall be under the sole and exclusive direction and control of that party. They shall not be considered employees of the other party for any purpose.
- N. Taxes and Assessments. Each party shall be responsible for payment of taxes, including federal, state and municipal taxes, chargeable or assessed with respect to its employees, such as Social Security, unemployment, worker's compensation, disability insurance, and federal and state withholding.

- O. Insolvency. Either party may terminate this MOU by notice, in writing, if the other party

admits insolvency, makes an assignment for the benefit of creditors, or has a trustee or receiver appointed over all or any substantial part of its assets.

- P. Potential Civil Liability Effects. In addition to Article XIII, the parties acknowledge that an authority that grants a charter to a charter school to be operated by or as a nonprofit public benefit corporation is not liable for the debts or obligations of the charter school, or for claims arising from the performance of acts, errors, or omissions by the charter school if the authority has complied with all oversight responsibilities required by law.
- Q. Successors. This MOU shall be binding on and inure to the benefit of the respective successors and permitted assigns of the parties.
- R. Notifications. All notices, requests, and other communications under this MOU shall be in writing and mailed to the proper addresses as follows:

To the District at:

Lucerne Valley Unified School District
8560 Aliento Road
Lucerne Valley, CA 92356

To the Charter School at:

Triumph Academy Charter School
1740 Huntington Drive #205
Duarte, CA 91010

IN WITNESS WHEREOF, the parties hereto execute this MOU.

LUCERNE VALLEY UNIFIED
SCHOOL DISTRICT

By 

Date 6/17/19

TRIUMPH ACADEMY
CHARTER SCHOOL

By 

Date 6/17/2019