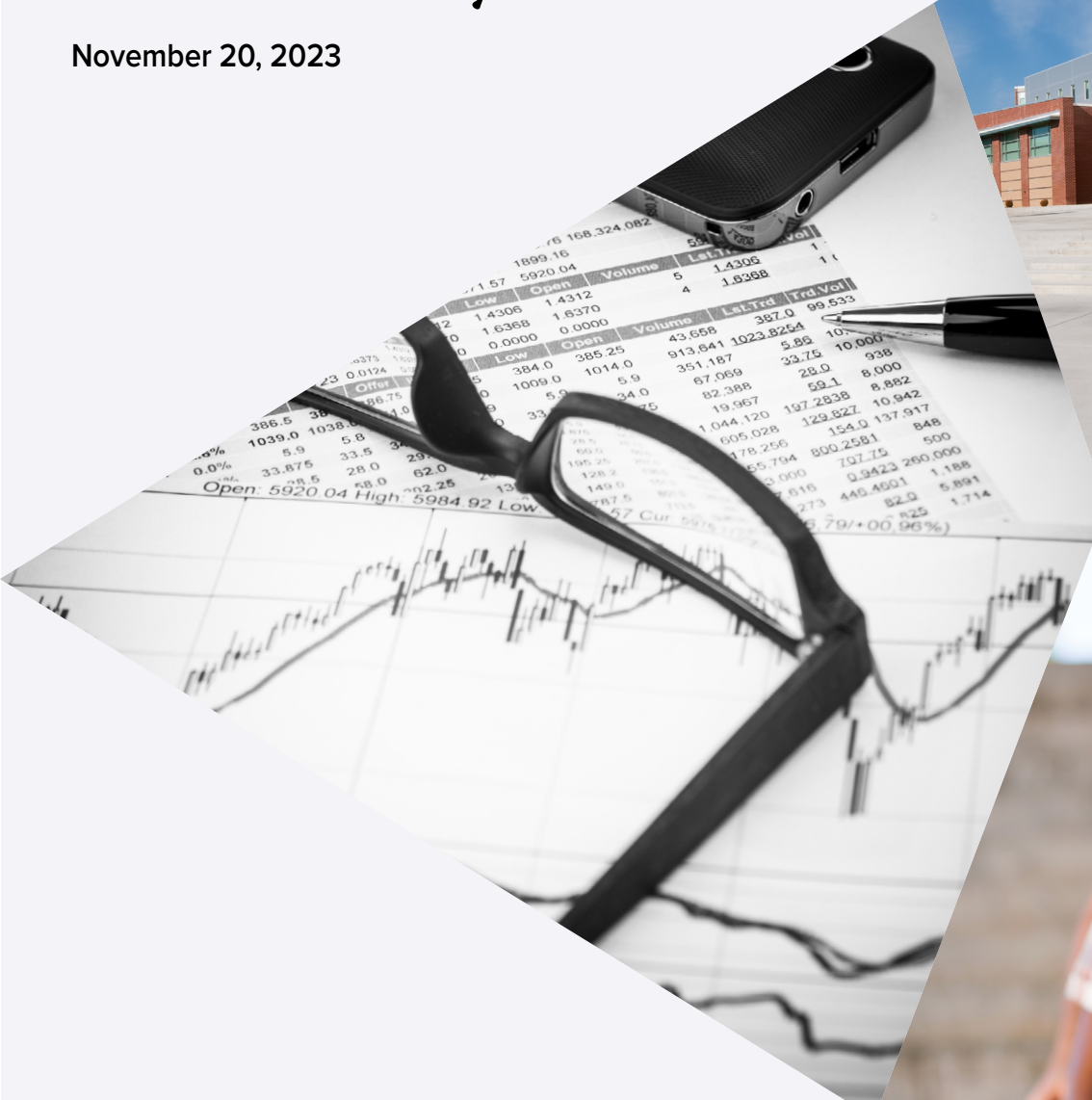


# FCMAT

FISCAL CRISIS & MANAGEMENT  
ASSISTANCE TEAM

## Extraordinary Audit

November 20, 2023



## Inspire Charter Schools

Michael H. Fine  
Chief Executive Officer

November 20, 2023

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Ventura County Office of Education

Dear superintendents:

In February 2020, eight county superintendents and the Fiscal Crisis and Management Assistance Team (FCMAT) entered into an agreement ([Appendix A](#)) to conduct an Assembly Bill (AB) 139 extraordinary audit of the Inspire Charter Schools listed below to determine if fraud, misappropriation of funds or other illegal fiscal practices may have occurred. The eight superintendents who made the request are from: Los Angeles County Office of Education, Fresno County Superintendent of Schools, El Dorado County Office of Education, Kern County Superintendent of Schools, Placer County Office of Education, San Diego County Office of Education, Sutter County Superintendent of Schools, and Ventura County Office of Education.

**Table 1**

<b>COE</b>	<b>Name of Inspire Charter School</b>	<b>Also Known As</b>	<b>Authorizing School District</b>
Fresno	Yosemite Valley Charter	ICS-Central	Westside Elementary
San Diego	Cabrillo Point Academy	ICS-South	Dehesa Elementary
San Diego	Pacific Coast Academy	ICS-Pacific Coast, or Learning Latitudes	Dehesa Elementary
El Dorado	Clarksville Charter		Buckeye Union
El Dorado	Cottonwood Charter		Buckeye Union
Sutter	Feather River Charter	ICS-North	Winship-Robbins
Kern	Heartland Charter		Maricopa Unified
Kern	Blue Ridge Academy	ICS-Kern	Maricopa Unified

Specifically, the agreement states that FCMAT will perform the following:

1. Evaluate attendance practices for the charter schools and review supporting documents for school years 2017-18, 2018-19 and 2019-20 to date to determine if attendance apportionment claimed from the state of California is substantiated, including residency within the operational boundaries approved by each charter petition, pupil-to-teacher ratios, and students who have dual enrollment in private sectarian schools.
2. Evaluate enrollment practices for the charter schools and review supporting documents for school years 2017-18, 2018-19 and 2019-20 to date to determine if enrollment and enrollment for specific student subgroups (English learners, low income and foster youth) is substantiated as related to the calculation of the Local Control Funding Formula.
3. Determine whether any of the charter schools listed above engaged in undisclosed or inappropriate related-party transactions and, if so, whether those transactions were conducted openly and in accordance with established national and state policies, standards and procedures. Many Inspire schools recently underwent a name change. The scope in this area will apply to each charter school listed above for fiscal years 2017-18, 2018-19 and 2019-20 to date, regardless of any name change. The team will:
  - a. To the extent reasonably possible, identify related parties and determine if the relationship was properly disclosed and/or appropriate.
  - b. Review the charter petitions, articles of incorporation, and bylaws.
  - c. Review vendor listings, vendor detail transaction reports, contracts, purchase orders and memoranda of understanding, for fiscal years 2017-18 through 2019-20 to date.
  - d. Review financial transactions of the charter schools and any related party for fiscal years 2017-18 through 2019-20 to date.
  - e. Review any charter property or assets transferred to any related party for fiscal years 2017-18 through 2019-20 to date.
  - f. Review the annual independent audits for fiscal years ending June 30, 2017; June 30, 2018; and June 30, 2019.
  - g. Review funding determinations for, 2017-18, 2018-19 and 2019-20 to date.
  - h. Review Internal Revenue Service (IRS) Forms 990 for 2017, 2018 and 2019.
4. Determine if loans or transfers made to or from the charter schools for 2017-18, 2018-19 and 2019-20 to date were for legitimate educational purposes, and if they had proper approval and were in accordance with California charter law.

5. Determine whether any conflict of interest standards may have been violated by any of the charter schools' local public officials, designated employees, or any "consultant to the organization who makes, participates in making, or acts in a staff capacity for making governmental decisions" as defined in the Political Reform Act (PRA) of 1974 (Government Code 81000 – 91014).
  - a. Review applicable PRA Form 700 filings from 2017 through 2020 to date.
  - b. Review applicable board meeting minutes and other documents from 2017 through 2020 to date.
6. To the extent possible, evaluate the existence of any Inspire-related charters that operate resource centers outside of their authorized areas for the counties previously listed, including Los Angeles, Placer and Ventura counties.

This report contains the study team's findings and recommendation.

FCMAT appreciates the opportunity to serve you and extends thanks to all the staff of each county office of education and authorizing school district for their cooperation and assistance during this review.

Sincerely,



Michael H. Fine  
Chief Executive Officer



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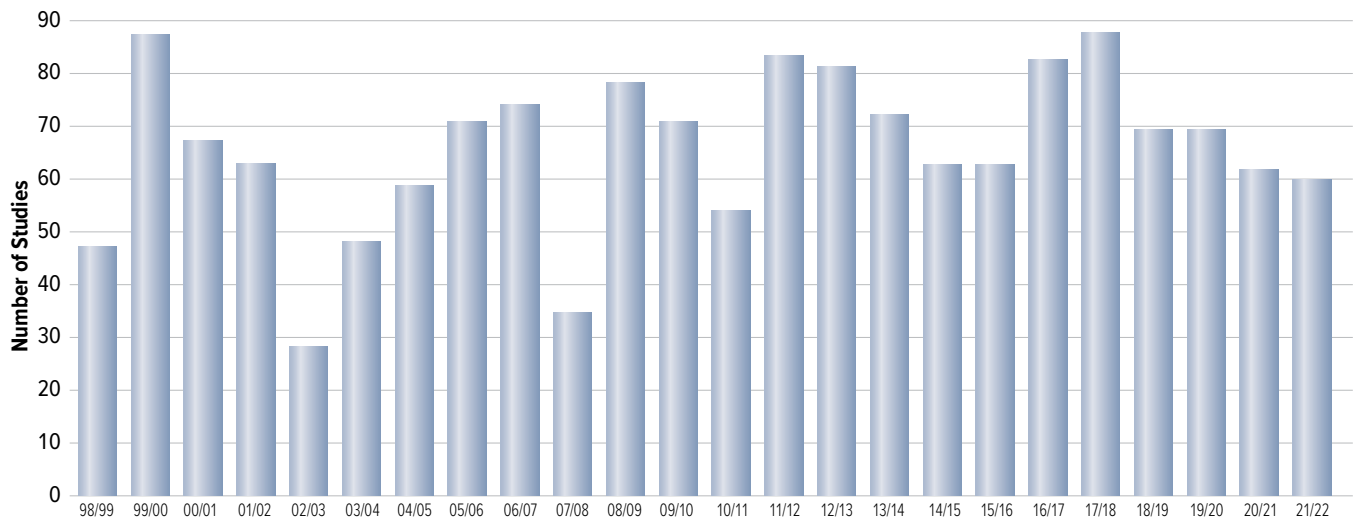
# About FCMAT

FCMAT’s primary mission is to assist California’s local TK-14 educational agencies to identify, prevent, and resolve financial, human resources and data management challenges. FCMAT provides fiscal and data management assistance, professional development training, product development and other related school business and data services. FCMAT’s fiscal and management assistance services are used not just to help avert fiscal crisis, but to promote sound financial practices, support the training and development of chief business officials and help to create efficient organizational operations. FCMAT’s data management services are used to help local educational agencies (LEAs) meet state reporting responsibilities, improve data quality, and inform instructional program decisions.

FCMAT may be requested to provide fiscal crisis or management assistance by a school district, charter school, community college, county office of education, the state superintendent of public instruction, or the Legislature.

When a request or assignment is received, FCMAT assembles a study team that works closely with the LEA to define the scope of work, conduct on-site fieldwork and provide a written report with findings and recommendations to help resolve issues, overcome challenges and plan for the future.

### Studies by Fiscal Year



FCMAT has continued to make adjustments in the types of support provided based on the changing dynamics of TK-14 LEAs and the implementation of major educational reforms. FCMAT also develops and provides numerous publications, software tools, workshops and professional learning opportunities to help LEAs operate more effectively and fulfill their fiscal oversight and data management responsibilities. The California School Information Services (CSIS) division of FCMAT assists the California Department of Education with the implementation of the California Longitudinal Pupil Achievement Data System (CALPADS). CSIS also hosts and maintains the Ed-Data website ([www.ed-data.org](http://www.ed-data.org)) and provides technical expertise to the Ed-Data partnership: the California Department of Education, EdSource and FCMAT.

FCMAT was created by Assembly Bill (AB) 1200 in 1991 to assist LEAs to meet and sustain their financial obligations. AB 107 in 1997 charged FCMAT with responsibility for CSIS and its statewide data management work. AB 1115 in 1999 codified CSIS’ mission.

AB 1200 is also a statewide plan for county offices of education and school districts to work together locally to improve fiscal procedures and accountability standards. AB 2756 (2004) provides specific responsibilities to FCMAT with regard to districts that have received emergency state loans.

In January 2006, Senate Bill 430 (charter schools) and AB 1366 (community colleges) became law and expanded FCMAT's services to those types of LEAs.

On September 17, 2018 AB 1840 was signed into law. This legislation changed how fiscally insolvent districts are administered once an emergency appropriation has been made, shifting the former state-centric system to be more consistent with the principles of local control, and providing new responsibilities to FCMAT associated with the process.

Since 1992, FCMAT has been engaged to perform more than 1,400 reviews for LEAs, including school districts, county offices of education, charter schools and community colleges. The Kern County Superintendent of Schools is the administrative agent for FCMAT. The team is led by Michael H. Fine, Chief Executive Officer, with funding derived through appropriations in the state budget and a modest fee schedule for charges to requesting agencies.

# Introduction

## Background

In February 2020, eight county superintendents from the Los Angeles County Office of Education, Fresno County Superintendent of Schools, El Dorado County Office of Education, Kern County Superintendent of Schools, Placer County Office of Education, San Diego County Office of Education, Sutter County Superintendent of Schools, and Ventura County Office of Education requested that FCMAT assist them by conducting an Assembly Bill (AB) 139 extraordinary audit to determine if fraud, misappropriation of funds or other illegal fiscal practices may have occurred at eight Inspire Charter Schools (ICS) as shown in Table 1 above.

The Inspire Charter Schools were founded and led by Herbert “Nick” Nichols III (Nichols). When the Inspire Charter Schools opened, they were organized under one nonprofit public benefit corporation, ICS, as non-classroom-based charter schools. As described below, ICS went through several name changes during its existence such as Provenance and ThinkSuite. Other Inspire Charter Schools related to ICS include Granite Mountain, Monarch River, Mission Vista, Triumph Academy, Winship, and Inspire Los Angeles, as well as other entities such as Inspire District Office (IDO), Inspire Education Foundation, Jitterbug Learning, Inc., and Inspire University. The eight Inspire Charter Schools listed in Table 1 above are those that the county superintendent selected as their primary concern. Each Inspire Charter School was originally organized as a component of ICS but with its own unique state charter school identification number.

The county superintendents were concerned that ICS may be engaging in practices similar to those alleged at the Valiant charter school network and its charter management organization, known as Academic Arts and Action and Charter Academy, doing business as A3 Education (A3). In May 2019, a grand jury indictment charged 11 individuals from A3 with conspiracy to commit a crime, misappropriation, and conflict of interest as described in the Superior Court of the State of California for the County of San Diego, CT No. SCD266439, DA No. AEM242.

As part of the county superintendents’ oversight responsibility, they questioned how the eight Inspire Charter Schools listed in Table 1 were organized, governed and operated. The California Charter Schools Association (CCSA), a charter school membership organization that advances the charter school movement through advocacy, leadership on accountability, and resources, also had growing concerns about the Inspire Charter Schools. In a statement dated September 17, 2019, CCSA explained that, even though Inspire participated in CCSA’s nonacademic accounting process, was fully transparent, and was cooperative, additional examination was needed beyond what it could accomplish through its processes and rescinded ICS’s membership effective September 1, 2019.

By October 2019, the county superintendents developed concerns that fraud, misappropriation of funds or other illegal fiscal practices may have occurred. By February 2020, the county superintendents and FCMAT had reached an agreement to conduct an AB 139 extraordinary audit of eight of the Inspire Charter Schools.

Inspire Charter Schools and its entities have experienced many changes since they began in 2014. In this report, FCMAT refers to the combined Inspire Charter Schools, various management companies, foundation, and other entities as the “Inspire network.” The charter management organization (CMO) Provenance was also known and doing business as or providing services as IDO and Inspire Charter Services. In November 2020, Provenance announced it had changed its name to ThinkSuite. ThinkSuite management indicated it is not a CMO but a charter school support service similar to a third-party back-office service

provider. Based on FCMAT's experience and understanding of the relationship between the Inspire network and ICS/Provenance/ThinkSuite, they operate and act as a charter management organization and are collectively referred to as the CMO for purposes of this report.

Based on interviews and discussions with staff and management of the Inspire Charter Schools, no decisions were made without Nichols' permission, regardless of the individuals' positions or authority within the CMO during his tenure. Many individuals who interacted with Nichols, whether employed at the CMO or the Inspire Charter Schools, feared making decisions without Nichols' approval because of the strict control he imposed. In this report, "CMO" refers to Nichols and the CMO entity, not the staff and managers who worked at the CMO. The CMO's control and authority are discussed below.

FCMAT discussed the Inspire network's history and evolution of name changes with the CMO. To help understand the history of the Inspire Charter Schools and entities, the CMO provided a written narrative, which is reproduced in its entirety in the document attached as [Appendix B](#) to this report. Selected sections from Appendix B are summarized below:

Inspire Charter Schools opened with the first charter in 2014-15, Hope Charter Academy. The nonprofit corporation's name was Inspire Charter Schools. Later during the restructuring, Hope Charter Academy became managed by the nonprofit corporation Inspire Charter School - Los Angeles.

Inspire Charter Schools was both the parent company and the operator of the charter schools. On May 20, 2017, the board of Inspire Charter Schools restructured the organization to create separate corporations and boards for each of the charter schools with Inspire Charter Schools as the sole member entity starting in the 2017-2018 school year. It also voted to open the Inspire District Office as a nonprofit to provide services that support the schools, and the Inspire Education Foundation to provide supplemental programs for the schools and home-schooling community.

Various corporations were formed to manage and operate the charter schools. The assets of Inspire Charter Schools were distributed to the individual charter school boards at the start of the 2017-2018 school year. These assets were initially purchased with funding from each of the schools that received them. Until July 2019, all agenda items related to the corporation were approved by both the charter boards and also the Inspire Charter Schools board. [Charter school management explained to FCMAT that the CMO also created the board agenda]

In July 2018, Inspire district office changed its name to Provenance and signed its first service agreement with the schools to provide educational support services. In March 2019, both Inspire Charter Schools and the Provenance board voted to remove Inspire Charter Schools as the sole member. In July 2019, both Inspire Charter Schools and the Individual Charter School boards voted to remove Inspire Charter Schools as the sole member. Inspire Charter Schools was inactive during the 2019-2020 school year, and steps are being taken to complete the voluntary windup and dissolution of the corporation.

The CMO narrative above states that in July 2018, IDO signed its first services agreement with the schools to provide educational support services. The July 2018 services agreement indicates that the CMO will continue to provide all the Inspire Charter Schools' business, educational, attendance, and student support services. A representative example of the July 2018 services agreement is shown in the document attached as [Appendix C](#) in this report. In July 2020, the CMO created another agreement. The July 2020 agreement shown in the document attached as [Appendix D](#) to this report lists in Schedule A a full menu of services provided including, but not limited to, compliance support, assistance with audits, group rates for medical



benefits, access to the Enrichment Ordering System (EOS) and related services (maintenance, uploading of student and staff data, supporting documentation) and all related systems (curriculum ordering system, lending library online system, vendor portal, online subscription package system), monthly payroll support, enrollment training and support, School Pathways and California Longitudinal Pupil Achievement Data System (CALPADS) training and support, records training and support and school accountability and compliance training and support.

The bylaws and service agreements between the CMO and the individual Inspire Charter Schools are similar to each other. As discussed below, the bylaws demonstrate the extreme control maintained by the CMO as the sole member. The agreements discussed above demonstrate that even after the sole member relationship was terminated, the CMO continued its responsibility and retained control to manage most aspects of the Inspire Charter Schools' operations, business, attendance, student information, and other support services.

As FCMAT interviewed the individual Inspire Charter Schools' management, its explanation was that it was given little access to financial information and records for the individual Inspire Charter Schools. It also received little to no access to and no decision-making authority for any of the CMO's financial reporting or decisions affecting the Inspire Charter Schools. The Inspire network CMO was the sole member of the Inspire Charter Schools.

A review of a sample of the Inspire Charter School bylaws as shown in [Appendix E](#) found that the sole member, among other powers, has the following noteworthy authorities over the Inspire Charter Schools:

- Selects and removes officers, directors, agents and employees.
- Fixes compensation, conducts, manages and controls the corporation's affairs and activities.
- At any time, has the absolute right to inspect all books, records and documents of every kind.
- Conducts activities in other states.
- Approves the terms of and removes directors at any time for any reason, with or without cause or advance notice.
- Creates new bylaws or amends or repeals existing bylaws.

With this authority, the CMO has complete control over the Inspire Charter Schools including, but not limited to, finances, operations, enrollment, attendance and curriculum.

As an example, the management of one of the Inspire Charter Schools described the level of control exercised by the CMO when, in the summer of 2019, approximately 2,500 students were transferred to their Inspire Charter School without their knowledge, regardless of whether those students actually belonged to the Inspire Charter School. Inspire Charter School management indicated that the CMO frequently moved staff between Inspire Charter Schools without the schools' knowledge.

According to the management of the Inspire Charter Schools, the CMO was responsible for payroll for the Inspire Charter Schools but did not consult with them on payroll issues, and the Inspire Charter Schools were often left unaware of the reasons for payroll discrepancies. They further explained that they had no idea how the CMO spent or transferred money. However, they were provided with other information they requested from the CMO. The Inspire Charter Schools interpreted this as meaning "we are getting what we need so don't ask any more questions." Nichols responded to financial questions from the managers of the Inspire Charter Schools by indicating that he handled everything and decided how money was moved and spent.

FCMAT met with the audit firm of the Inspire Charter Schools. They confirmed that the CMO was responsible for all aspects of Inspire Charter Schools operations and the individual Inspire Charter Schools knew little about what happened behind the scenes, including but not limited to contracts, payroll, attendance, and books and records.

In late March through July 2019, the CMO's sole member status was removed. Despite this, the management of the Inspire Charter Schools indicated that during this time, each individual Inspire Charter Schools' management met and had a vote of no confidence in Nichols. Shortly after, the CMO and Nichols were in the process of separating from one another, and the Inspire Charter Schools and the CMO tried to reconcile the interorganizational funds owed between the Inspire Charter Schools and CMO.

On October 11, 2019, Nichols and the CMO signed a separation and release agreement removing Nichols from his duties over the Inspire network. The agreement includes the following:

- Nichols has been on unpaid administrative leave since September 20, 2019.
- Must repay outstanding payroll advances totaling \$1,055,834; however, \$195,910.89 has been repaid, leaving an outstanding balance of \$859,923.11.
- A promissory note for the unpaid balance has been secured.
- Nichols owes interest on the payroll advances as an excess benefits assessment pursuant to Internal Revenue Code 4958 and 4975, tax on prohibited transactions.
- A general release of all claims and no admission of liability or wrongdoing by both Nichols and the CMO.

This was the beginning of the Inspire network's eventual end, with each Inspire Charter School rebranding itself and becoming its own independent charter school under its own nonprofit public benefit corporation as presently established as of this report.

## **Study and Report Guidelines (AB 139 Audit Authority)**

Education Code (EC) 1241.5(c) permits a county superintendent of schools to review or audit the expenditures and internal controls of any charter school in the county if they have reason to believe that fraud, misappropriation of funds, or other illegal fiscal practices have occurred that merit examination. This is known as an AB 139 extraordinary audit or review.

The purpose of an extraordinary audit is to determine if sufficient evidence exists that fraud, misappropriation of funds, or other illegal fiscal practices may have occurred, and to document the findings for referral to the state controller, the state superintendent of public instruction and local district attorney's office and further investigation by law enforcement if needed.

In writing its reports, FCMAT uses the Associated Press Stylebook, a comprehensive guide to usage and accepted style that emphasizes conciseness and clarity. In addition, this guide emphasizes plain language, discourages the use of jargon, and capitalizes relatively few terms.

# Extraordinary Audit Procedures

An extraordinary audit is conducted based on the study team's experience and judgment. These audits have many components including: obtaining and examining available original source documents; corroborating documents and information through third-party sources when possible; interviewing potential witnesses; gaining an understanding of internal controls applicable to the scope of the work; and assessing factors such as intent, capability, opportunity, and possible pressures or motives.

The audit consists of gathering adequate information about specific allegations, establishing an audit plan, and performing audit test procedures, often based on a sampling of transactions, using the team's judgment and experience to determine whether fraud, misappropriation of funds, or other illegal fiscal practices may have occurred; evaluating the loss that resulted from the alleged inappropriate activity; and determining who could have been involved and how it may have occurred.

The county superintendents contracted with FCMAT in February 2020 for the audit. Due to COVID-19, the process of notifying the Inspire Charter Schools by each respective county office was not complete until May 2020. FCMAT had planned to visit each Inspire Charter School and CMO at the very beginning of the audit; however, because of the state guidelines surrounding COVID-19 and an abundance of caution, the necessary in-person site visits did not commence until November 2020. Travel restrictions, Inspire Charter School and CMO staffing shortages, changes and closures, and scheduling conflicts continued to slow the process.

The material portion of fieldwork was completed by January 2023. The team visited Inspire Charter School locations as well as the CMO and examined available documents and information including but not limited to the following:

- Board minutes, agendas, and resolutions.
- Independent contractor contracts, vendor contracts, agreements, schedules, and invoice supporting documents.
- Accounting detail reports such as general ledger summaries and detail reports, the general journal, vendor detail transaction reports, customer accounts receivable and revenue recognition reports, financial statements, budgets, and balance sheet accounts such as prepaid assets.
- Vendor and independent contractor reports, invoices, payments and contracts.
- Other contracts, memorandums of understanding (MOUs), severance agreements, and attorney and consultant communications.
- Credit card transactions, Inspire Charter School back-office service provider reports and documentation.
- Asset listings, depreciation schedules, transfers, additions and disposals.
- Loan payables and receivable, fund transfers, and interorganization transactions.
- Enrollment and attendance reporting and software system review, independent study attendance and apportionment validation process and documentation.
- Teacher credentials and pupil-to-teacher class size ratios.

- Student work product, teacher review of student work product, student residency, student transfers, independent study agreement (ISA) completeness and signatures validated for students, parents and teachers.
- Resource center, lending library, and other service information and site visits of locations within California.
- Board bylaws, policies, administrative regulations, articles of incorporation, and conflicts of interest reporting documents.
- Audit reports, news media reports, and authorizer-provided documentation.
- Emails, social media, and public database information.
- Inspire Charter School petitions, renewal petitions, Local Control Funding Formula (LCFF) reports and budgets, Local Control Accountability Plan (LCAP) reports and updates.
- Federal and state nonprofit tax reporting, i.e., Forms 990 and 199.

As documents and information are reviewed, they are compared to the audit scope and evaluated to decide whether an exception contributes to a finding as determined by the audit team. Only exceptions resulting in findings as determined by the team's judgment and experience are presented in this report.

## Study Team

The study team was composed of the following members:

Michael Ammermon  
CPA, CFE, CRFAC, DABFA  
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FCMAT Consultant

Each team member reviewed the draft report to confirm its accuracy and to achieve consensus on the final recommendation.

# Fraud, Occupational Fraud and Internal Controls

Fraud can include an array of irregularities and illegal acts characterized by intentional deception and misrepresentations of material facts. Although all employees have some degree of responsibility for internal controls, the governing board, superintendent and senior management ultimately are responsible.

## Occupational Fraud

Occupational fraud includes asset misappropriation, corruption, and fraudulent financial statements. Occupational fraud occurs when an organization's owners, executives, managers or employees use their position within the organization to deliberately misuse or misapply the employer's resources or assets for personal benefit.

Asset misappropriation includes the theft or misuse of local educational agency (LEA) assets and may include taking cash, inventory, or other assets, and/or fraudulent disbursements. Asset misappropriation is the largest category of occupational fraud and includes numerous fraudulent disbursement schemes. Corruption schemes involve an employee(s)/board member(s) using their influence in business transactions to obtain a personal benefit that violates that employee's duty to the employer or the organization; conflicts of interest fall into this category. Financial statement fraud includes intentionally misstating or omitting material information in financial reports.

Although there are many different types of fraud, occupational fraud, including asset misappropriation and corruption, is more likely to occur when employees are in positions of trust and have access to assets. Embezzlement occurs when someone who is lawfully entrusted with property takes it for their personal use. Common elements in all fraud include the following:

- Intent, or knowingly committing a wrongful act.
- Misrepresentation or intentional false and willful representation(s) of a material fact.
- Reliance on weaknesses in the internal control structure, including when an individual relies on the fraudulent information.
- Concealment to hide the act or facts.
- Damages, loss or injury by the deceived party.

The Inspire Charter Schools governing boards and employees have some responsibility for internal control. However, considering the complete control that the CMO, as the sole member, exercised over all operational, financial, and governance of the Inspire Charter Schools, the CMO had a higher ethical standard, fiduciary duty and responsibility to safeguard the assets and ensure the proper administration, operation, and reconciliation of transactions of and between the Inspire Charter Schools in the Inspire network.

## Internal Controls

The accounting industry defines the term "internal control" as it applies to organizations, including school agencies. Internal control is "a process, effected by an entity's board of directors, management, and other personnel, designed to provide reasonable assurance regarding the achievement of objectives relating to operations, reporting, and compliance." [The Committee of Sponsoring Organizations of the Treadway Commission – May 2013] The reference to achievement of objectives refers to an organization's work



of planning, organizing, directing, and performing routine tasks related to operations, and monitoring performance.

An organization establishes control over its operations by setting goals, objectives, budgets and performance expectations. Several factors influence the effectiveness of internal control, including the social environment and how it affects employees’ behavior, the availability and quality of information used to monitor the organization’s operations, and the policies and procedures that guide the organization. Internal control helps an organization obtain timely feedback on its progress in meeting operational goals and guiding principles, producing reliable financial reports, and ensuring compliance with applicable laws and regulations.

Internal control is the principal mechanism for preventing and/or deterring fraud or illegal acts. Illegal acts, misappropriation of assets or other fraudulent activities can include an assortment of irregularities characterized by intentional deception and misrepresentation of material facts. Effective internal control provides reasonable assurance that operations are effective and efficient, that the financial information produced is reliable, and that the organization complies with all applicable laws and regulations.

Internal control provides the framework for an effective fraud prevention program. An effective internal control structure includes the policies and administrative regulations established by the board and operational procedures used by staff, adequate accounting and information systems, the work environment, and the professionalism of employees. The five integrated components of internal control and their summarized characteristics are included in the following table.

Internal Control Component	Characteristics
Control Environment	The set of standards, processes and structures that provide the basis for carrying out internal control across an organization. Comprises the integrity and ethical values of the organization. Commonly referred to as the moral tone of the organization, the control environment includes a code of ethical conduct; policies for ethics, hiring and promotion guidelines; proper assignment of authority and responsibility; oversight by management, the board or an audit committee; investigation of reported concerns; and effective disciplinary action for violations.
Risk Assessment	Identification and assessment of potential events that adversely affect the achievement of the organization’s objectives, and the development of strategies to react in a timely manner.
Control Activities	Actions established by policies and procedures to enforce the governing board’s directives. These include actions by management to prevent and identify misuse of the LEA’s assets, including preventing employees from overriding controls in the system.
Information and Communication	Ensures that employees receive information regarding policies and procedures and understand their responsibility for internal control. Provides opportunity to discuss ethical dilemmas. Establishes clear means of communication within an organization to report suspected violations.
Monitoring Activities	Ongoing monitoring to ascertain that all components of internal control are present and functioning; ensures deficiencies are evaluated and corrective actions are implemented.

The five components of internal control are supported by numerous underlying principles that help ensure an entity achieves effective internal control. Each of the five components listed above and their relative principles must be present and functioning in an integrated manner to be effective. An effective system of internal control can provide reasonable but not absolute assurance that the organization will achieve its objectives. Although the board and all employees in the LEA have some responsibility for internal control, the superintendent, board and other key management personnel have a higher ethical standard, fiduciary duty and responsibility to safeguard the LEA’s assets.

### Control Environment

The internal control environment establishes the organization’s moral tone. Though intangible, it begins with the leadership and consists of employees’ perception of the ethical conduct displayed by the governing board and executive management.

The control environment is a prerequisite that enables other components of internal control to be effective in achieving the goals and objectives to prevent and/or deter fraud or illegal acts. It sets the tone for the organization, provides discipline and control, and includes factors such as integrity, ethical values and competence of employees.

The control environment can be weakened significantly by a lack of experience in financial management and internal control.

## **Control Activities**

Control activities are a fundamental component of internal control and are a direct result of policies and procedures designed to prevent and detect misuse of an LEA's assets, including preventing any employee from overriding system controls. Examples of control and transaction activities include the following:

1. Performance reviews, which compare actual data with expectations. In accounting and business offices, this most often occurs when budgeted amounts are compared with actual expenditures to identify variances and followed up with budget transfers to prevent overspending.
2. Information processing, which includes the approvals, authorizations, verifications and reconciliations necessary to ensure that transactions are valid, complete and accurate.
3. Physical controls, which are the processes and procedures designed to safeguard and secure assets and records.
4. Supervisory controls, which assess whether the transaction control activities performed are accurate and in accordance with established policies and procedures.
5. Segregation of duties, which consists of processes and procedures that ensure that no employee or group is placed in a position to be able to commit and conceal errors or fraud in the normal course of duties. In general, segregation of duties includes separating the custody of assets, the authorization or approval of transactions affecting those assets, the recording or reporting of related transactions, and the execution of the transactions. Adequate segregation of duties provides for separate processing by different individuals at various stages of a transaction, and for independent review of the work; these measures reduce the likelihood that errors will remain undetected.

Internal controls are effective in deterring and detecting fraud and in mitigating financial errors, ensuring accounts such as interorganizational transfers and loans and organizationwide credit card type accounts are thoroughly documented and reconciled. Effective internal controls require the governing boards of the Inspire Charter Schools and the CMO as well as all levels of management and staff to discern any existing system weakness. Examples of these weaknesses are demonstrated in the condition of the Inspire network's interorganization due to/from balances and Divvy Card transactions, which are discussed in the findings section of this report.

## **Fiduciary Responsibilities**

A fiduciary duty is the highest standard of care. The person who has a fiduciary duty is called the fiduciary, and the person to whom they owe the duty is typically referred to as the principal or the beneficiary. (Source: [https://www.law.cornell.edu/wex/fiduciary\\_duty](https://www.law.cornell.edu/wex/fiduciary_duty))

A fiduciary also may be a person who holds a legal or ethical relationship of trust with one or more other parties (person or group of persons). In other words, a fiduciary takes care of money or other assets for another. Board members, administrators and managers are examples of those who have fiduciary respon-

sibilities or a fiduciary duty. The Cornell law source cited above further describes several components of fiduciary duties, which FCMAT summarizes and applies to LEAs as follows:

Duty of Care: Before making a decision, collect all evidence and information available. Do your due diligence and review all the information and evidence available – do not just accept the information as it is presented. Assess information with a critical eye and ask who, what, when, and where. A fiduciary’s responsibility is to protect the assets of the LEA.

Duty of Loyalty: Do not use your position in the organization to further your private interests. Avoid anything that might injure the LEA.

Duty of Good Faith: Advance the interests of the LEA. Do not violate the law. Fulfill your duties and responsibilities.

Duty of Confidentiality: Keep confidential matters confidential and never disclose confidential information for your own benefit or to avoid personal liability.

Duty of Prudence: Be trustworthy, with the degree of care and skill that a prudent board member, member of management, or fiduciary would exercise. Prudent means acting with wisdom and care, including exercising good judgment.

Duty of Disclosure: Act with complete candor. Be open, sincere, honest and transparent. Disclose all financial interests on Form 700, Statement of Economic Interests

As presented in the findings section of this report that evaluates the due to/from and Divvy (a credit-card management system) transactions, the CMO’s apparent inability to provide an accurate accounting and supporting documentation are characteristic of significant internal control deficiencies and a material internal control failure as well as a possible failure in the CMO’s fiduciary duties. Based on the evidence presented in this report, the potential fiduciary responsibility failures of the CMO are as follows:

- Duty of care, such that before making a decision, collect all evidence and information available, perform due diligence and not just accept information as it is presented, protect the assets of the organization, and assess information with a critical eye and ask questions.
- Duty of loyalty to avoid anything that might injure the organization.
- Duty of good faith to fulfill the CMO’s duties and responsibilities.
- Duty of prudence to act with wisdom and care, including exercising good judgment.

## **Transaction Sampling**

FCMAT developed and conducted audit procedures to analyze and evaluate allegations and identify potential outcomes. The audit scope, objectives, and substantive transaction testing were based on the FCMAT study team’s experience and professional judgment and did not include testing or evaluating all available transactions and records. The transactions sampled were selected randomly and/or specifically based on the team’s judgment.

Transactions selected, when applicable, are analyzed and compared to board policies, administrative regulations, operational procedures and industry standards or best practices. They are evaluated for proper authorizations and reasonableness based on the team’s judgment and technical expertise in school business operations, internal controls, and accounting best practices.

Sample testing and examination results are intended to provide reasonable but not absolute assurance of the accuracy of the transactions and financial activity and/or to identify whether fraud, misappropriation of funds or other illegal fiscal practices may have taken place during the period under review.

FCMAT sampled transactions in fiscal years 2017-18 through 2019-20. Sampling occurred in many categories such as disbursements, journal entries, transfers, prepaid expenses, attendance records, student work product, potential resource center locations, teacher credentials, and confirmation letters sent to parents. Based on auditor judgment, transaction sampling may have been selected for any individual or combination of fiscal years. A mix of years and transactions tested was used to produce a random testing result that could be considered representative of the entire population of transactions.

Disbursements include prepaid expenses. Prepaid expenses are typically not an expenditure at the time of purchase but are considered an asset until the terms of the prepayment are met. However, paying a prepaid expense is a disbursement and is included in sample testing. Disbursement transactions are payments through check/warrant or electronic-type payments such as wire transfers. Journal entries and transfers transactions recorded in the accounting records as decreases or increases to cash were also examined.

Disbursement testing is often a strong indicator of the health of an organization’s internal control because it demonstrates how the organization documents and controls its spending. Deficiencies in spending practices can lead to cash flow shortages, excessive borrowing, fraud or the inability to pay a charter school’s obligations.

The three combined summarized sampling tables below present the results of the major components of transactions and activities reviewed. The tables below are arranged in the same order as they appear in the findings section of this report, where they are presented with more detailed information. The Inspire Charter Schools shown in the tables throughout this report are listed in no particular order.

**Table 2**

**Transaction/Activities Testing Results Summary, Fiscal Years 2017-18 through 2019-20**

(Dollar amounts and other figures are rounded)

Summarized Sampling: Disbursements and Attendance

Abbreviated Inspire Charter School Name	Disbursement Testing		Attendance	Attendance
	Transactions Tested	Net Dollars Tested	Amount ADA (- Over) / Underreported Tracks B-C	Amount ADA (- Over) / Under Reported Track A
Yosemite Valley	80	\$16,988,662	-1.79	N/A
Cabrillo Point	155	2,336,362	-3.53	-4.80
Pacific Coast	124	4,813,082	-0.80	-8.39
Clarksville	84	2,597,035	2.56	N/A
Cottonwood (opened 2019-20)	80	10,059,087	0.25	N/A
Feather River	81	5,491,487	-3.80	-56.30
Heartland (opened 2018-19)	170	2,913,860	-1.59	N/A
Blue Ridge	87	7,461,006	6.00	-0.02
CMO-ICS, Provenance/Other	180	11,492,485	N/A	N/A
<b>Totals</b>	<b>1,041</b>	<b>\$64,153,066</b>	<b>-2.70</b>	<b>-69.51</b>

(N/A = not applicable)

**Table 3**

**Summarized Sampling: Enrollment, Student Addresses, Independent Study Agreements, Teaching Credentials, Student Work Product, and Pupil/Student Teacher Ratio**

Abbreviated Inspire Charter School Name	Enrollment Confirmations		Student Addresses	Independent Study Agreements	Teaching Credentials	Student Work Product	Pupil/Student Teacher Ratio
	Number Sampled	Number Confirmed	Addresses Sampled	Number Sampled	Teachers Sampled	Number Students Sampled	Teachers Sampled
Yosemite Valley	141	29	3,635	70	7	69	225
Cabrillo Point	122	88	122	24	21	27	187
Pacific Coast	84	57	84	17	15	17	198
Clarksville	55	34	42	13	8	13	8
Cottonwood (opened 2019-20)	80	68	80	32	14	32	110
Feather River	96	54	3,872	67	42	67	225
Heartland (opened 2018-19)	70	43	27	7	6	6	236
Blue Ridge	86	24	19	19	10	19	312
CMO-ICS, Provenance/Other	N/A	N/A	N/A	N/A	N/A	N/A	N/A
<b>Totals</b>	<b>734</b>	<b>397</b>	<b>7,881</b>	<b>249</b>	<b>123</b>	<b>250</b>	<b>1,501</b>

(N/A = not applicable)

**Table 4**

**Summarized Sampling: Service Location Visits and Depreciable Fixed Asset Testing**

Abbreviated Inspire Charter School Name	Service Location Visits	Depreciable Fixed Asset Testing
	Known Locations	Reviewed Yes/No
Yosemite Valley	3	Yes
Cabrillo Point	5	Yes
Pacific Coast	5	Yes
Clarksville	3	Yes
Cottonwood (opened 2019-20)	5	Yes
Feather River	3	Yes
Heartland (opened 2018-19)	3	Yes
Blue Ridge	8	Yes
CMO-ICS, Provenance/Other	46	Yes
<b>Totals</b>	<b>81</b>	<b>Yes</b>

(N/A = not applicable)

Sampled transactions are evaluated for proper authorization, adequate supporting documentation, educational purpose and other criteria that clarify the appropriateness of the transaction or activity. Adequate supporting documentation generally means there is evidence to document the proper approval, educational purpose, proper and timely signatures on agreements and work product, and student addresses were within the county or contiguous county the Inspire Charter School is located in and authorized.



Attendance data was examined to determine if the attendance qualified for state funding as a true offering. A true offering means that the Inspire Charter School offered a full 175-day calendar program, which qualified for state funding. Contiguous county means any county border that touches the county border where the Inspire Charter School is located in and authorized.

A transaction is considered a deviation if based on the auditor's judgment, it is insufficiently documented or has some other characteristic or missing supporting documentation that cannot explain its purpose. A deviation does not mean the transaction was not made for an educational purpose or is fraudulent; it means at a minimum that a determination about the transaction cannot be made. Numerous deviations are characteristic of significant internal control deficiencies and weaknesses. Although an internal control weakness may not necessarily mean fraud, it can indicate a potential for fraud.

# Findings

## CMO State of Records

When working to determine the condition of the Inspire Charter Schools' documentation of its financial, attendance and student records, FCMAT encountered several obstacles because of the poor state of records kept by the CMO. To understand the condition of the Inspire network's records, it is necessary to understand that the CMO's control was absolute and central to all things concerning each Inspire Charter School's daily operations, financial transactions, documents, and the decisions affecting the Inspire Charter Schools. The CMO was the sole member of each Inspire Charter School. As described in the background section above, the sole member has sole discretion to "select and remove officers, directors, agents, and employees," which means it has absolute power for every decision and every transaction of the Inspire Charter Schools. This power and authority were further enhanced when the CMO enjoined the Inspire Charter Schools into service agreements for educational services. While each Inspire Charter School may have appeared to have autonomy for the day-to-day student instruction, the CMO managed and controlled the curriculum, attendance reporting, financial decisions and all educational services.

When FCMAT started the audit, each Inspire Charter School and the CMO were sent a document request list. As the Inspire Charter Schools and CMO responded to the request, the team quickly noticed that much of the information requested was unavailable or incomplete. The Inspire Charter Schools management explained that the CMO took care of their financial transactions, and the Inspire Charter Schools did not have access to any of those records. Even though the CMO was custodian of the Inspire Charter Schools' records and its own, it was unable to produce many of either the Inspire Charter Schools' records or its own.

To supplement the records the individual Inspire Charter Schools could produce, FCMAT obtained from the Inspire Charter Schools' back-office service provider a copy of the digital records it had. The records filled in a few more gaps in the paperwork; however, much remained unavailable or fragmented once it became part of the CMO's processing. Examples of the CMO's maintenance, quality, reliability, and control of the records are described as follows:

### Due To/From Balances

Due to/from transactions represent one entity paying for another entity's expenditures and account for how the money is owed between those involved in the transaction. Reviewing interorganization due to/from transactions quickly identified that the CMO had not been reconciling and properly tracking them because many of the Inspire Charter Schools and the CMO could not agree on the balances owed. Because the CMO was the sole member, it could pay bills for the CMO or any Inspire Charter School based on the cash available in any of the Inspire Charter Schools. This meant that a Inspire Charter School that had no relationship, interest, or anything to do with an expenditure may have paid for the expenses or purchases of any entity throughout the Inspire network.

Due to/from transactions should have been carefully recorded, reconciled and documented but were not. Daily transactions amass into each month's ending balances, and monthly balances become each Inspire Charter School and CMO's year-end balances spread across the entire Inspire network. If entity A has a due to amount owed, entity B should have a corresponding due from amount owed to it from entity A. Each side of the transaction should know precisely what was purchased, which entity paid for the purchase, and the transactions should be fully supported with detailed backup documentation. However, if the amounts owed between entities do not reconcile, and transactions are not clearly identified with proper supporting documentation, the ending balances lose integrity, and the ability to clearly show who owes who is lost.

When due to/from transactions do not balance, these types of transactions become exponentially more difficult to reconcile with every month and every year the balances are not reconciled.

Due from transactions represent the asset side of a due to/from transaction. The entity that paid for the transaction on behalf of another entity is the party that is owed the money as a due from or receivable. Due from or receivable transactions are the paying entity's assets, and due to or payable transactions are liabilities of the entity for which the purchase was made. The CMO's inability to provide an accurate accounting of the interorganization due to/from transactions are characteristic of a significant internal control deficiency and a material internal control failure as well as a possible failure in the CMO's fiduciary responsibilities.

In a discussion with FCMAT about the due to/from balances, the CMO conceded it could not reconcile the accounts, which may be out of balance by approximately \$1 million. FCMAT evaluated the due to/from year-end balances for fiscal years 2017-18 through 2019-20 and found that they became progressively more out of balance each year. The 2019-20 year-end due to/from balances were analyzed for all Inspire network entities, Inspire Charter Schools not being audited by FCMAT, and all other known Inspire-related entities such as the Inspire Education Foundation, Jitterbug Learning, Inspire University, etc. The analysis identified 157 balances spread across a grid of 20 Inspire entities. Of the balances, only 78 or 49.7% had matching account balances. This left 79 or 50.3% unmatched. Essentially half of all interorganizational due to/from balances were out of balance.

When FCMAT sampled individual interorganizational due to/from transactions, each Inspire Charter School typically could not provide sufficient documentation to support its purpose. The CMO, as the sole member with unilateral ability to move money at will with or without proper supporting transactional documentation, did not have the paper trail to reconcile the due to/from transactions on behalf of the Inspire Charter Schools it served. After several attempts to locate the documentation, the CMO could not produce it.

#### Divvy Card

The CMO also managed and controlled the Inspire network's use of a companywide credit card expense management system known as Divvy. The results of FCMAT's Divvy card transaction testing was similar to the due to/from transaction testing. The Inspire Charter Schools had little supporting documentation because the CMO controlled the payments, documents, and business arrangement with Divvy. To gain an understanding of the Divvy system, FCMAT met with Divvy representatives, who explained their system.

From what could be determined from the interviews of Inspire Charter School management, the Inspire Charter Schools' independent back-office service provider, Divvy, and the available documentation, the CMO was not acting as a responsible fiduciary to the Inspire Charter School it served. Sampled Divvy card transactions from the accounting records of the Inspire Charter Schools found that most supporting documentation was not available from either the Inspire Charter Schools or CMO. Further complicating the Divvy transactions is that the CMO controlled them through the due to/from accounts. When an Inspire Charter School provided FCMAT with documentation, it was the best information the school had as provided to it by the CMO. However, in many instances, Divvy card transactions were so fragmented, unreliable, and without documentation, that tracing their true origin within the Inspire network was difficult and in most instances impractical. According to the Inspire Charter Schools, the CMO was also prepaying large amounts to Divvy that may or may not have been reconciled or tied to a specific Inspire Charter School's own individual Divvy card purchases.

As part of the Inspire Charter Schools' attempt to obtain their fair share of the due to/from and Divvy balances, they turned to their back-office service provider, who explained the prepaid component of the Divvy issue. One Inspire Charter School summed up the CMO's administration of the Divvy account in an email, dated May 22, 2023, it provided FCMAT as follows:

During the period of time where there were multiple schools being run by the Inspire organization, Inspire chose to utilize a single Divvy account. Divvy is similar to a pre-paid credit card use [sic] for purchasing student supplies, where transactions flow for payment and tracking. Towards the end of Inspires [sic] existence, schools paid what was assigned as their fair share by the Inspire organization into the pre-paid pot, but the fund ran out of money without all school [sic] taking their fair share of the pre-payment balance. This was confirmed via a phone call to Divvy in February 2023 and applies to several of the school [sic] that were in this joint pool. Specifically looking at our charter, we were forced to write-off \$229,008.51 caused by this issue during the current fiscal year. This is not even the smallest amount that was written off by one of the former Inspire schools.

[Name of Inspire Charter School removed by FCMAT and replaced with “our charter, we...”]

Prepaid accounts are considered an asset to the charter schools that prepaid for purchases. A Divvy prepaid transaction means the CMO advanced money to Divvy without those funds being reconciled to purchases of the Inspire Charter School that advanced the money. This type of accounting is characteristic of mismanagement, misappropriation and negligence and may have resulted in some Inspire Charter Schools losing money for purchases they did not make and other Inspire Charter Schools not paying for their purchases. The CMO’s inability to provide an accurate accounting of the Divvy card transactions is characteristic of a significant internal control deficiency, a material internal control failure, as well as a possible failure in the CMO’s fiduciary responsibilities.

#### Pay Advance - \$1,055,834

The CMO’s control and authority is evidenced in its advancing of \$1,055,834 to Nichols for what he characterized as pay advances. This characterization is disclosed in Nichols’ separation agreement. Five Inspire Charter Schools funded the pay advances: Inspire Charter School-Los Angeles, Feather River, Cabrillo Point, Blue Ridge and Yosemite Valley. As described in the background section above, Nichols entered into a separation agreement with the CMO on October 11, 2019. The entire separation agreement is attached as Appendix F to this report. In that document, the CMO “contends that these ‘advances’ were not fully disclosed to the Employer or Inspire Entities.” Representatives of the CMO have stated that Nichols is faithful in making periodic payments toward paying off the payroll advance.

#### Gaylord Opryland Resort - \$150,300

Another example of the CMO’s control and ability to unilaterally make financial decisions was when it paid for an alleged Inspire Charter School conference retreat at the Gaylord Opryland Resort and Convention Center, in Nashville, Tennessee, from the Inspire Charter Schools’ funding. The event was supposed to take place July 29, 2018 – August 1, 2018. Gaylord issued two invoices about the event. The Gaylord invoices are to the attention of Dr. Nick Nichols, dated July 15, 2017, and indicate they are for 1,400 room nights at \$179 per night totaling \$250,600. The invoices include a clause that indicates cancellation is required 366 to 551 days prior to arrival and required a combined deposit of \$150,300. The check to pay the deposit is dated July 12, 2017, and was written from the checking account of Inspire Charter Schools (Kern), also known as Blue Ridge Academy. No other information was available that detailed the purpose, attendees, an agenda, and other specific information to support the cost as an educational expense. No information could be found that demonstrated that the CMO placed precautions in its agreement with Gaylord to mitigate losing the deposit or why it failed to explain and document the reason such an event location with stringent deposit requirements was considered a good business decision.

The cancellation clause for a refund required at least 366 days’ notice, the invoice date is July 15, 2017, and the event was scheduled to start on July 29, 2018. Therefore, the CMO had only 13 days to cancel to receive a refund (7/15/2017 + 366 days = 7/16/2018; therefore, 7/16/2018 + 13 days = 7/29/2018). Neither

FCMAT nor the Inspire Charter Schools nor the CMO could produce any further information about the event or why it was not held, and they could not determine whether a refund was received. FCMAT wrote Gaylord on October 26, 2021, to determine if a refund was issued but received no response. At 10:30 a.m., Pacific Standard Time, on December 8, 2022, FCMAT spoke with Gaylord representatives. Two separate representatives each searched the resort accounting records, and neither could find any evidence that a refund was issued.

Spending \$150,300 on a deposit to pay for a future Inspire Charter School conference may have had good intentions; however, the apparent lack of care in protecting the Inspire network's assets is characteristic of a failure in the CMO's fiduciary duty.

### Disbursement Testing

Sampling and testing disbursements further exemplify the poor state of the records. The disbursement transactions of the Inspire Charter Schools and CMO were sampled. The transaction dollar amounts are shown as "net dollars tested." Because both positive and negative, or accounting debit or credit transactions, were captured in the sample, the dollars shown are net of positive and negative amounts. The same is true for "net dollars of deviations," where the deviations are shown at the net amount of positive and negative transactions. Based on the sample selected, some Inspire Charter Schools were able to provide a more complete set of documents while others and the CMO could not find the supporting documentation. Sampling spanned all three years, 2017-18 through 2019-20 where applicable, and the sample size for each Inspire Charter School was randomly determined, with the smallest sample size being 80 transactions. Table 5 below summarizes the disbursement testing and the types of deviations.

**Table 5**

### ***Disbursement Testing Results, Fiscal Years 2017-18 through 2019-20***

(Dollar amounts are rounded)

Abbreviated Inspire Charter School Name	Transactions Tested	Net Dollars Tested	Number of Deviations	% Deviations of Transactions Tested	Net Dollars of Deviations	% Dollars Tested	Type of Deviation
Yosemite Valley	80	\$16,988,662	23	28.8%	\$15,256,692	89.8%	F
Cabrillo Point	155	2,336,362	64	41.3%	456,136	19.5%	A, B, C, D, E, F, H
Pacific Coast	124	4,813,082	-	0.0%	-	0.0%	
Clarksville	84	2,597,035	-	0.0%	-	0.0%	
Cottonwood (opened 2019-20)	80	10,059,087	55	68.8%	6,670,077	66.3%	A, B, C, E, F, H
Feather River	81	5,491,487	48	59.3%	4,689,169	85.4%	A, B, F, H
Heartland (opened 2018-19)	170	2,913,860	2	1.2%	49,563	1.7%	F, H
Blue Ridge	87	7,461,006	6	6.9%	702,907	9.4%	A, F, H
CMO-ICS, Provenance	180	11,492,485	107	59.4%	9,631,024	83.8%	B, F, H
<b>Totals</b>	<b>1,041</b>	<b>\$64,153,066</b>	<b>305</b>	<b>29.3%</b>	<b>\$37,455,568</b>	<b>58.4%</b>	

Sampling involved the identification of various possible errors or irregularities also known as deviations. The deviation types used to measure the disbursement transactions are described as follows:



- A** = Payment amount does not agree to contract or other available supporting documentation.
- B** = California educational purpose cannot be determined.
- C** = Invoice allocation of Inspire Charter School's billing portion cannot be determined.
- D** = Invoice or amount paid does not agree to general ledger.
- E** = One or more students listed in the invoice is not verifiable.
- F** = CMO controlled; therefore, Inspire Charter School was not consulted nor does it have information about the transaction.
- G** = Payment or vendor is an undisclosed related party transaction or entity.
- H** = Supporting documentation was not available.

Deviation type **G** was the only type not found in the sampling. In other words, the sampling did not find any undisclosed related parties or any conflicts of interest. FCMAT did not quantify the deviation types individually; however, the testing showed that more than one deviation type was present in most transaction items sampled. Most of the findings demonstrated that deviation type **F**, CMO controlled, was the main problem. When **F** existed, it was also found that deviation types **A**, **B**, **C**, **D**, **E**, and **H** may also be issues.

Regarding deviation type **B**, some transactions were with educational vendors based on FCMAT's judgment and experience with such vendors. For example, if the transaction was with a known school textbook supplier, it was likely made for an educational purpose. However, since the documentation was not available, FCMAT considers it a deviation type **B**.

Deviation types **C**, **D**, and **E** represent examples of the available paperwork not matching up to the transaction. The paperwork may indicate that the bill is for payment to a vendor for services or an activity for numerous students. However, a specific Inspire Charter School's portion of the bill cannot be determined, the bill does not agree to the amount charged to the Inspire Charter School for their portion, and/or the students listed may not be verifiable to the specific Inspire Charter School paying that portion of the bill. These issues were typically linked to due to/from or Divvy transactions, which are also CMO-controlled.

Overall, 1,041 transactions were tested representing \$64,153,066 in total net dollar value. Of these, 305 contained at least one deviation type and represented 29.3% of the total. If a transaction contained more than one deviation type, it was only counted once. While only 29.3% of the transactions tested represent deviations, the dollar value of those deviations represents 58.4% of total dollars tested. Based on FCMAT's experience, the result of this testing demonstrates a material internal control weakness. While the individual Inspire Charter Schools may be partly responsible for obtaining and reconciling paperwork to the best of their ability, the full responsibility for the internal control system, accuracy of records, and the financial system's accuracy rests with the CMO as sole member and service provider of the Inspire Charter Schools.

#### Poor Quality and Reliability of Records

The examples cited above are not isolated but represent what FCMAT found regarding how the CMO operated on behalf of the Inspire Charter Schools. Without proper paperwork and oversight confirming that procedures were followed, the accounting and reconciliation of transactions is unreliable. FCMAT found that many expenditure and journal entry transactions were either partially documented, contained information that was not related to the purchase or were not documented at all.

Adequately reviewing and resolving allegations regarding audits of this type is often difficult when the quality of the record-keeping, accounting practices and oversight by a sole member CMO is significantly poor. This type of situation also provides more opportunities for fraud and can lead to the appearance of fraud when none has occurred.

The mere appearance of fraud may often be just as damaging to an organization. Innocent, untrained, and well-intentioned staff may be wrongfully suspected or accused of fraud and be unable to prove otherwise.

The goodwill of the Inspire network's individual charter schools may also be damaged. The public's trust can suffer as parents lose trust that funds may not be spent for educational purposes and withdraw their students, adversely affecting the Inspire Charter School's funding. The actions of one individual or a CMO with significant internal control weaknesses can damage an entire Inspire Charter School network. Similarly, the CMO's inability to reconcile the material transactions flowing between Inspire Charter Schools and other Inspire network entities represents significant internal control weaknesses and may be considered negligent.

FCMAT attempted to contact Nichols to ask questions about the operations of the Inspire network. A letter sent to multiple potential Nichols addresses, emails, and texts were sent to Nichols explaining the type of issues about which his knowledge could prove helpful. A response came from Nichols' attorney, saying that Nichols declined to meet with FCMAT and be interviewed on the advice of his legal counsel.

# Attendance

The individual Inspire Charter Schools had responsibilities for teaching students, providing books and supplies, confirming student work product, student supervision and other daily student interaction activities. The CMO provided, maintained, and monitored the attendance software and data used by the school sites, required Inspire Charter Schools to send to the CMO attendance documentation, and had unilateral control, authority and ability to move students' records and adjust attendance data. The CMO prepared and submitted attendance reports to the California Department of Education (CDE). As part of its authority, the CMO determined and controlled all attendance-related activities such as offering a summer program that required the participation of selected Inspire Charter Schools, and determined how this participation would be managed down to who would retain possession of the summer program records.

FCMAT's audit of attendance data identified Tracks A, B, and C in the attendance records. Depending on the Inspire Charter School, it may have used Track A, B, or C to offer a full school calendar year 175-day offering of classes. However, only four Inspire Charter Schools operated Track A as a summer program in 2017-18 and 2018-19. At least on paper, as in the example of the Cabrillo Point charter master ISA presented as Image 1, Track A was shown to be a full school year offering of courses.

FCMAT's examination of attendance was a random sample for each Inspire Charter School, including selecting students, examining their work product, evaluating the teachers' credentials and the student addresses, reviewing the ISA, and tracing data to monthly totals and grand totals for the second period principal apportionment (P-2) time frame. The P-2 time frame is between July 1 and approximately April 15. The CMO issues the P-2 report to the county superintendent, who reviews and signs the report, then submits it to the CDE. The P-2 report categorizes and summarizes attendance by grade span and is used to determine funding for schools through the apportionment process. Grade spans are transitional kindergarten-3, 4-6, 7-8, and 9-12. The Inspire-Charter-School-provided P-2 report totals were compared to the P-2 report submitted to the CDE. The Inspire Charter Schools were limited to producing attendance reports for FCMAT that were given to them by the CMO.

Attendance sampling focused on two potential factors as shown in the bullets below. If true, these factors would be considered a sample deviation. These deviations had the possibility to overreport or underreport average daily attendance (ADA). ADA is how a charter school receives funding based on student attendance. The calculation of ADA is discussed below in further detail.

- Type 1: P-2 reports prepared by the CMO did not reconcile to the P-2 report provided by the Inspire Charter School and what was submitted to the CDE.
- Type 2: Track A summer program attendance was not considered a true offering.

Deviation type one is specific to tracks B and C, and type two is specific to Track A. Tracks B and C are discussed first, and then Track A, which is more complicated because of the summer program.

## Tracks B and C

In 2020-21, the Inspire Charter Schools had greater autonomy with their own systems and operational procedures and with little or no reliance on the CMO. However, prior to 2020-21, according to the management of the Inspire Charter Schools, when the Inspire network collapsed, many types of records in possession of the CMO were not provided to the Inspire Charter Schools or could not be located. Therefore, they did the following during the collapse:

- Requested the CMO to return their records many times.

- Were frustrated with the CMO's lack of concern about the records, especially the attendance records, because the CMO would not or could not provide attendance records and other documentation support for 2017-18, 2018-19, and 2019-20.

The audit findings shown in Table 6 for Tracks B and C are specific to attendance and P-2 reports provided by the Inspire Charter Schools and summarizes the differences between each Inspire Charter School's attendance and P-2 reports. The Inspire Charter School P-2 reports, however, did not reconcile with the P-2 reports the CMO submitted to the CDE. The CMO could have used other detailed reports of attendance data that reconcile to the P-2 report, but FCMAT and the Inspire Charter Schools could not obtain the information from the CMO. Therefore, the Inspire Charter School's available attendance and P-2 information was analyzed. Even if the CMO had made available the P-2 reports it submitted to the CDE, FCMAT cannot determine how many possible report versions may have been used. Having multiple versions of the P-2 reports and attendance data would necessitate determining which report and data, if any, reflected the actual accounting of student attendance for apportionment purposes. However, as described in the section "CMO State of Records" above, the CMO's records were not reliable, not available, or could not or would not be provided to the Inspire Charter Schools or FCMAT. This left FCMAT to use any records available. The results of the ADA testing for tracks B and C are shown in Table 6 below.

**Table 6**

**Tracks B and C Attendance Testing: 2017-18 through 2019-20**

Abbreviated Inspire Charter School Name Year(s) Sampled	Amount ADA (Over-)/Underreported Tracks B - C
Yosemite Valley	
2017-18	-0.61
2018-19	-1.18
2019-20	-
<b>Total</b>	<b>-1.79</b>
Cabrillo Point	
2017-18	-3.19
2018-19	0.23
2019-20	-0.57
<b>Total</b>	<b>-3.53</b>
Pacific Coast	
2017-18	-3.21
2018-19	-5.07
2019-20	7.48
<b>Total</b>	<b>-0.80</b>
Clarksville	
2017-18	2.75
2018-19	-0.18
2019-20	-0.01
<b>Total</b>	<b>2.56</b>
Cottonwood (opened 2019-20)	
2019-20	0.25
<b>Total</b>	<b>0.25</b>

Abbreviated Inspire Charter School Name Year(s) Sampled	Amount ADA (Over-)/Underreported Tracks B - C
Feather River	
2017-18	-1.43
2018-19	-2.10
2019-20	-0.27
<b>Total</b>	<b>-3.80</b>
Heartland (opened 2018-19)	
2019-20	-1.59
<b>Total</b>	<b>-1.59</b>
Blue Ridge	
2018-19	6.00
<b>Total</b>	<b>6.00</b>
CMO-ICS, Provenance	N/A
<b>TOTALS</b>	<b>-2.70</b>

(N/A = not applicable: CMO with no students)

In the table above, if ADA is considered *overreported*, it is shown with the number as a negative. Overreported means that the Inspire Charter School may have received excess funding or more ADA-based dollars than it should have. If the ADA is considered *underreported*, it is shown as a positive number, which means the Inspire Charter School received less ADA-based funding than it should have. The testing results identified both over- and underreported ADA. In total, for all three years, 2017-18 through 2019-20, the combined Tracks B and C difference in ADA for all Inspire Charter Schools resulted in a net -2.70 overreported ADA.

The team established materiality or error rates. If the error rate or deviation amount or percentage predetermined by FCMAT was exceeded, it would mean that additional testing may be conducted, or attendance disallowed. The error rate for total Track A, B, and C attendance of potential net overreported ADA is -8.00 for all Inspire Charter Schools for all years sampled. This amount was established based on FCMAT's experience and judgment and included some tolerance due to the CMO state of records. The -2.70 overreported ADA was below FCMAT's -8.00 error rate. Based on the results of the sampling of attendance, no further testing of ADA in Tracks B and C was considered necessary.

#### Track A (Summer School Program)

Many LEAs, including charter schools, offer summer programs for enrichment opportunities, credit recapture, or course makeup whether they qualify for additional funding or not. For charter schools, summer programs that are a component of a full school calendar year 175-day program may earn attendance funding. Summer programs do not earn state funding when they are operated by charter schools that are specific to enrichment, credit recapture or to make up for courses missed.

One of the key determiners to receiving state funding is in the intent of the program, and establishing intent begins with documentation. The student's independent study agreements (ISAs) must indicate that the contract term is a full year, detail a course schedule, outline objectives, methods of study, a schedule, credit values, other information about the full program, and as with all ISAs, must be signed and dated by the student, parent/guardian/caregiver and supervising teacher. Also required are student work samples and compliance with other nonclassroom-based independent study requirements. The general term for the agreement between the student, parent/guardian/caregiver and supervising teacher is an ISA; however, it



is also known as a master agreement for independent study by the Inspire Charter Schools. An example of the Cabrillo Point Academy charter school ISA for its Track A is shown below.

Image 1

**Student:** Student Name Redacted  
**Student Number:** 4912219855  
**Address:** Address Redacted  
**Location:** [Redacted]  
**1st Phone Number:** Phone Number Redacted  
**DOB:** DOB Redacted  
**Program Placement:** General Education

**Contract Term:** Full Year  
**Beginning Date:** 07/03/2017  
**End Date:** 06/13/2018  
**Year:** 2017 - 2018  
**2nd Phone Number:**  
**Grade Level:** 7  
**School for Classroom Option:** Riverside Unified

It is understood that:  
**Objectives:** The student will complete the courses listed below. All course objectives will be consistent with the established program's governing board and are consistent with program standards as outlined in the program's subject/course descriptions. Work Record (WR) Forms will include additional descriptions of the major objectives and activities of the courses of study covered by this agreement including the evaluation of student work and are incorporated herein. The term "Course Value" (CV) refers to the number of credits (secondary education) or weeks of work (elementary education) the student will attempt.

Schedule	Category	Course Value
Language Arts 7	Language Arts	36 Weeks
Mathematics 7	Mathematics	36 Weeks
Science 7	Science	36 Weeks
Social Studies 7	Social Studies	36 Weeks

**Methods of Study:** Specific methods of study will be designated on the Work Record (WR) and are incorporated herein. Examples of methods of study for the student will include: Independent Reading, Textbook Activities, Problem Solving, Study Projects, Drill & Practice, Computerized Curriculum, Web/Internet Research, Library Research, Field Trips, Learning Center Courses  
**Specific Resources:** The school will provide appropriate instructional materials and personnel necessary to the achievement of the objectives and must include resources that are normally available to all students on the same terms as the terms on which they are available to all. Assignments and specific resources will be designated on the Work Record (WR) and are incorporated herein.  
**Methods of Evaluation:** Academic evaluations will be designated on the Work Record (WR) and are incorporated herein. Other acceptable methods of evaluation include, but are not limited to: Teacher Made Tests, Student Conferences, Progress/Report Cards, Chapter/Unit Tests, Work Samples, Observations, State Standards Testing, Quizzes, Labs, Finals.  
**Students are required to report to their teacher as scheduled:** Manner of Reporting: One-on-One, Email, Phone. Time: 8-5pm. Day: M-F. Frequency: At least once every 20 days. Duration: Full Year. Location: Virtual or In-Person.

Form includes signatures of Student, Parent, and Teacher.

Notes: FCMAT omitted the signed signature page, and redacted student identifying information. FCMAT added highlighting, red call-out boxes and red circles.

The intent of the Track A program and whether it is considered an offering within a true full school calendar year 175-day program play a major role in whether ADA may be earned. A true full school calendar year program is composed of many classes, e.g., language arts, mathematics, science, and social studies. To establish the Track A program's intent, FCMAT attempted to sample Track A attendance separate from Tracks B and C. The obstacle encountered specific to Track A, however, was that the Inspire Charter Schools did not have any paperwork. In discussing this issue with the Inspire Charter Schools management, they explained that unlike Tracks B and C, the documentation of Track A was all based on paper documentation, which the CMO instructed to be sent to them.

FCMAT requested Track A information for 2017-18 and/or 2018-19, the years the summer program was offered, from former CMO staff. The team also requested that the Inspire Charter Schools search again for paper or electronic documents in case someone scanned one related to Track A. The Inspire Charter Schools found some additional copies of documents that were scanned electronically. Cabrillo Point found



five ISAs, Pacific Coast came up with seven, Blue Ridge located two, and Feather River found 25. In total, the available sample of Track A documents is 39 ISAs. This is not a representative sample but is the best the Inspire Charter Schools could find after all Track A documents were sent to the CMO.

All 39 ISA documents are similar to the example shown above. If all four Inspire Charter Schools - Cabrillo Point, Pacific Coast, Blue Ridge, and Feather River - that were instructed by Nichols to offer a Track A program possessed a complete inventory of ISAs for all students, it remains unclear whether Track A was intended as a true offering of a full student calendar year 175-Day program.

### Track A Background

The CMO may have misunderstood the issue of receiving ADA funding for summer-only programs. To understand further the rationale of Track A and why it was started, FCMAT interviewed the two Inspire Charter School managers who were most knowledgeable about the summer program. According to one, the CMO, specifically Nichols, wanted the summer program. The combined interviews with the two Inspire Charter School managers about Track A are summarized below using the same tone and vernacular of the managers as follows:

Track A became known as Inspire's version of summer school. It was not primarily for Inspire students to participate, but done for other groups such as other school districts, other programs, and students who went to other schools. It was for students in the summer who wanted to participate in a more formalized summer program.

In anyone's mind at the schools, this summer program was legit. The summer program may have had a few hundred students, but this was a small number compared to 12,000 combined students of all of the Inspire charter schools. It was never a scheme to get a bunch of kids in the program to boost the attendance or income. It never even dawned on the managers or anyone that the summer program was something other than a summer program. The managers had never even heard of Track A until later when Nichols started telling everybody don't call it summer school, call it Track A. But to the managers, Track A was a summer program. Nichols was consistent in explaining that summer school was allowed for charter schools, and said he even had a letter from the CDE that allowed summer school and it indicates that if kids were to attend for Track A, that it is OK. As the charter manager continued to question the summer program, Nichols explained that the lawyers, CDE, and everyone had approved it.

[The CDE letter was actually an email provided by a senior management at Learn For Life charter schools to Nichols.]

The summer program students were the only ones placed in Track A. The CMO set up all attendance information in the attendance system and mandated that certain charter schools would run the Track A program. The reason a summer program was offered is because Nichols was under pressure from students, parents, and even staff to run a summer program. Nichols kept saying that summer programs are "not our jam, that's not our bread and butter, that's not what we do." In the managers' and staffs' minds, they never thought anything negative or bad about the summer program. When the managers questioned the summer program, Nichols told them that Learn for Life, Methods, and many other schools have summer programs, and they are allowed.

The students that attended the Inspire summer programs came from other schools. Even though the intent was to show the kids that came from other schools that they might like staying and become Inspire students, and to run a full 175-day calendar for all those students.

What the charter managers found was the majority of the students only stayed for the summer program and returned to the schools they came from.

The difference between the summer programs run by the charter schools located in southern and northern California is that the southern charter summer programs used Discovery of Learning (DOL) and the northern charter schools did not. DOL is an independent TK-high school alternative education enrichment center that only served the south. The north was different because it was the relationship with the charter schools and their authorizers who wanted a summer program for a Track A. Track A offered in the north such as Feather River and Winship charter were offered for authorizers that were small districts. These types of small districts did not have the funds to run a summer program for their students. They wanted to run the summer program for their schools through Inspire's charter schools using the authorizers' school facilities. The authorizers wanted help from the Inspire Charter Schools. Once the six-week summer program section was over, those students were released to go back to wherever they normally went to school.

Regardless of where the summer program was operated, it was a legitimate program, operated under Inspire standards, credentialed teachers, supervisors, students, math, science, language arts and student work samples. However, the summer program was not intended to keep a student for Track A on a 175-Day program. There were six Saturdays for the summer program. It was an early program adaptation to offer Saturdays to facilitate testing and make it convenient. Students who stayed, which were very few, were moved to the respective Inspire charter's Track B or C and the charter did not claim attendance for the students who stayed.

When A3 happened, charter managers questioned Nichols who explained there is a difference between A3 and Inspire. Inspire has a legitimate summer program, has legitimate kids, a legitimate program doing real work while A3 is a falsifying attendance money grab. During this conversation, a manager told Nichols she wants nothing to do with the summer program, and it should be canceled. Nichols was planning to continue operating the summer program, but because a few managers disagreed and banded together, the summer program was discontinued. All the participating Inspire charter schools thought they were doing a good thing for the kids. They were real kids participating in a real program. It was not until A3 that the CMO pulled the program.

The managers stated they were not provided with a copy of the CDE letter that Nichols referenced. FCMAT contacted Learn for Life charter, which supposedly provided the CDE letter or information to Nichols. The CDE information was not a letter but an email string between the CDE, the Learn for Life charter school, its district authorizer, and county office. The CDE email response is very clear stating that "There is no separate funding for summer school." The distinction lies in charter schools that operate a summer school as part of a full 175-day school calendar program, which is different than charter schools that operate a stand-alone 'summer school only' program that is not part of the other courses students would take during the entire school year. Each school track should be its own full 175-day program, and the Inspire Track A summer program at best operated only six-weeks.

Because Nichols declined to meet with FCMAT, his understanding of how the Track A summer program could qualify for funding cannot be determined. As discussed further below, many Education Code laws and circumstances must be considered when determining allowable attendance for funding. The CMO is the entity responsible for ensuring that it has accurately researched and understood these circumstances and codes when claiming attendance for the Track A summer program. Reliance on another charter school communication with the CDE may seem applicable, but without obtaining the CMO's own opinion regarding the Track A summer program from the CDE, it is characteristic of negligence.

## Education Code, CDE, and K-12 Audit Guide Analysis

Charter schools have flexibility in their school calendars and minutes offered, which affects attendance collection and reporting. The California Education Code is permissive, meaning that unless something is specifically stated as not allowable or prohibited, it is considered allowable. This requires thorough research of all codes to ensure no offsetting code or regulation prohibits something. For example, EC 46300 and 46301 describe computing the ADA of a school district or county office of education, specifically excluding Saturdays or Sundays, while EC 47612.5 describes the required instructional minutes and defines classroom-based and nonclassroom-based attendance for charter schools. Title 5 California Code of Regulations (CCR) 11960 defines regular ADA for charter schools; however, it does not discuss weekend classes such as school on Saturday or Sunday for charter schools.

Education Code 37223 describes weekend classes in detail; however, they are only described for elementary, high school, unified school districts, or any county superintendent of schools. The code also details how they may maintain classes on Saturday or Sunday or both. In this instance, Saturday school is allowed only under special circumstances such as for continuation classes, special day classes for mentally gifted minors, makeup classes for absences occurring during the week, and the programs of a regional occupational center or regional occupation program; these classes must already be offered during the regular Monday through Friday school week. Therefore, Saturday and Sunday school may be allowed; however, including those days cannot result in the crediting of more than five days of attendance per pupil per week for schools other than charter schools. Because EC 37223 does not specifically identify charter schools, they may include in their school calendar classes on Saturday or Sunday that are not provided during the regular Monday through Friday school week. However, this also means charter schools can credit more than five days of attendance per pupil per week.

Charter schools must have an annual minimum 175-day calendar during the school fiscal year for each track if multiple tracks are offered from July 1 to June 30. If these schools have fewer or more than 175 annual days for calculating state ADA apportionment funding based on attendance, that calculation must be adjusted. Title 5 CCR 11960 states that charter schools' "Regular average daily attendance" shall be computed by dividing a charter school's total number of pupil-days of attendance by the number of calendar days on which school was actually taught in the charter school." Nothing is mentioned, however, about the number of days taught in the school month such as a five-day school week totaling 20 days per month and when a six-day week includes a Saturday. EC 37201, however, states the following:

37201. (a) A school month is 20 days or four weeks of five days each, including legal holidays but excluding weekend makeup classes. For the purposes of counting attendance only in providing for a school calendar the winter vacation period, or any portion thereof, may be excluded by the school district in the definition of a school month.

(b) The provisions of subdivision (a) of this section are limited to defining a school month for attendance-counting purposes only.

No matter how many days in a week or month are taught or claimed for attendance funding, the 175-day calendar remains applicable to charter schools. To understand what applies to charter schools for the 20 days per month and the school month, EC 41601 resolves the missing information.

Education Code 41601 defines that "... the governing board of each school district shall report to the Superintendent during each fiscal year the ADA of the school district for all full school months during ... the period between July 1 and April 15, inclusive, to be known as the 'second period' report for the second Principal apportionment." Because the second period reporting time frame ends April 15 and includes all full school months that end on or before that date, the reporting days can vary depending on how the charter school's school month ends for the second period reporting time frame.

An important component that is easily overlooked in EC 41601 is the term “superintendent.” When the title is capitalized, it means the state superintendent of public instruction (SPI). However as written, this section refers only to “each school district” and not to a charter school. Later in this section, an important sentence is written about the “report” referenced above. EC 41601 continues to state that, “Each report shall be prepared in accordance with instructions on forms prescribed and furnished by the Superintendent.” This implies that all schools, including charter schools, must report their attendance in the manner that the CDE requires.

Instructions on forms prescribed and furnished by the SPI are found in the Data Reporting Instruction Manual published by the CDE. FCMAT used the 2017-18 version of this manual. Inspire operated multiple attendance tracks; Track A is a six-week program that included six Saturdays for which attendance was recorded. The instruction manual's "Attendance Charter School" section, Multitrack Entry Tab, page 16, describes multitrack procedures specifically for charter schools. This section states:

If the charter school operates multiple tracks, you must report ADA by track for the P-2 and Annual reporting period. The order of tracks reported at P-2 and Annual must match.

[For clarity, ADA is defined as average daily attendance.]

This section continues to describe how to calculate attendance by track. EC 47612 also references calculating attendance separately for each track. This means that an Inspire Charter School may operate multiple tracks, including a program that has school on Saturdays, as long as it is part of the regular 175-day calendar. Saturday and Sunday classes remain allowable because they are not prohibited.

Like school districts and county offices of education, charter school ADA is reported in full school months by each reporting period listed in EC 41601. Unlike charter schools, traditional school districts are limited to Monday through Friday school weeks and have school months for the purpose of attendance accounting that consist of four five-day weeks, which translates to a 20-day school month. Charter schools have additional flexibility in their scheduling that provides for regular instructional days on Saturdays and Sundays. Therefore, the CDE has advised the following for charter schools that include Saturdays and/or Sundays as regular instructional days in their instructional time offering; when calculating school months for the purpose of reporting attendance, each school month consists of four full school weeks running Sunday through Saturday. Therefore, a charter school's full school week can be five, six, or seven days and a full school month can be 20, 24, or 28 days for the purpose of attendance accounting.

Another source for evaluating attendance is the Guide for Annual Audits of K-12 Local Education Agencies and State Compliance Reporting issued by the Education Audit Appeals Panel. The 2018-19 audit guide includes an entire section specific to charter school compliance. Two sections, "AA. Attendance" and "CC. Nonclassroom-Based Instruction/Independent Study" apply to determining allowable attendance. The audit guide provides the audit steps to substantiate that a charter school's calculated ADA is in accordance with EC 47612 and Title 5 CCR 11960.

The "AA. Attendance" section of the audit guide describes detailed instructions to calculate attendance and discusses what to examine for charter schools operating multiple tracks. Audit step 2.d.(3) states, “Verify that the charter school operated each track for a minimum of 175 days.” This means if a charter school does not show (or the attendance records fail to show) that the charter school operated a track for 175 days, such a track may not be considered a true offering. The audit guide's "CC. Nonclassroom-Based Instruction/Independent Study's" section audit step 4.d indicates that the procedure is to “Verify that each day of each pupil’s attendance included in calculations of ADA took place on one of the charter school’s schooldays.” Therefore, if the school day is a Saturday, it can be counted towards attendance.

### FCMAT Opinion - Intent of Track A Program

The question is whether Track A was part of a true 175-day school calendar program with the intent for the students who attended to remain Inspire Charter School students for a full school calendar. The Inspire Charter Schools referred to Track A as the summer program. At best, the students of Track A only stayed for the summer program, which was no more than eight weeks. According to management of the Inspire Charter Schools, most students were not Inspire Charter School students and returned to their home schools.

As stated earlier, stand-alone summer programs are allowable but do not qualify for funding. The Inspire Charter Schools themselves and Nichols may have believed that the summer program operated under Track A would qualify for funding. Without all ISAs and other supporting documentation such as student work product, attendance records showing the days as part of a 175-day full year offering, and guidance from the CMO's legal counsel or CDE approval, the Track A program is characteristic of a stand-alone summer program and thus not eligible for funding.

The Track A summer program overreporting of ADA is summarized in the Table 7.

**Table 7**

#### **Track A Attendance Testing: 2017-18 through 2019-20**

<b>Abbreviated Inspire Charter School Name Year(s) Sampled</b>	<b>Amount ADA (Over-)/Underreported Track A</b>
Yosemite Valley	
2017-18 (no summer program)	N/A
2018-19 (no summer program)	N/A
2019-20 (no summer program)	N/A
<b>Total</b>	<b>N/A</b>
Cabrillo Point	
2017-18	-4.42
2018-19	-0.38
2019-20 (no summer program)	N/A
<b>Total</b>	<b>-4.80</b>
Pacific Coast	
2017-18	-8.39
2018-19 (no summer program)	N/A
2019-20 (no summer program)	N/A
<b>Total</b>	<b>-8.39</b>
Clarksville	
2017-18 (no summer program)	N/A
2018-19 (no summer program)	N/A
2019-20 (no summer program)	N/A
<b>Total</b>	<b>N/A</b>
Cottonwood (opened 2019-20)	
2019-20 (no summer program)	N/A
<b>Total</b>	<b>N/A</b>

Abbreviated Inspire Charter School Name Year(s) Sampled	Amount ADA (Over-)/Underreported Track A
Feather River	
2017-18	-38.62
2018-19	-17.68
2019-20 (no summer program)	N/A
<b>Total</b>	<b>-56.30</b>
Heartland (opened 2018-19)	
2019-20 (no summer program)	N/A
<b>Total</b>	<b>N/A</b>
Blue Ridge	
2018-19	-0.02
<b>Total</b>	<b>-0.02</b>
CMO-ICS, Provenance	N/A
<b>TOTALS</b>	<b>-69.51</b>

(N/A = not applicable: no summer program, Inspire Charter School not operating, year not sampled, or CMO with no students)

Based on the information available, given the state of records and the lack of cooperation of a key party, the evidence is insufficient to demonstrate that the CMO intended to create a fraudulent attendance scheme. Based on the information provided by the Inspire Charter Schools, they believed there was a lack of understanding by the CMO and the Inspire Charter Schools of what was required to earn funding for the Track A summer program. Overall, the Track A summer program simply did not have the structural components to support a true offering of a full school calendar 175-day program.

In total, the combined ADA difference for all Inspire Charter Schools resulted in a net -69.51 overreported ADA for the two years the summer program was operated, 2017-18 and 2018-19.

#### Combined Tracks A, B, and C Potential Estimated Dollar Value of Net Overreported ADA

The testing of attendance resulted in both over- and underreported ADA. Charter schools are funded and receive money from the state through ADA earned. If one student attends every day of the 175-day school year, the Inspire Charter School receives one ADA. Funding depends on a student's grade span. For example, one full ADA in grades 9–12 resulted in base funding of \$9,572 in 2019-20 for each student. The funding is measured through the P-2 reporting period. Other ADA-based funding may be received in addition to the base funding. For every day the student does not attend, the Inspire Charter School receives a prorated reduction of the amount of that one full ADA, or fewer funding dollars. This means for every day missed, the school receives incrementally less and less of the \$9,572. Table 8 estimates the net dollar values of the over- and underreported ADA for each Inspire Charter School for Tracks A, B, and C.

**Table 8**

#### **Tracks A, B, and C Attendance Summary: 2017-18 through 2019-20**

Abbreviated Inspire Charter School Name Year(s) Sampled	Amount ADA (Over-)/Underreported			Est. Dollar Value ADA (Over)/Underreported
	Track A	Tracks B -C	Total	
Yosemite Valley				
2017-18	N/A	-0.61	-0.61	\$(5,895)



Abbreviated Inspire Charter School Name Year(s) Sampled	Amount ADA (Over-)/Underreported			Est. Dollar Value ADA (Over)/Underreported
	Track A	Tracks B -C	Total	
2018-19	N/A	-1.18	-1.18	(10,713)
2019-20	N/A	-	-	-
<b>Total</b>	<b>N/A</b>	<b>-1.79</b>	<b>-1.79</b>	<b>(16,608)</b>
Cabrillo Point				
2017-18	-4.42	-3.19	-7.61	(63,922)
2018-19	-0.38	0.23	-0.15	(1,808)
2019-20	N/A	-0.57	-0.57	(5,690)
<b>Total</b>	<b>-4.80</b>	<b>-3.53</b>	<b>-8.33</b>	<b>(71,420)</b>
Pacific Coast				
2017-18	-8.39	-3.21	-11.6	(100,208)
2018-19	N/A	-5.07	-5.07	(47,233)
2019-20	N/A	7.48	7.48	70,100
<b>Total</b>	<b>-8.39</b>	<b>-0.80</b>	<b>-9.19</b>	<b>(77,341)</b>
Clarksville				
2017-18	N/A	2.75	2.75	22,462
2018-19	N/A	-0.18	-0.18	(1,645)
2019-20	N/A	-0.01	-0.01	(91)
<b>Total</b>	<b>N/A</b>	<b>2.56</b>	<b>2.56</b>	<b>20,726</b>
Cottonwood (opened 2019-20)				
2019-20	N/A	0.25	0.25	2,581
<b>Total</b>	<b>N/A</b>	<b>0.25</b>	<b>0.25</b>	<b>2,581</b>
Feather River				
2017-18	-38.62	-1.43	-40.05	(335,241)
2018-19	-17.68	-2.10	-19.78	(170,649)
2019-20	N/A	-0.27	-0.27	(2,313)
<b>Total</b>	<b>-56.30</b>	<b>-3.80</b>	<b>-60.10</b>	<b>(508,203)</b>
Heartland (opened 2018-19)				
2019-20	N/A	-1.59	-1.59	(14,018)
<b>Total</b>	<b>N/A</b>	<b>-1.59</b>	<b>-1.59</b>	<b>(14,018)</b>
Blue Ridge				
2018-19	-0.02	6.00	5.98	55,060
<b>Total</b>	<b>-0.02</b>	<b>6.00</b>	<b>5.98</b>	<b>55,060</b>
CMO-ICS, Provenance	N/A	N/A	N/A	N/A
<b>TOTALS</b>	<b>-69.51</b>	<b>-2.70</b>	<b>-72.21</b>	<b>\$(609,223)</b>

(N/A = not applicable: no summer program, Inspire Charter School not operating, year not sampled, or CMO with no students)

Table 8 quantifies in dollars the possible results if the individual Inspire Charter Schools were held accountable for the CMO's programs, operations, oversight, and potential negligence. Five Inspire Charter Schools

may have been overreported in ADA, receiving too much funding, and three Inspire Charter Schools may have been underreported, receiving too little.

The attendance calculation dollar amounts in Table 8 include the Local Control Funding Formula base grant amount for each grade span of the Inspire Charter Schools and estimated additional supplemental funding built on each Inspire Charter School's certified unduplicated pupil percentage (UPP). The UPP is another calculation that factors into the amount of money a school receives for each student's characteristics such as family income, English learner status or foster youth. In total, the potential estimated dollar value of the net overreporting of ADA is (\$609,223).

# Enrollment, Student Addresses, ISAs, Credentials, Student Work Product

Other areas related to attendance such as enrollment practices, residency, ISAs, teacher credentials, and student work product were examined on a sample basis. This information is presented in the tables and analysis below.

## Enrollment

Enrollment was sampled by sending confirmation letters to the parents of students based on student information provided by the Inspire Charter Schools. The Inspire Charter Schools used the student information software managed and controlled by the CMO. Confirmation letters requested students' parent/guardian/custodian complete a questionnaire and return it to FCMAT. See the document attached as [Appendix G](#) to this report for an example of the complete confirmation letter. The document's questions are summarized as follows:

1. Are you the parent and/or guardian?
2. What years was your student enrolled in Inspire or [charter name inserted here]?
3. What program was your student participating in?
4. Was your student enrolled in another school, such as another public or private school, at the same time they attended Inspire or [charter name inserted here]?
5. Did your student receive Education Funds of \$2,600 (K-8), \$2,800 (9-12) or other amount \$\_\_\_\_\_ in 2017-18, 2018-19 or 2019-20?

Once completed, the parent/guardian was asked to sign and date the letter and return it to the address provided or scan and email it to the FCMAT site lead's email address shown on each Inspire Charter School's confirmation letter. The letter also provided an option for the recipients to contact the Inspire Charter School or FCMAT if they had any questions or concerns.

Confirmation letters are inherently inaccurate for the following reasons:

- Some people may try to provide the answer they think is desired.
- The response may be completed by someone who does not understand the questions.
- The responder may not know the answers but guesses or is afraid that they may get in trouble if the answer is incorrect.

FCMAT established the minimum number of confirmations as 80 per Inspire Charter School. A total of 734 confirmation letters were sent, and two additional mailings of confirmation letters were sent to nonrespondents to increase the number of responses. A total of three mailings were sent, with the goal of receiving a return rate of at least 30%. Of the 734 confirmations sent, based on three total attempts, 54.1% or 397 were returned, a return rate that was better than anticipated. The team established a false response deviation rate of 3% based on FCMAT's experience and judgment with confirmations. This means that because of the inherent inaccuracy or error rates of those who respond to confirmations, if more than 3%, or 12 of the 397 returned for all Inspire Charter Schools, contained deviations, it would be considered significant, and FCMAT may decide to contact nonrespondants directly at its discretion. In total, only eight deviations were identified representing a 2% deviation return rate. The student enrollment confirmation testing is shown in Table 9 below.

**Table 9****Enrollment Confirmation Testing: 2017-18 through 2019-20**

Abbreviated Inspire Charter School Name	Number Sampled	Number Confirmed <sup>(1)</sup>	% Returned	Number of Deviations	Type of Deviation
Yosemite Valley	141	29	20.6%	-	
Cabrillo Point	122	88	72.1%	-	
Pacific Coast	84	57	67.9%	5	<b>A</b>
Clarksville	55	34	61.8%	-	
Cottonwood (opened 2019-20)	80	68	85.0%	2	<b>D</b>
Feather River	96	54	56.3%	-	
Heartland (opened 2018-19)	70	43	61.4%	1	<b>E</b>
Blue Ridge	86	24	27.9%	-	
CMO-ICS, Provenance	N/A	N/A	N/A	N/A	N/A
<b>Totals</b>	<b>734</b>	<b>397</b>	<b>54.1%</b>	<b>8</b>	

<sup>(1)</sup> Number returned is composed of first, second, and third mailing attempts

(N/A = not applicable)

The confirmations were used to identify various possible errors or irregularities also known as deviations. The deviation types used to measure the confirmations are described as follows:

- A** = Student record shows enrolled at the Inspire Charter School, but the confirmation indicates not enrolled at the charter.
- B** = Type of program, classroom- or nonclassroom-based, differs from the student record.
- C** = Student concurrently enrolled in another school during the Inspire Charter School's same school day.
- D** = Form returned incomplete.
- E** = Student resides outside of the county the Inspire Charter School is authorized and located in and its contiguous counties.

Two deviation types were not found in the sampling, types **B** and **C**. The five deviations shown as type **A** at Pacific Coast were responses that indicated the student did not attend the Inspire Charter School. This is likely true, and because the CMO was known to move students to different Inspire Charter Schools without the individual school's knowledge, the confirmation responses were probably accurate. Nevertheless, a total of only eight deviations were identified; therefore, no further follow-up was considered necessary. Similarly, deviation type **D** represented two incomplete confirmation forms and deviation **E** represents one address that is outside of the county the Inspire Charter School is authorized and located in and its contiguous counties. That address may be the location of a divided household address; however, even if the address were truly outside of the county the Inspire Charter School is authorized and located in and its contiguous counties, the single deviation is well within the 3% error rate of all schools combined. Additional student address sampling was conducted and shown in the next section below. Overall, the return of 397 confirmations was more than expected, and the error rate was lower than anticipated. The enrollment sampling is considered representative and reasonable; therefore, no further followup was considered necessary.

## Student Addresses

Student addresses were evaluated by exporting each Inspire Charter School's best available student address record into public database search tools and comparing them to the county where the Inspire Charter School is located. Addresses from student confirmations discussed above were also used as part of the sample. FCMAT did not establish a minimum sample size, but randomly selected student addresses or reviewed the entire database of addresses for each Inspire Charter School. The team established an address mismatch deviation rate of 1% based on FCMAT's experience and judgment.

In FCMAT's experience, the most common address mismatch is due to separate parent/guardian households; this means the student may reside within the county the Inspire Charter School is authorized and located in and its contiguous county boundaries with one parent/guardian while the parent who registered the student lives elsewhere. Specific to Inspire and the CMO's poor internal control system and CMO-controlled student information software, coding errors may have been made, or student records may have been moved without the Inspire Charter Schools' knowledge.

The 1% address mismatch deviation rate means that if more than 80 addresses of the 7,881 total for all Inspire Charter Schools combined contained deviations, it would be considered significant, and parents/guardians may be contacted directly by FCMAT. In total, 80 deviations were identified representing a 1% deviation rate. The student address testing is shown Table 10.

**Table 10**

**Student Address Testing: 2017-18 through 2019-20**

Abbreviated Inspire Charter School Name	Addresses Sampled	Address Deviations	% Deviations to Sampled	Type of Deviation
Yosemite Valley	3,635	62	1.7%	<b>C</b>
Cabrillo Point	122	-	0.0%	
Pacific Coast	84	-	0.0%	
Clarksville	42	-	0.0%	
Cottonwood (opened 2019-20)	80	-	0.0%	
Feather River	3,872	17	0.4%	<b>C</b>
Heartland (opened 2018-19)	27	1	3.7%	<b>A</b>
Blue Ridge	19	-	0.0%	
CMO-ICS, Provenance	N/A	N/A	N/A	N/A
<b>Totals</b>	<b>7,881</b>	<b>80</b>	<b>1.0%</b>	

(N/A = not applicable)

Student address testing involved identifying various possible errors or irregularities also known as deviations. The deviation types used to measure the addresses are described as follows:

- A** = Address was recorded for the wrong parent address outside of the county the Inspire Charter School is authorized and located in and its contiguous county's boundaries.
- B** = Student address cannot be verified.
- C** = Student address is considered outside of the county the Inspire Charter School is authorized and located in and its contiguous county's boundaries.

Deviation type **B** was not present in the sampling. The 62 type **C** deviations at Yosemite Valley were addresses considered outside of the county the Inspire Charter School is authorized and located in and its

contiguous county's boundaries. This is likely true; however, because the CMO was known to move students to different Inspire Charter Schools without the individual school's knowledge, it is possible that the student's record was at one Inspire Charter School while the student attended a different Inspire Charter School independent study program. Nevertheless, rounding the percentage to only one decimal place, in total, the established deviation rate was not exceeded; therefore, no further follow-up was considered necessary.

## Independent Study Agreements

Independent study agreements were evaluated to determine whether attendance was claimed prior to the signature date of the ISA and whether the correct signatures were shown on the document. FCMAT did not establish a minimum sample size, but randomly selected ISAs for each Inspire Charter School. The team established a 1% deviation rate based on FCMAT's experience and judgment. In FCMAT's experience, the most common ISA signature and date mismatch is due to a delay in obtaining one of the required signatures, parent/guardian, teacher, or student, and attendance is claimed as of the first signature date. Typically, this date mismatch difference is one day between gathering all signatures. ISAs are controlled at the local Inspire Charter School level with little CMO interference; therefore, FCMAT expected few deviations.

The 1% ISA deviation rate means that if more than 1% or 2 (rounded down) of the ISAs of the 249 total for all Inspire Charter Schools combined contained deviations, it would be considered significant, and parents/guardians may be contacted directly by FCMAT. In total, 1 deviation was identified representing a .4% deviation rate. Table 11 below shows ISA testing.

**Table 11**

### **Independent Study Agreement Testing: 2017-18 through 2019-20**

Abbreviated Inspire Charter School Name	Total Sampled	Number of Deviations	% Deviations to Total Sampled	Type of Deviation
Yosemite Valley	70	1	1.4%	<b>A</b>
Cabrillo Point	24	-	0.0%	
Pacific Coast	17	-	0.0%	
Clarksville	13	-	0.0%	
Cottonwood (opened 2019-20)	32	-	0.0%	
Feather River	67	-	0.0%	
Heartland (opened 2018-19)	7	-	0.0%	
Blue Ridge	19	-	0.0%	
CMO-ICS, Provenance	N/A	N/A	N/A	N/A
<b>Totals</b>	<b>249</b>	<b>1</b>	<b>0.4%</b>	

(N/A = not applicable)

ISA testing involved identifying various possible errors or irregularities also known as deviations. The deviation types used to measure the ISAs are described as follows:

**A** = First date of actual attendance claimed is before the ISA signature date.

**B** = ISA is not signed by the parent, teacher and student.



Deviation type **B** was not present in the sampling. The single type **A** deviation at Yosemite Valley is attributed to attendance claimed one day early. In total, the combined 1% deviation rate was not exceeded; therefore, no further follow-up was considered necessary.

## Teaching Credentials

Teaching credentials were evaluated to determine if the teacher of record held an appropriate and valid teaching credential. FCMAT did not establish a minimum sample size but randomly selected teachers from each Inspire Charter School. The team established a 1% deviation rate. The 1% teaching credential deviation rate was established based on FCMAT's experience and judgment. In FCMAT's experience, the most common teaching credential error is due to misassignment of the teacher based on the teacher's credential and teaching assignment. Typically, these types of errors are rare because credentials are controlled at the local Inspire Charter School level with little CMO interference. FCMAT expected no deviations.

The 1% teaching credential deviation rate means that if more than 1% or 1 (rounded down) of the teaching credentials of the total 123 for all Inspire Charter Schools combined contained deviations, it would be considered significant, and the teacher may be contacted directly by FCMAT. In total, no deviations were identified representing a 0% deviation rate. The teaching credential testing is shown in Table 12.

**Table 12**

### Teaching Credential Testing: 2017-18 through 2019-20

Abbreviated Inspire Charter School Name	Total Teachers Sampled	Number of Deviations	% Deviations to Total Sampled	Type of Deviation
Yosemite Valley	7	-	0.0%	
Cabrillo Point	21	-	0.0%	
Pacific Coast	15	-	0.0%	
Clarksville	8	-	0.0%	
Cottonwood (opened 2019-20)	14	-	0.0%	
Feather River	42	-	0.0%	
Heartland (opened 2018-19)	6	-	0.0%	
Blue Ridge	10	-	0.0%	
CMO-ICS, Provenance	N/A	N/A	N/A	N/A
<b>Totals</b>	<b>123</b>	<b>-</b>	<b>0.0%</b>	

(N/A = not applicable)

Teaching credential testing involved identifying various possible errors or irregularities also known as deviations. The deviation types used to measure the credentials are described as follows:

- A** = Teaching credential not valid.
- B** = Teaching credential is incorrect for the classes being taught (misassignment.)
- C** = Teaching credential does not agree with state website listing of credentials.

No deviations were identified; therefore, no further follow-up was considered necessary.

## Student Work Product

Student work product or assignments were evaluated to determine if the work product was reasonable. Independent study student work product is not required to be kept for every assignment a student engages, but only a sample. The student's credentialed teacher is the final arbitrator of whether the student is meeting their objectives and which work product samples to retain. FCMAT did not establish a minimum sample size but randomly selected students and their work product documentation for each Inspire Charter School. The team established a 1% deviation rate based on FCMAT's experience and judgment. In FCMAT's experience, the most common work product error is that documentation was retained on paper, not scanned, and subsequently misplaced. Typically, these types of errors are rare and because student work product is controlled at the local Inspire Charter School level with little CMO interference, FCMAT expected no deviations.

The 1% student work product deviation rate means that if more than 1% or 2 (rounded down) of the student work product examples of the 250 total for Inspire Charter Schools combined contained deviations, it would be considered significant, and the teacher and/or parent may be contacted directly by FCMAT. In total, no deviations were identified representing a 0% deviation rate. Student work product testing is shown in Table 13.

**Table 13**

### **Student Work Product: 2017-18 through 2019-20**

Abbreviated Inspire Charter School Name	Total Students Sampled	Number of Deviations	% Deviations to Total Sampled	Type of Deviation
Yosemite Valley	69	-	0.0%	
Cabrillo Point	27	-	0.0%	
Pacific Coast	17	-	0.0%	
Clarksville	13	-	0.0%	
Cottonwood (opened 2019-20)	32	-	0.0%	
Feather River	67	-	0.0%	
Heartland (opened 2018-19)	6	-	0.0%	
Blue Ridge	19	-	0.0%	
CMO-ICS, Provenance	N/A	N/A	N/A	N/A
<b>Totals</b>	<b>250</b>	<b>-</b>	<b>0.0%</b>	

(N/A = not applicable)

Student work product testing involved identifying various possible errors or irregularities also known as deviations. The deviation types used to measure the student work product is described as follows:

- A** = Example student work product is not available.
- B** = Example student work product is insufficient or not representative of work performed.
- C** = No evidence that student is doing assignments.
- D** = Student work product does not meet standards for teacher review and acceptance.

No deviations were identified; therefore, no further follow-up was considered necessary.

## Pupil-to-Teacher Ratio

Pupil-to-teacher ratios were evaluated to determine if the teacher had no more than 25 students attending their class. Education Code 51745.6(d) sets the independent study pupil-to-teacher ratio at 25 students for every one teacher. The ratio may be determined by calculating a fixed ADA-to-teacher ratio of 25-to-1 or by using a ratio of less than 25 pupils per teacher. An alternative higher or lower pupil-to-teacher ratio may be negotiated for charter schools in a collective bargaining agreement or an MOU.

Education Code 51745.6(e) did not require pupil-to-teacher ratio analyses to be verified for annual audit purposes until 2021-22. However, the 2019-20 audit guide at section CC.2. states, “Verify the charter school’s independent study ratio calculation, made pursuant to title 5, CCR, 11704, of ineligible ADA, if any, generated through independent study.”

FCMAT established a minimum sample size of five teachers for each Inspire Charter School. The sampling was performed by selecting individual teachers and their students or all teachers and all students from each Inspire Charter School’s attendance records for a single year, two years, or all three fiscal years. The team established a 0.5% deviation rate based on FCMAT’s experience and judgment.

Pupil-to-teacher ratios may be skewed higher than 25-1 if the teacher’s roster of students were compared rather than the attendance register of students. If a student roster were not continually updated by the student information system, student class size could appear larger; however, this is uncommon.

Because the CMO could move students at will and without the Inspire Charter School’s knowledge, FCMAT expected seven deviations, meaning there may be seven teachers with class sizes based on attendance exceeding 25 students. The 0.5% pupil-to-teacher deviation rate means that if more than 0.5% or seven (rounded down) of the teachers’ class sizes exceeded the ratio of 25-to-1, it would be considered significant. The pupil/student-to-teacher testing is shown in Table 14.

**Table 14**

### **Student-to-Teacher Ratio 25-to-1 Testing, 2017-18 through 2019-20**

Abbreviated Inspire Charter School Name	Teachers Sampled	Number of Deviations	% Deviations to Total Sampled Sampled	Type of Deviation
Yosemite Valley	225	-	0.0%	
Cabrillo Point	187	-	0.0%	
Pacific Coast	198	-	0.0%	
Clarksville	8	-	0.0%	
Cottonwood (opened 2019-20)	110	-	0.0%	
Feather River	225	-	0.0%	
Heartland (opened 2018-19)	236	-	0.0%	
Blue Ridge	312	-	0.0%	
CMO-ICS, Provenance	N/A	N/A	N/A	N/A
<b>Totals</b>	<b>1,501</b>	<b>-</b>	<b>0.0%</b>	

(N/A = not applicable)

Pupil-to-teacher testing involved identifying various possible errors or irregularities also known as deviations. The deviation types used to measure the pupil-to-teacher 25-to-1 ratio are described as follows:

**A** = Pupil/student to teacher ratio of 25-to-1 exceeded based on individual teachers sampled.

**B** = Pupil/student to teacher ratio of 25-to-1 exceeded based on an average of individual teachers sampled.

No deviations were identified; therefore, no further follow-up was considered necessary.

# Inspire Charter School Physical Location and Depreciable Fixed Assets

FCMAT also visited all known locations for those Inspire Charter Schools associated to this review and examined documentation of property and equipment (fixed asset).

## Inspire Charter School Physical Location

The team visited Inspire network locations such as school offices, lending libraries, books and supplies locations, or any other alleged location that could be identified. A list of 81 locations throughout California was compiled from addresses provided by the Inspire Charter Schools, the CMO, auditors, back-office service providers, public database searches, and county office and Inspire Charter School authorizers. The purpose of the location testing was to identify if any locations were active resource centers or classrooms outside of the county Inspire Charter School is authorized and located in and its contiguous county's boundaries.

Location visits were conducted between December 2020 and October 2022. Any location that had a higher perceived possibility that it might be a resource center outside of the county the Inspire Charter School is authorized and located in and its contiguous county's boundaries were visited first. Any location that was thought to be attributable to a specific Inspire Charter School was included with the known locations for that Inspire Charter School. Any other location was added to the "all other alleged locations" category.

FCMAT did not establish a minimum sample size but compiled all possible locations it was aware of. The team established a 1% deviation rate based on FCMAT's experience and judgment. In FCMAT's experience, the most common resource center location error is that a lending library may be confused with a teaching resource center. FCMAT expected no deviations. The 1% location deviation rate means that if more than 1% or 1 (rounded up) of the locations of the 81 total for all Inspire Charter Schools combined contained deviations, it would be considered significant. In total, no deviations were identified representing a 0% deviation rate. The results of location visit testing are shown in Table 15 below.

**Table 15**

### **Testing of Potential Active Non-Classroom-Based Instruction (Resource Center) Locations Outside of Authorizer Geographic Boundaries**

Abbreviated Inspire Charter School Name	Known Locations	Active Resource Centers or Classrooms Outside of Authorizer Boundary	Number of Deviations	% Deviations of Transactions Tested
Yosemite Valley	3	-	-	0.0%
Cabrillo Point	5	-	-	0.0%
Pacific Coast	5	-	-	0.0%
Clarksville	3	-	-	0.0%
Cottonwood (opened 2019-20)	5	-	-	0.0%
Feather River	3	-	-	0.0%
Heartland (opened 2018-19)	3	-	-	0.0%
Blue Ridge	8	-	-	0.0%
All Other Alleged Locations	46	-	-	0.0%
<b>Totals</b>	<b>81</b>	<b>-</b>	<b>-</b>	<b>0.0%</b>

Physical location testing involved identifying various possible errors or irregularities also known as deviations. Only one deviation type was used to measure the physical locations. That type would be if the location was found to be an operating resource center outside the authorizer's boundary.

No deviations were identified; therefore, no further follow-up was considered necessary.

## Depreciable Fixed Assets

Depreciable fixed assets were evaluated to determine if they were shown in audit reports, Inspire Charter School accounting records, nonprofit tax returns, or other documentation. Not all assets purchased are depreciated. The Inspire Charter Schools may have assets such as small equipment items including computers, furniture, etc. Depreciable fixed assets are larger higher dollar value items such as buildings, vehicles, large computer server systems, and other equipment that may have an accounting depreciable life of a few years or more.

Depreciable fixed assets are capitalized upon purchase and shown as an asset in the balance sheet. Nonfixed assets are not capitalized but expensed when purchased, meaning their useful life is below a set dollar threshold per individual item or is useful only in the year purchased. The Inspire Charter Schools' audit reports define the capitalization threshold as "The School records property and equipment additions over \$5,000 at cost, or if donated, at fair value on the date of donation." It further states, "Depreciation and amortization are computed using the straight-line method over the estimated useful lives of the assets ranging from 3 to 30 years..."

FCMAT did not establish a minimum sample size but examined the available depreciable fixed asset ledgers and Inspire Charter School audit report classifications of additions and deletions. That information was compared to the Inspire Charter Schools nonprofit Form 990 tax returns and any other documents available for each Inspire Charter School. The team did not establish a deviation rate. Depreciable fixed assets could either be reconciled to supporting information or not. Because the CMO controlled all purchases throughout the Inspire network, FCMAT expected at least one deviation. In total, two deviation types were identified as shown in depreciable fixed asset testing Table 16 below.

**Table 16**

### **Depreciable Fixed Asset Testing, fiscal years 2017-18 through 2019-20**

Abbreviated Inspire Charter School Name	Fixed Assets Reviewed Yes/No	Number of Deviations	Type of Deviation
Yosemite Valley	Yes	-	
Cabrillo Point	Yes	2	A, B
Pacific Coast	Yes	-	
Clarksville	Yes	-	
Cottonwood (opened 2019-20)	Yes	-	
Feather River	Yes	-	
Heartland (opened 2018-19)	Yes	-	
Blue Ridge	Yes	-	
CMO-ICS, Provenance	Yes	-	
<b>Totals</b>	<b>Yes</b>	<b>2</b>	



Each Inspire Charter School's records were searched for the existence of depreciable fixed assets. If the Inspire Charter School did not have any depreciable fixed assets, it was counted as having been tested for depreciable fixed assets.

Depreciable fixed asset testing involved identifying various possible errors or irregularities also known as deviations. The deviation types used to measure the depreciable fixed assets are described as follows:

**A** = Asset cannot be located.

**B** = Transfer/deletion of asset not documented because it is controlled by CMO.

Both deviation types **A** and **B** were present in the testing. The two deviations represent three vans that were purchased in February 2018. According to the management of the Inspire Charter School, the CMO deleted/transferred the three vans from the Inspire Charter School's records to the Inspire Education Foundation; however, no documentation is available from the foundation to provide further information about the disposition of the vans.

## Other

- During the audit, FCMAT became aware that the United States Securities and Exchange Commission (SEC) was investigating ICS and four Inspire Charter Schools, Blue Ridge Academy, Pacific Coast Academy, Heartland Charter, and Yosemite Valley Charter. The Inspire Charter Schools were represented through the CMO, which in turn was represented by legal counsel. The SEC concluded its investigation and issued its findings in a letter dated January 7, 2021. ICS and each of the four Inspire Charter Schools received the same letter referencing, "In the Matter of Inspire Charter Schools (SF-4333)." The letters are addressed to each entity and care of the CMO counsel. The conclusion of the SEC letter states the following:

We have concluded the investigation as to Inspire Charter Schools. Based on the information we have as of this date, we do not intend to recommend an enforcement action by the Commission against Inspire Charter Schools.

A copy of the SEC letter to ICS is attached as [Appendix H](#) to this report.

## Judgments Regarding Guilt or Innocence

The existence of fraud, misappropriation of funds and/or assets, or other illegal fiscal practices is solely the purview of the courts. FCMAT is not making statements that could be construed as a conclusion that fraud, misappropriation of funds and/or assets, or other illegal fiscal practices have occurred. These terms are a broad legal concept, and auditors do not make legal determinations regarding whether illegal activity has occurred.

In accordance with EC 1241.5(c), the county superintendent is required to report the findings and recommendations to the charter school's governing board at a regularly scheduled board meeting and provide a copy of the information to the chartering authority of the charter school, within 45 days of completing the audit. Within 15 days of receipt of the report, the governing board of the charter school is required to notify the county superintendent and its chartering authority of its proposed actions regarding the county superintendent's recommendations.

## Conclusion

Based on the findings in this report, acknowledging the status of records and the lack of cooperation of a key party, there is insufficient evidence to demonstrate that fraud, misappropriation of funds and/or assets, or other illegal fiscal practices may have occurred in the specific areas reviewed.

The deficiencies and exceptions noted during FCMAT's review of the Inspire network's financial records and internal control environment increase the probability of fraud, mismanagement and/or misappropriation of the Inspire Charter Schools' assets. The Inspire Charter Schools have separated from the CMO and any sole member controlling interest by the CMO no longer exists as of this report. Even though the Inspire Charter Schools have separated from the CMO and are their own independent organizations, these findings should be used as the basis for the SPI to recover and fund overapportionments and underapportionments from individual schools and as an opportunity for the former Inspire Charter Schools to improve. Therefore, these findings should be of great concern to the Inspire Charter Schools, authorizers and each county office as listed in Table 1 and require immediate intervention to limit the risk of fraud, mismanagement and/or misappropriation of assets, or other illegal fiscal practices.

## Recommendation

It is recommended that each of the respective county superintendents report the findings and recommendations of this review to the governing boards of each of the named Inspire Charter Schools as listed in Table 1 at a regularly scheduled board meeting within 45 days of the completion of the review. The governing board of each Inspire Charter School as listed in Table 1 shall, no later than 15 calendar days after receipt of the report, notify the county superintendent of its proposed actions on the county superintendent's recommendations. It is further recommended that each respective county superintendent notify the governing board of each of the respective chartering authorities, the state controller, and the SPI regarding overreported/underreported apportionment of ADA.

# Appendices

- A: Study Agreement**
- B: Corporate Narrative**
- C: Pacific Coast Academy District Office Services Agreement**
- D: Education and Support Services Agreement Between Provenance and Pacific Coast**
- E: Pacific Coast Academy Bylaws**
- F: Nichols Separation Agreement**
- G: Inspire Sample Student Confirmation**
- H: Letter to Inspire Charter Schools**

# Appendix A: Study Agreement

## FCMAT

FISCAL CRISIS & MANAGEMENT  
ASSISTANCE TEAM

**FISCAL CRISIS & MANAGEMENT ASSISTANCE TEAM**  
**AB139 STUDY AGREEMENT**  
**February 12, 2020**  
**AMENDED AB139 STUDY AGREEMENT**  
**June 21, 2021**

The Fiscal Crisis and Management Assistance Team (FCMAT), hereinafter referred to as the team, and the El Dorado County Office of Education, Fresno County Superintendent of Schools, Kern County Superintendent of Schools, Los Angeles County Office of Education, Placer County Office of Education, San Diego County Office of Education, Sutter County Superintendent of Schools, and Ventura County Office of Education, hereinafter referred to as the COEs or county superintendents, mutually agree as follows:

### 1. BASIS OF AGREEMENT

The team provides a variety of services to local educational agencies (LEAs). Pursuant to the provisions of Education Code (EC) Section 1241.5 (c), county superintendents may review or audit the expenditures and internal controls of any charter school in their county if they have reason to believe that fraud, misappropriation of funds, or other illegal fiscal practices have occurred that merit examination. The extraordinary audits conducted by the county superintendents shall be focused on the alleged fraud, misappropriation of funds, or other illegal fiscal practices and shall be conducted in a timely and efficient manner.

All work shall be performed in accordance with the terms and conditions of this agreement.

### 2. SCOPE OF THE WORK

#### A. Scope and Objectives of the Study

The county superintendents listed above have requested that FCMAT assign professionals to conduct an AB 139 Extraordinary Audit pursuant to Education Code Section 1241.5 (c). The county superintendents have received information regarding possible fraud, misappropriation of funds or other illegal fiscal practices at the charter schools listed below, all of which are current or former entities of Inspire Charter Schools.

COE	Name of Charter School	Also Known As	Authorizing School District
Fresno	ICS-Central	Yosemite Valley Charter	Westside Elementary

San Diego	Cabrillo Point Academy	ICS-South	Dehesa Elementary
San Diego	Pacific Coast Academy	ICS-Pacific Coast, or Learning Latitudes	Dehesa Elementary
El Dorado	Clarksville Charter		Buckeye Union
El Dorado	Cottonwood Charter		Buckeye Union
Sutter	Feather River Charter	ICS-North	Winship-Robbins
Kern	Heartland Charter	ICS-Kern	Maricopa Unified
Kern	Blue Ridge Academy		Maricopa Unified

The main focus of this review is to determine, based on the sample testing performed and the auditor's judgment, whether (1) any charter claimed attendance apportionment to which it was not entitled; was involved in any undisclosed or inappropriate related-party transactions that were in conflict with state and federal policies and standards or that violated conflict of interest laws, and whether the charter was involved in financial transactions that were not for legitimate educational purposes, or operated any resource centers outside of their authorized areas; and (2) based on that assessment, determine whether fraud, misappropriation of funds or other illegal fiscal practices may have occurred.

The team will review and test recorded transactions for the fiscal years described in the scope of this agreement to determine if fraud, misappropriation of funds or other illegal activities may have occurred. Testing for this review will be based on the auditor's judgment and a sample of transactions and records for the specified period. Testing and review results are intended to provide reasonable but not absolute certainty about whether the charters' financial transactions and activity were sufficiently accurate.

Most specifically, the county superintendents are requesting that FCMAT conduct a review to:

1. Evaluate attendance practices for the charters and review supporting documents for school years 2017-18, 2018-19 and 2019-20 to date to determine if attendance apportionment claimed from the state of California is substantiated, including residency within the operational boundaries approved by each charter petition, pupil-to-teacher ratios, and students who have dual enrollment in private sectarian schools.
2. Evaluate enrollment practices for the charters and review supporting documents for school years 2017-18, 2018-19 and 2019-20 to date to determine if enrollment and enrollment for specific student subgroups

(English learners, low income and foster youth) is substantiated as related to the calculation of the Local Control Funding Formula.

3. Determine whether any of the charter schools listed above engaged in undisclosed or inappropriate related-party transactions and, if so, whether those transactions were conducted openly and in accordance with established national and state policies, standards and procedures. Many Inspire schools recently underwent a name change. The scope in this area will apply to each charter school listed above for fiscal years 2017-18, 2018-19 and 2019-20 to date, regardless of any name change. The team will:
  - a. To the extent reasonably possible, identify related parties and determine if the relationship was properly disclosed and/or appropriate.
  - b. Review the charter petitions, articles of incorporation, and bylaws.
  - c. Review vendor listings, vendor detail transaction reports, contracts, purchase orders and memoranda of understanding, for fiscal years 2017-18 through 2019-20 to date.
  - d. Review financial transactions of the charter schools and any related party for fiscal years 2017-18 through 2019-20 to date.
  - e. Review any charter property or assets transferred to any related party for fiscal years 2017-18 through 2019-20 to date.
  - f. Review the annual independent audits for fiscal years ending June 30, 2017; June 20, 2018; and June 30, 2019.
  - g. Review funding determinations for, 2017-18, 2018-19 and 2019-20 to date.
  - h. Review Internal Revenue Service (IRS) Forms 990 for 2017, 2018 and 2019.
4. Determine if loans or transfers made to or from the charter schools for 2017-18, 2018-19 and 2019-20 to date were for legitimate educational purposes, and if they had proper approval and were in accordance with California charter law.
5. Determine whether any conflict of interest standards may have been violated by any of the charter schools' local public officials, designated employees, or any "consultant to the organization who makes, participates in making, or acts in a staff capacity for making governmental decisions" as defined in the Political Reform Act (PRA) of 1974 (Government Code Sections 81000 – 91014).



- a. Review applicable PRA Form 700 filings from 2017 through 2020 to date.
  - b. Review applicable board meeting minutes and other documents from 2017 through 2020 to date.
5. To the extent possible, evaluate the existence of any Inspire-related charters that operate resource centers outside of their authorized areas for the counties previously listed, including Los Angeles, Placer and Ventura counties.

**B. Services and Products to be Provided**

1. Orientation Meeting – The team will conduct an orientation session at the charters to brief management and supervisory personnel on the team’s procedures and the purpose and schedule of the study.
2. On-Site Review – The team will conduct an on-site review at the charters’ offices and at school sites if necessary; pertinent documents will also be reviewed off site.
3. Progress Reports – The team will inform the COEs of material issues as the review is performed.
4. Exit Meeting – The team will hold an exit meeting at the conclusion of the on-site review to inform the COEs of any significant findings to that point.
5. Draft Report – When appropriate, electronic copies of a preliminary draft report will be delivered to the COEs’ administrations for review and comment on a schedule determined by the team.
6. Final Report – One final report will be issued covering the scope of work. Electronic copies of the final report will be delivered to the COEs following completion of the review. Printed copies are available from the FCMAT office upon request.
7. Follow-Up Support – If requested, the team will meet with the COEs and/or charters to discuss the findings and recommendations of the report.

**PROJECT PERSONNEL**

The FCMAT study team may include:

<b>A.</b>	<b><i>Michael Ammermon</i></b>	<b><i>FCMAT Staff</i></b>
<b>B.</b>	<b><i>To Be Determined</i></b>	<b><i>FCMAT Staff</i></b>
<b>C.</b>	<b><i>To Be Determined</i></b>	<b><i>FCMAT Staff</i></b>
<b>D.</b>	<b><i>To Be Determined</i></b>	<b><i>FCMAT Staff</i></b>
<b>E.</b>	<b><i>To Be Determined</i></b>	<b><i>FCMAT Staff</i></b>
<b>F.</b>	<b><i>To Be Determined</i></b>	<b><i>FCMAT Staff</i></b>
<b>G.</b>	<b><i>To Be Determined</i></b>	<b><i>FCMAT Consultant</i></b>

Other equally qualified staff or consultants will be substituted in the event one of the above individuals is unable to participate in the study.

#### 4. **PROJECT COSTS**

The cost for studies requested pursuant to EC 42127.8 (d) (1) shall be:

- A. \$1,100 per day for each staff team member while on site, conducting fieldwork at other locations, presenting reports, or participating in meetings. The cost of independent FCMAT consultants will be billed at their actual daily rate for all work performed.
- B. All out-of-pocket expenses, including travel, meals and lodging.

**Based on the elements noted in Section 2A, the total estimated cost of the study will be \$425,000.**

- C. Any change to the scope will affect the estimate of total cost.
- D. This study agreement involves multiple county superintendents. The cost to complete this study agreement shall be borne by each of the COEs in equal share (eight county superintendents, each shall pay 1/8 or 12.5% of the costs).

Payments for FCMAT's services are payable to Kern County Superintendent of Schools - Administrative Agent, located at 1300 17<sup>th</sup> Street, City Centre, Bakersfield, CA 93301. Clients may qualify for reimbursement from funds set aside for this purpose, pursuant to AB 139.

#### 5. **RESPONSIBILITIES OF THE COEs AND/OR CHARTERS**

- A. The charters will provide office and conference room space during on-site reviews.
- B. The charters will provide the following if requested:
  1. Policies, regulations and prior reports addressing the study request
  2. Current or proposed organizational charts
  3. Current and two prior years' audit reports
  4. Any documents requested on a supplemental list. Documents requested on the supplemental list should be provided to FCMAT only in electronic format; if only hard copies are available, they should be scanned by the charters and sent to FCMAT in an electronic format
  5. Documents should be provided in advance of fieldwork; any delay in the receipt of the requested documents may affect the start date and/or completion date of the project. Upon approval of the signed study agreement, access will be provided to FCMAT's online SharePoint document repository where the charters shall upload all requested

documents.

- C. The county superintendents will review a draft copy of the study. Any comments regarding the accuracy of the data presented in the report or the practicability of the recommendations will be reviewed with the team prior to completion of the final report. Comments on the draft report shall be provided to FCMAT within ten (10) days.

Pursuant to EC 45125.1(c), representatives of FCMAT will have limited contact with pupils. The charters shall take appropriate steps to comply with EC 45125.1(c).

## 6. **PROJECT SCHEDULE**

The following schedule outlines the planned completion dates for different phases of the study and will be established upon the receipt of a signed study agreement:

<i>Orientation:</i>	<i>To be determined</i>
<i>Staff Interviews:</i>	<i>To be determined</i>
<i>Exit Meeting:</i>	<i>To be determined</i>
<i>Draft Report Submitted:</i>	<i>To be determined</i>
<i>Final Report Submitted:</i>	<i>To be determined</i>

## 7. **COMMENCEMENT, TERMINATION AND COMPLETION OF WORK**

FCMAT will begin work as soon as it has assembled an available and appropriate study team consisting of FCMAT staff and independent consultants, taking into consideration other jobs FCMAT has previously undertaken and assignments from the state. The team will work expeditiously to complete its work and deliver its report, subject to the cooperation of the charters and any other parties from which, in the team's judgment, it must obtain information. Once the team has completed its fieldwork, it will proceed to prepare a draft report and a final report. Prior to completion of fieldwork, the COEs may terminate their request for service and will be responsible for all costs incurred by FCMAT to the date of termination under Section 4 (Project Costs). If the COEs do not provide written notice of termination prior to completion of fieldwork, the team will complete its work and deliver its report and the COEs will be responsible for the full costs. The COEs understand and agree that FCMAT is a state agency and all FCMAT reports are published on the FCMAT website and made available to interested parties in state government. In the absence of extraordinary circumstances, FCMAT will not withhold preparation, publication and distribution of a report once fieldwork has been completed, and the COEs shall not request that it do so.

## 8. **INDEPENDENT CONTRACTOR**

FCMAT is an independent contractor and is not an employee or engaged in any manner with the COEs. The manner in which FCMAT's services are rendered shall be within its sole control and discretion. FCMAT representatives are not authorized to speak for, represent, or obligate the COEs in any manner without prior express written authorization from an officer of the COEs.

**9. INSURANCE**

During the term of this agreement, FCMAT shall maintain liability insurance of not less than \$1 million unless otherwise agreed upon in writing by each COE, automobile liability insurance in the amount required under California state law, and workers' compensation as required under California state law. FCMAT shall provide certificates of insurance, with each COE named as additional insured, indicating applicable insurance coverages upon request.

**10. HOLD HARMLESS**

FCMAT shall hold the COEs, their boards, officers, agents and employees harmless from all suits, claims and liabilities resulting from negligent acts or omissions of their boards, officers, agents and employees undertaken under this agreement. Conversely, the COEs shall hold FCMAT, its board, officers, agents and employees harmless from all suits, claims and liabilities resulting from negligent acts or omissions of its board, officers, agents and employees undertaken under this agreement.

SIGNED BY JIM YOVINO FEBRUARY 26, 2020  
Jim Yovino, County Superintendent Date  
Fresno County Superintendent of Schools

SIGNED BY ED MANANSALA FEBRUARY 27, 2020  
Ed Manansala, County Superintendent Date  
El Dorado County Office of Education

SIGNED BY MARY BARLOW FEBRUARY 12, 2020  
Mary Barlow, County Superintendent Date  
Kern County Superintendent of Schools


SIGNED BY DEBRA DUARDO FEBRUARY 19, 2020  
Debra Duardo, County Superintendent Date  
Los Angeles County Office of Education

SIGNED BY GAYLE GARBOLINO-MOJICA FEBRUARY 12, 2020  
Gayle Garbolino-Mojica, County Superintendent Date  
Placer County Office of Education

SIGNED BY PAUL GOTHOLD FEBRUARY 12, 2020  
Paul Gothold, County Superintendent Date  
San Diego County Office of Education

SIGNED BY TOM REUSSER FEBRUARY 12, 2020  
\_\_\_\_\_  
Tom Reusser, County Superintendent Date  
Sutter County Superintendent of Schools

SIGNED BY STANLEY MONTTOOTH FEBRUARY 12, 2020  
\_\_\_\_\_  
Stanley Mantooth, County Superintendent Date  
Ventura County Office of Education

 FEBRUARY 12, 2020  
\_\_\_\_\_  
Michael H. Fine Date  
Chief Executive Officer  
Fiscal Crisis & Management Assistance Team

STUDY AGREEMENT AMENDMENT

\_\_\_\_\_  
Jim Yovino, County Superintendent Date  
Fresno County Superintendent of Schools

\_\_\_\_\_  
Ed Manansala, County Superintendent Date  
El Dorado County Office of Education

\_\_\_\_\_  
Mary Barlow, County Superintendent Date  
Kern County Superintendent of Schools

\_\_\_\_\_  
Debra Duardo, County Superintendent Date  
Los Angeles County Office of Education

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Gayle Garbolino-Mojica, County Superintendent Date  
Placer County Office of Education

\_\_\_\_\_  
Paul Gothold, County Superintendent Date  
San Diego County Office of Education


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Tom Reusser, County Superintendent Sutter County Superintendent of Schools	Date
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Stanley Mantooh, County Superintendent Ventura County Office of Education	Date
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 Michael H. Fine Chief Executive Officer Fiscal Crisis & Management Assistance Team	June 21, 2021 Date
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SIGNED BY TOM REUSSER FEBRUARY 12, 2020  
Tom Reusser, County Superintendent Date  
Sutter County Superintendent of Schools

SIGNED BY STANLEY MONTTOOTH FEBRUARY 12, 2020  
Stanley Mantooth, County Superintendent Date  
Ventura County Office of Education

 February 12, 2020  
Michael H. Fine Date  
Chief Executive Officer  
Fiscal Crisis & Management Assistance Team

**STUDY AGREEMENT AMENDMENT**

 3/24/22  
Jim Yovino, County Superintendent Date  
Fresno County Superintendent of Schools

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Ed Manansala, County Superintendent Date  
El Dorado County Office of Education

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Mary Barlow, County Superintendent Date  
Kern County Superintendent of Schools

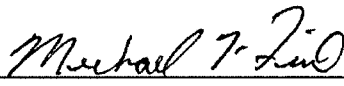
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Debra Duardo, County Superintendent Date  
Los Angeles County Office of Education

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Gayle Garbolino-Mojica, County Superintendent Date  
Placer County Office of Education

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Paul Gothold, County Superintendent Date  
San Diego County Office of Education

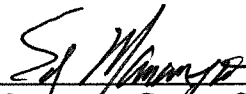
SIGNED BY TOM REUSSER FEBRUARY 12, 2020  
Tom Reusser, County Superintendent Date  
Sutter County Superintendent of Schools

SIGNED BY STANLEY MONTTOOTH FEBRUARY 12, 2020  
Stanley Mantooth, County Superintendent Date  
Ventura County Office of Education

  
February 12, 2020  
Michael H. Fine Date  
Chief Executive Officer  
Fiscal Crisis & Management Assistance Team

STUDY AGREEMENT AMENDMENT

Jim Yovino, County Superintendent Date  
Fresno County Superintendent of Schools

  
6/28/2021  
Ed Manansala, County Superintendent Date  
El Dorado County Office of Education

Mary Barlow, County Superintendent Date  
Kern County Superintendent of Schools

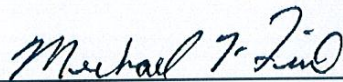
Debra Duardo, County Superintendent Date  
Los Angeles County Office of Education

Gayle Garbolino-Mojica, County Superintendent Date  
Placer County Office of Education

Paul Gothold, County Superintendent Date  
San Diego County Office of Education

SIGNED BY TOM REUSSER FEBRUARY 12, 2020  
Tom Reusser, County Superintendent Date  
Sutter County Superintendent of Schools

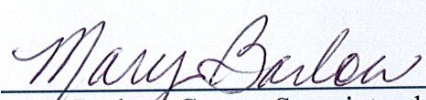
SIGNED BY STANLEY MONTTOOTH FEBRUARY 12, 2020  
Stanley Mantooth, County Superintendent Date  
Ventura County Office of Education

 FEBRUARY 12, 2020  
Michael H. Fine Date  
Chief Executive Officer  
Fiscal Crisis & Management Assistance Team

STUDY AGREEMENT AMENDMENT

\_\_\_\_\_  
Jim Yovino, County Superintendent Date  
Fresno County Superintendent of Schools

\_\_\_\_\_  
Ed Manansala, County Superintendent Date  
El Dorado County Office of Education

 6/21/2021  
Mary Barlow, County Superintendent Date  
Kern County Superintendent of Schools

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Debra Duardo, County Superintendent Date  
Los Angeles County Office of Education


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Gayle Garbolino-Mojica, County Superintendent Date  
Placer County Office of Education

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Paul Gothold, County Superintendent Date  
San Diego County Office of Education



SIGNED BY TOM REUSSER FEBRUARY 12, 2020  
\_\_\_\_\_  
Tom Reusser, County Superintendent Date  
Sutter County Superintendent of Schools

SIGNED BY STANLEY MONTTOOTH FEBRUARY 12, 2020  
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Stanley Mantooth, County Superintendent Date  
Ventura County Office of Education

 FEBRUARY 12, 2020  
\_\_\_\_\_  
Michael H. Fine Date  
Chief Executive Officer  
Fiscal Crisis & Management Assistance Team


STUDY AGREEMENT AMENDMENT

\_\_\_\_\_  
Jim Yovino, County Superintendent Date  
Fresno County Superintendent of Schools

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Ed Manansala, County Superintendent Date  
El Dorado County Office of Education

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Mary Barlow, County Superintendent Date  
Kern County Superintendent of Schools

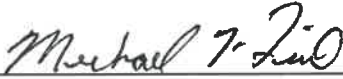
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Debra Duardo, County Superintendent Date  
Los Angeles County Office of Education

 6/22/2021  
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Gayle Garbolino-Mojica, County Superintendent Date  
Placer County Office of Education

\_\_\_\_\_  
Paul Gothold, County Superintendent Date  
San Diego County Office of Education

SIGNED BY TOM REUSSER FEBRUARY 12, 2020  
Tom Reusser, County Superintendent Date  
Sutter County Superintendent of Schools

SIGNED BY STANLEY MONTTOOTH FEBRUARY 12, 2020  
Stanley Mantooth, County Superintendent Date  
Ventura County Office of Education

 FEBRUARY 12, 2020  
Michael H. Fine Date  
Chief Executive Officer  
Fiscal Crisis & Management Assistance Team

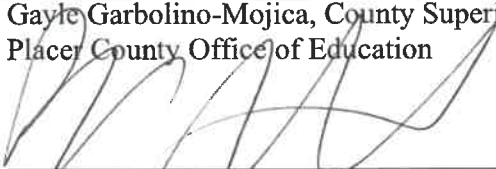
**STUDY AGREEMENT AMENDMENT**

Jim Yovino, County Superintendent Date  
Fresno County Superintendent of Schools

Ed Manansala, County Superintendent Date  
El Dorado County Office of Education

Mary Barlow, County Superintendent Date  
Kern County Superintendent of Schools

Debra Duardo, County Superintendent Date  
Los Angeles County Office of Education

Gayle Garbolino-Mojica, County Superintendent Date  
Placer County Office of Education  
 11/10/21  
Paul Gothold, County Superintendent Date  
San Diego County Office of Education



*Tom Reusser* \_\_\_\_\_ October 21, 2021  
Tom Reusser, County Superintendent \_\_\_\_\_  
Sutter County Superintendent of Schools Date

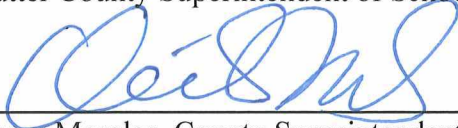
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Stanley Mantooth, County Superintendent \_\_\_\_\_ Date  
Ventura County Office of Education

*Michael H. Fine* \_\_\_\_\_ June 21, 2021  
Michael H. Fine \_\_\_\_\_  
Chief Executive Officer Date  
Fiscal Crisis & Management Assistance Team

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Tom Reusser, County Superintendent  
Sutter County Superintendent of Schools

Date



11-16-21

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Cesar Morales, County Superintendent  
Ventura County Office of Education

Date



June 21, 2021

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Michael H. Fine  
Chief Executive Officer  
Fiscal Crisis & Management Assistance Team

Date

## **Appendix B: Corporate Narrative**

# Corporation Structure

## 2014-2015

Inspire Charter Schools opened with the first charter being named Hope Charter Academy. The corporation's name was Inspire Charter Schools. Later during the restructuring, Hope Charter Academy became managed by the corporation Inspire Charter School - Los Angeles.

## 2015 – 2016

Inspire Charter Schools expanded by opening the following schools:

- Inspire Charter School – South (later renamed to Cabrillo Point Academy)

## 2016-2017

Inspire Charter Schools expanded by opening the following schools:

- Inspire Charter School – North (Later renamed to Feather River Charter School)
- Winship Community School
- Inspire Charter School – Central (Later renamed to Yosemite Valley Charter School)
- Inspire Charter School – Kern (Later renamed to Blue Ridge Academy)
- In the spring of 2017, Inspire Charter Schools received authorization to open Learning Latitudes Charter School (later renamed to Pacific Coast Academy) and Clarksville Charter School during the 2017 - 2018 school year.

## **From 2014 - June 30, 2017**

Inspire Charter Schools was both the parent company and the operator of Inspire Charter Schools.

On May 20, 2017, the Board of Inspire Charter Schools voted to work with the Blank Rome Legal Team to restructure the organization to create separate corporations and boards for each of the Charter Schools with Inspire Charter Schools as the Sole Member Entity starting in the 2017-2018 school year. They also voted to open the Inspire District Office as a non-profit to provide services that support the schools, and the

Inspire Education Foundation to provide supplemental programs for the schools and homeschooling community.

The following corporations were formed to manage and operate the various charter schools:

- The corporation Learning Latitudes Charter School (later renamed to Pacific Coast Academy) managed and operated the school Learning Latitudes Charter School (later renamed to Pacific Coast Academy).
- The corporation Inspire Charter School - South (later renamed to Cabrillo Point Academy) managed and operated the school Inspire Charter School - South (later renamed to Cabrillo Point Academy)
- The corporation Inspire Charter School - Los Angeles managed and operated the school Hope Charter Academy.
- The corporation Inspire Charter School - Kern (later renamed to Blue Ridge Academy) managed and operated the school Inspire Charter School - Kern (later renamed to Blue Ridge Academy).
- The corporation Inspire Charter Schools - Winship - Central (later renamed to Winship Community School) managed and operated two separate charter schools Winship Community School and Inspire Charter School - Central (later renamed to Yosemite Valley Charter School).
- The corporation Inspire Charter School - North (later renamed to Feather River Charter School) managed and operated the school Inspire Charter School - North (later renamed to Feather River Charter School).
- The corporation Clarksville Charter School managed and operated the school Clarksville Charter School.

The intent behind the restructuring was to protect the individual charters. By having all of the charters managed by Inspire Charter Schools, there was a concern that one negative legal action could impact the entire network of schools.

The assets of Inspire Charter Schools were distributed to the individual charter school boards at the start of the 2017-2018 school year. These assets were initially purchased with funding from each of the schools that received them.

Until July 2019, all agenda items related to the corporation were approved by both the charter boards and also the Inspire Charter Schools board.

## 2017-2018

Inspire Charter Schools expanded by opening the following schools:

- Clarksville Charter School
- Learning Latitudes Charter School (later renamed to Pacific Coast Academy)

Inspire District Office (name later changed to Provenance) was in its initial phase of existence and did not have income or employees, nor did it provide any support services during the 2017-2018 school year. Provenance became the support provider for the 2018-2019 school year after both Provenance and the independent Charter School Boards approved the Services Agreement.

The Inspire Education Foundation opened during the 2017-2018 school year. The schools passed a resolution to authorize fees to be paid to the Foundation for professional development, career technical educational program development, and software development.

Jitterbug was opened during the 2017-2018 school year. The purpose was to open a for-profit entity that could market and sell the Enrichment Ordering System to other independent study schools. The Foundation voted to purchase 100 shares of Jitterbug Learning.

San Diego Enrichment Services opened during the 2017-2018 school year. The purpose was to have a non-profit entity that managed the buildings that were purchased. Some of the buildings that were purchased had tenants in them that San Diego Enrichment Services was set up to collect rent from those tenants. San Diego Enrichment Services ended up transferring the buildings over to Provenance.

## 2018-2019

Inspire Charter Schools expanded by opening the following schools:

- Heartland Charter School
- The Cottonwood School (delayed opening by 1 year due to facilities. Was expected to be a hybrid charter)
- Inspire Charter School - Central created its own corporate entity and the charter was separated from Inspire Charter Schools - Winship - Central (later renamed to Winship Community School) and housed here.

In July of 2018, Inspire District Office changed its name to Provenance and signed its first Service Agreement with the schools to provide educational support services.

In March of 2019, both Inspire Charter Schools and the Provenance Board voted to remove Inspire Charter Schools as the Sole Member.

The Inspire Education Foundation continued to provide services to the schools during the 2018-2019 school year. In March of 2019, both Inspire Charter Schools and the Inspire Education Foundation Board voted to remove Inspire Charter Schools as the Sole Member. In June of 2019, the Foundation Board voted to start the wind-up and dissolution process for the Foundation. Steps are being taken to complete the voluntary wind-up and dissolution of the corporation.

Inspire Elementary Charter School (Ohio) opened during the 2018-2019 school year. In June of 2019, the Inspire Education Foundation voted to approve a Resolution Authorizing Loan to Inspire Elementary. This loan was assumed by Provenance when both the Foundation and Provenance voted to approve an Agreement and Plan of Merger.

Savannah Exploratory Charter Academy (Georgia) was also pursued during the 2018-2019 school year. The application was submitted in February of 2019 with the plan to open during the 2020-2021 school year.

The Inspire University was opened during the 2018-2019 school year, and an application was submitted for the Initial Institution Approval Application on December 11, 2018. In March of 2019, Inspire Charter Schools voted to remove Inspire Charter Schools as the Sole Member of the University.

## 2019-2020

Inspire Charter Schools expanded by opening the following schools:

- Mission Vista Academy
- Granite Mountain Charter School
- Triumph Academy
- Monarch River Academy
- Lake View Charter School

In July of 2019 both Inspire Charter Schools and the Individual Charter School boards voted to remove Inspire Charter Schools as the Sole Member Entity. Inspire Charter Schools was inactive during the 2019-2020 school year Steps are being taken to complete the voluntary wind-up and dissolution of the corporation.

In July 2019, Provenance voted to approve the DBA Inspire Charter Services.

The Inspire Education Foundation was inactive during the 2019-2020 school year. Steps are being taken to complete the voluntary wind-up and dissolution of the corporation.

The Inspire University was inactive during the 2019-2020 school year.

Jitterbug was inactive during the 2019-2020 school year. Steps are being taken to complete the voluntary wind-up and dissolution of the corporation.

San Diego Enrichment Services was inactive during the 2019-2020 school year. Steps are being taken to complete the voluntary wind-up and dissolution of the corporation.

Inspire Charter Services ended their involvement with the Savannah Exploratory Charter Academy (Georgia) project.

Inspire Charter Services ended their involvement with the Inspire Elementary Charter School (Ohio) project.

Provenance (dba Inspire Charter Services) continued as the support provider for the 2019-2020 school year after both Provenance (dba Inspire Charter Services) and the independent Charter School Boards approved the Services Agreement.



# Appendix C: Pacific Coast Academy District Office Services Agreement

**SERVICES AGREEMENT**  
**By and Between**  
**PROVENANCE, a California not for profit corporation and**  
**PACIFIC COAST ACADEMY**

**RECITALS**

**THIS SERVICES AGREEMENT** (the “*Agreement*”) is made and entered into as of July 1, 2018 (the “*Effective Date*”) by and between Provenance (“*PV*”) doing business as Inspire District Office, and PACIFIC COAST ACADEMY (*PCA*) (*PCA* together with *PV* each a “*Party*” and, collectively, the “*Parties*”).

**WHEREAS, *PV***, a California nonprofit corporation, with tax exempt status under section 501(c)(3) of the Internal Revenue Code is in the business of providing educational and administrative services to charter schools that are operated by separate corporations doing business under the trade-name of Inspire (collectively the “*Inspire Charter Schools*”), including and such corporations are also California nonprofit corporations, pursuant to section 501(c)(3) of the Internal Revenue Code;

**WHEREAS, *PV*’s** mission is to assist the various *Inspire Charter Schools*, such as, in the administration of their businesses in order to create greater efficiencies in their operations and to thereby effectively serve the ever-growing population of youth seeking greater opportunities to access innovated curriculum and enrichment through a personalized learning model;

**WHEREAS, *PV* and *PCA*** share a common mission of providing educational services to students in the State of California seeking educational alternatives to the traditional public school model and to do so such that efficient administration of all the *Inspire Charter Schools* educational programs and administrations will maximize their resources by increasing operational and other efficiencies;

**WHEREAS, the *PCA* Board of Directors** (the “*Board*”) has final authority over policy and operational decisions for *PCA*.

**WHEREAS, based on experiences of other charter schools across the country, the *Board*** believes that it is in the best interest of *PCA* to contract with *PV* to provide administrative services that will maximize the performance and operational efficiency of *PCA* and serve the joint mission of each of *PV* and *PCA* as set forth immediately above;

**WHEREAS, it is the *Parties*’** intention to build on a relationship already based on trust, common educational objectives, and to ensure *PCA* has resources for the *PCA* to achieve clear accountability, through which they will work together to bring educational excellence to the *PCA*, and because of the *Parties*’ shared goals; and

**WHEREAS, for and during the *Term*** (as hereinafter defined in Section 9.a) of this *Agreement*, the *Board* desires that *PV* provide certain services to *PCA* as set forth herein, and *PV* desires to provide such services to *PCA* in a manner that is fully consistent with the charter of *PCA* and applicable law.

## **AGREEMENT**

**NOW, THEREFORE**, in consideration of the recitals and the mutual covenants, representations, warranties, conditions and agreements hereinafter expressed, the **Parties** agree as follows:

### **1. DEFINITIONS**

- a. “**Chartering Authority**” refers to the school district or authorizer authorizing and supervising the charter held by **PCA**.
- b. “**Charter School Law**” means the laws permitting the creation of charter schools in California and governing the development and operation of charter schools in California, including the California Charter Schools Act of 1992, as amended (Education Code §§ 47600 *et seq.*).
- c. “**Marks**” means all trademarks, service marks, design marks, trade names, domain names, service names, registrations and applications for registration thereof, and any common law rights pertaining thereto, belonging to each **Party**.
- d. “**Regulatory Authority**” means any United States federal, state or local government, or political subdivision thereof, any authority, agency or commission entitled to exercise any administrative, executive, judicial, legislative, regulatory or taxing authority or power, any court or tribunal (or any department, bureau or division thereof), any arbitrator or arbitral body, or any similar body, including each **Chartering Authority**.
- e. “**PVvices**” means all the services provided by **PV** to **PCA** pursuant to, and as described more fully in, this **Agreement**.
- f. “**State**” means the State of California.

### **2. REPRESENTATIONS AND WARRANTIES**

- a. Representations and Warranties of **PV**. **PV** represents and warrants as follows:
  - i. Organization and Tax-exempt Status. **PV** is authorized to do business in the **State**. **PV** has been granted tax exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code and, shall at all times during the **Term**, be duly organized under the laws of the **State** and shall be exempt from federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code. Should the Internal Revenue Service require changes to this **Agreement** in conjunction with the continuation of the tax- exempt status of **PV**, both **Parties** will take all reasonable steps and agree to all reasonable modifications to effectuate the necessary changes.
  - ii. Authority. Subject to the last two sentences of clause (i) above, **PV** has all requisite power and authority to execute and deliver this **Agreement**, to perform its obligations hereunder, and to otherwise consummate the agreements contemplated hereby. This **Agreement** constitutes a valid and binding obligation of **PV**, enforceable against **PV** in accordance with its terms.
  - iii. Full Disclosure. No representation or warranty of herein and no statement, information or certificate furnished or to be furnished by **PV** pursuant hereto or in connection with the transactions contemplated hereby contains any untrue statement of a material fact or omits or will omit to state a material fact necessary in order to make the statements contained herein or therein not misleading.

iv. Conduct of *PV*. *PV* has complied, and at all times during the *Term* will comply, in all material respects, with all local, state, and federal laws and regulations that are applicable to *PV*, which include, but are not limited to, the Internal Revenue Code and the California Corporations Code, as each may be amended. *PV* has maintained and will maintain adequate records of the activities and decisions of *PV* to ensure and document compliance with all such laws and regulations. *PV* agrees to provide *PCA* with copies of all such records, and to allow *PCA*, at *PCA*'s reasonable discretion, to assist with the preparation and retention of such records.

v. Insurance. *PV* maintains in effect all insurance as required to perform its obligations hereunder, including the insurance. *PCA* is responsible for all costs associated with obtaining such insurance.

b. Representations and Warranties of *PCA*. *PCA* represents and warrants as follows:

i. Organization and Tax-Exempt Status. *PCA* is authorized to do business in the *State*. *PCA* is, and at all times during the *Term* will be, duly organized under the laws of the *State* and is exempt from federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code. Should the Internal Revenue Service require changes to this *Agreement* in conjunction with the continuation of tax-exempt status of *PCA*, both *Parties* will take all reasonable steps and agree to all reasonable modifications to effectuate the necessary changes.

ii. Authority. Subject to the last two sentences of clause (i) above, *PCA* has all requisite power and authority to execute and deliver this *Agreement*, to perform its obligations hereunder, and to otherwise consummate the agreements contemplated hereby. This *Agreement* constitutes a valid and binding obligation of *PCA*, enforceable against *PCA* in accordance with its respective terms.

iii. Full Disclosure. No representation or warranty of *PCA* herein and no statement, information or certificate furnished or to be furnished by *PCA* pursuant hereto or in connection with the transactions contemplated hereby contains any untrue statement of a material fact or omits or will omit to state a material fact necessary in order to make the statements contained herein or therein not misleading.

iv. Conduct of *PCA* and the *Board*. *PCA* has materially complied, and at all times during the *Term* will comply, in all material respects, with all local, *State* and federal laws and regulations that are applicable to *PCA*, which include, but are not limited to, the Internal Revenue Code, the California Corporations Code, the open records and meetings laws of *State*, and the *Charter School Law*, as each may be amended. *PCA* has maintained and will maintain adequate records of the activities and decisions of *PCA* to ensure and document compliance with all such laws and regulations. *PCA* agrees to provide *PV* with copies of all such records, and to allow *PV*, at *PV*'s reasonable discretion, to assist with the preparation and retention of such records.

v. Due Authorization. *PCA* is authorized to organize and operate *PCA*, and such charter school is vested by the *Chartering Authority* with all powers necessary to carry out the educational program outlined in its charter (the "*PCA Charter*"). *PCA* shall at all times retain all rights, responsibilities and obligations under the *PCA Charter* and nothing in this *Agreement* is or shall be interpreted in a manner inconsistent with the *PCA Charter*.

vi. Insurance. *PCA* maintains in effect all insurance as required by the *PCA Charter*. Subject to the requirements of the *PCA Charter*, *PV* will assist *PCA* in selecting and procuring the level of insurance coverage as it deems appropriate.

### 3. AUTHORITY

a. PCA's Fully Retained Duties and Authority. *PCA* hereby authorizes *PV* to undertake the functions specified in this *Agreement* in regards to educational and administrative services, it being understood that, at all times, *PCA* remains accountable to the *Chartering Authority* and *State* authorities, as provided for in this *Agreement*, the *PCA Charter*, and to applicable law. For the sake of clarity, the *Parties* agree that the *Board*, and not *PV*, shall maintain the ultimate fiduciary responsibility for *PCA*. *PV* shall not be required to provide any services to the extent provision thereof: (a) is or becomes impracticable, in any material respect, as a result of a cause or causes outside 's reasonable control, or (b) would require to violate any law or other binding commitment of to any *Regulatory Authority* or as imposed by law.

b. Authority to Subcontract. *PV* may subcontract any function or service it is obligated to provide hereunder, provided that no such subcontract permitted hereunder shall relieve or discharge *PV* from any obligation or liability under this *Agreement* and provided that no such subcontract permitted hereunder shall constitute a majority of *PV's* duties under this *Agreement*. Nothing in this Section 3.b authorizes *PV* to subcontract in a manner that is not permitted by applicable law or any provisions of the *PCA Charter*.

c. School District Authority. Nothing in this *Agreement* shall be construed in any way to limit the authority of the *Chartering Authority*, including, but not limited to, the authority to take and enforce action pursuant to the *Charter School Law*.

d. Conflict with Applicable Charter. To the extent there are any conflicts between the terms of the *PCA Charter* and the terms of this *Agreement*, the terms of the *PCA Charter* shall control.

### 4. RIGHTS, DUTIES AND OBLIGATIONS OF

In addition to the duties and obligations otherwise set forth in this *Agreement*, *PV* shall have the following rights, duties and obligations:

#### A. *Administrative Services:*

1. General Administrative Services. In exchange for the *PV Service Fee* described in Section 6 and paid by *PCA* to *PV*, *PV* will provide the services as and to the extent more specifically described in the balance of this Section 4 (the "*PV Services*"). *PV* may perform functions off-site, except as prohibited by law or otherwise restricted by the *Board*. *PV* may utilize web-based systems to provide support and services to *PCA*. *PV* shall provide reports indicating the services *PV* has provided to *PCA*, as contemplated by this *Agreement*, as and when the *Board* shall reasonably request, but no less frequently than an annual year-end report. To the extent that *PCA* wishes to contract with a third party unrelated to for any administrative services not then being provided by (a "*Third Party Agreement*"), such *Third Party Agreement* cannot be effective and shall be expressly conditioned upon the right of *PV*, after thirty (30) days written notice (including a description of such proposed *Third Party Agreement*) by *PCA* to *PV*, to agree to perform such services upon reasonably comparable terms (the reasonableness of the comparison being determined by *PV* in the exercise of its discretion) (the "*Alternative*"). If *PV* does not notify *PCA* of its intention to cause *PCA* to refuse the *Third Party Agreement* and enter into an alternative agreement with *PV* within the aforementioned notice period, then *PCA* may proceed with the *Third Party Agreement*. For the avoidance of doubt, *PCA* agrees that it will not permit and is not authorized to permit a *Third Party Agreement* to become effective unless and until *PV* has fully exercised its right of review and first refusal within the terms of this Section 4.A.1.

2. Public Relations and IP. *PV* shall provide public relations services to *PCA*, as determined by further mutual agreement of the *Parties*, in order to advance the shared mission of *PV* and *PCA* as set forth above in the recitals to this *Agreement*. *PCA* may provide *PV* a non-exclusive, limited license to use those Pacific Coast Academy *Marks* or any other Pacific Coast Academy intellectual property as may be owned or under license to *PCA*, as may be requested by *PV* from time to time, whether registered or unregistered, whether subject to application or not (the “*Pacific Coast Academy IP*”). Without limitation, and subject to consultation with the *PCA*, *PV* shall act as *PCA*’s representative on all matters relating to public relations and public information, including, without limitation, preparing press releases on topics relating to the shared mission of *PV* and *PCA* as set forth above in the recitals to this *Agreement*.

3. Financial Services (Accounting, Bookkeeping, Payroll, Procurement, and other Financial Functions). Subject to the terms of this *Agreement*, *PV* shall be responsible and accountable for all financial functions in respect of *PCA*, including, without limitation:

a. Preparation and submission of financial reports including all required *State* financial reporting including but not limited to annual audited financial reports, annual budgets, 1<sup>st</sup> and 2<sup>nd</sup> Interims, unaudited actual reportings, P1 and P2 reportings, non-classroom based funding determinations when applicable, annual LCAP spending reporting and monthly financial statements to *PCA*;

i. Coordination and processing of payments of *PCA*’s expenditures;

ii. Management of cash balances to cover *PCA*’s payroll and payments to vendors;

iii. Coordination of and payment of *PCA*’s *Board* stipends as described in Section 4.e below;

iv. Coordination and processing of *PCA*’s payroll and tax reporting and other filings in accordance with the specific procedures and guidelines as designated and updated from time to time by *PCA* personnel;

v. Coordination and management the annual independent audit of *PCA*’s financial statements. The cost of the audit will be the sole expense of *PCA*.

vi. Assistance with Western Association of Schools and Colleges (WASC) financial reviews, when applicable.

vii. Coordination and management of all equipment leasing

viii. Assistance and monitoring of spending and general administration of grant funding in compliance with specific terms and conditions of said grants and participation in any audits related thereto; and,

ix. Acquisition and management of external financing as needed.

x. Leases.

b. *Board* Facilitation. *PV* shall coordinate the scheduling of and documentation of meetings of the *Board*, including the preparation of agendas, preparation of minutes and payment of *Board* stipends. *PV* will coordinate the annual *Board* member training to include training in *PCA* protocols, best

practices and legal updates. All training will be for the purpose of supporting *PCA*'s education mission and other related official school business.

c. Strategic Planning and Implementation. *PV* will assist *PCA* in the development of key long term goals for *PCA* in meeting its academic, funding, reporting, accountability, growth requirements and in analyzing the political and legislative educational climate. *PV* will assist in setting priorities, focusing resources, strengthening operations, insuring that employees at all levels are working toward common goals, establishing consensus around intended results, and assessing and adjusting the organizational direction in response to its changing environment.

d. PCA Policies. *PV* may make reasonable recommendations to *PCA* concerning its calendar, policies, rules, regulations, procedures, personnel, and budget, as appropriate and consistent with the shared mission of the *Parties* as set forth in the above recitals. For the avoidance of doubt, *PCA* retains sole and complete control over the foregoing policies.

e. Human Capital Management.

i. *PV* shall assist in recruiting, screening and recommending certificated and non-certificated individuals for employment by *PCA*;

ii. *PV* shall also provide pre-employment screening services, verify, check and monitor credentials for certificated staff;

iii. *PV* shall coordinate and administer health, life and retirement benefits for *PCA* employees, including certificated and non-certificated staff. *PCA* shall be solely responsible for the costs of these benefits;

iv. *PV* will develop and provide new hire employee orientation, training; onboarding (at the time of hiring) and off-boarding (upon termination). *PV* will also provide all required *State* and federal mandated training to applicable *PCA* employees. *PV* and *PCA* shall comply with all applicable federal and *State* laws, concerning employee welfare, safety and health;

v. *PV* will administer and track leave of absence benefits and monitor employee work related injuries;

vi. *PV* will also assist *PCA* with its *Authorizer*'s annual oversight visit.

vii. *PV*, on behalf of *PCA*, shall secure and maintain the insurance policies which shall be in the amounts that are no less than the minimum levels required by *PCA*, applicable law or both. Liability, casualty, and property insurance for any facility leased directly and/or managed by *PCA* and any capital equipment or furniture leased directly and/or managed by *PCA*, as well as Directors and Officer's Insurance in the amount required by *PCA* or the *Authorizer*. All premiums and costs will be the responsibility of *PCA*.

f. Files and Records. *PV* shall supervise and maintain temporary custody (for the joint benefit of *PCA* and *PV*) of all files and records relating to the Services. *PV* acknowledges that all records, data, communications, and other property of *PCA* entrusted or loaned to *PV* during the term of this *Agreement* are *PCA*'s property and *PV* agrees to return any such material to *PCA* immediately upon the termination of this *Agreement*.

g. Operations Management. *PV* will provide day-to-day operational oversight for *PCA* in all administrative operational areas including without limitation: human capital, facilities



(procurement and management), financial matters, and (as appropriate) legal representation. *PV* will work cooperatively with *PCA* on all recommendations and actions.

h. Reporting Requirements to the Board. *PV* shall report to the *Board* an annual year-end report and more frequently as the *Board* shall reasonably request on all actions taken or proposed to be taken by *PV* under this *Agreement*.

## B. *Educational Services*

1. Educational Program: *PV* will work in collaboration with *PCA* on development and implementation of the educational model provided to *PCA*. *PV* will work with *PCA* to effectuate any necessary change in the educational program, recognizing that essential principle of this educational program is its flexibility, adaptability and capacity to change in the interest of continuous improvement of efficiency, provided that such changes shall be consistent with the Mission and Purpose of *PCA*.

2. Professional Development: *PV* will provide the resources and plans to the *PCA* staff to enhance their effectiveness to meet and exceed the educational standard established by the State of California or otherwise required by *PCA*.

3. Testing and Assessments: *PV* will assist *PCA* in the administration of all *State* required testing and other State mandated assessments, including a series of assessments designed to gauge the Student's mastery of core concepts and readiness for the State of California's standardize test or other *State* mandated testing;

4. Student Records Support: *PV* will provide maintenance of *PCA*'s Student Records in accordance with state, local and federal requirements.

5. Technology: *PV* will provide a comprehensive Computer Technology and IT infrastructure solution to *PCA* office space and employees which shall include procuring, imaging, delivering, repairing, replacing, warehousing and collection of such Computer Technology, as well as other related comprehensive logistical support services. *PCA* will pay directly or reimburse *PV* for all technology costs.

6. Services to Special Needs Students: *PV* will assist *PCA* in the development of Special Education Protocols which Special Education Services are provided including procuring related service providers to students with special education needs *PCA* or any students who have, will have or require an Individualized Education Program ("IEP"). All service provider costs will be the sole responsibility of *PCA*; Provide consultative support and management of the *PCA* day-to-day operations of Special Education Services. *PV* will develop and oversee the academic counseling and other related services to the *PCA* students.

7. Instructional Materials: *PV* shall develop curriculum and coordinate the purchase of the curriculum and instructional materials to be used by *PCA* in order to offer interesting and challenging curricula for the purpose of allowing students to progress as quickly as their capabilities will allow. Materials shall be designed in a language and format that are readily accessible, and students will be allowed to complete course work at their own pace, as the program will be formulated based on an initial assessment of the student's skill levels in reading, math and other core courses. *PCA* will be responsible for all curriculum and instructional material costs. *PV* shall retain all ownership and copyrights to any curricular material created by *PV* for the use by *PCA*.



8. Marketing/Branding: *PV* will provide *PCA* the design of all branded materials, including promo items, website design, collateral, wearables, print assets including tri-fold brochures, rack cards, newsletters, event fliers, graduation programs, and more. *PV* will establish brand and communication strategies across all channels and promote the brand. *PV* will maintain the *PCA* public website that will contain any information required by *PCA* and applicable state law. *PV* will review and provide a report of all social media properties, which may include Facebook, Twitter, Instagram, and LinkedIn and provide refinements to increase traffic. *PV* will coordinate and manage all third party vendors on behalf of *PCA*. *PCA* will be solely responsible for those third party vendor costs.

9. Community Relationships: *PV* shall coordinate *PCA*'s community relationships, including with local non-profits, governmental agencies, local businesses and higher education institutions.

10. Student Information: *PV* will serve as the liaison between *PCA* and the Student Information System Provider; perform quality data tracking, including but not limited to student data such as attendance, performance, etc.; and, shall coordinate and manage school data as the technology system is developed and maintained. *PV* shall prepare and submit all required State reporting regarding student enrollment, demographics, etc. *PV* will provide periodic reports on student performance, and assessments of whether educational goals and measurements are being achieved.

11. School Calendar: To the extent necessary or requested by *PCA*, *PV* will assist *PCA* with the development of calendars suitable for *PCA*'s purposes, including for funding qualification and maximization.

## 5. DUTIES AND OBLIGATIONS OF *PCA*

In addition to the duties and obligations otherwise set forth in this *Agreement*, *PCA* shall have the following duties and obligations:

a. General Principle: To the extent not otherwise specified either as a duty of *PCA* or as a duty of *PV*, all duties applicable to the proper operation of *PCA* and maintenance of applicable academic standards shall remain the duty of *PCA* and the *Board*.

b. Damage or Loss. *PCA* shall maintain adequate insurance, or otherwise hold *PV* harmless, for damage or loss to *PCA*'s property unless such damage is caused by the gross negligence or willful misconduct of *PV*.

c. PCA Employees. *PCA* shall employ all of its certificated personnel. *PCA* shall determine and manage compensation (social security and benefit) plans for its *PCA* employees, provided however that *PV* may consult with, administer and advise *PCA* with respect to said matters.

d. Annual Audit. *PCA* shall pay for an annual audit of *PCA* to be conducted in compliance with *State* law and regulations, and showing the manner in which funds are spent at and on behalf of *PCA*. The annual audit shall be performed by a certified public accountant selected by the *Board*. *PV* shall help to identify the certified public accountant.

e. Legal Services. While *PV* may make recommendations to the *Board* regarding any arrangements for legal services for *PCA*, *PCA* and the *Board* shall hire legal counsel for *PCA* and it, as *PCA* may deem appropriate and necessary, and *PCA* shall pay for its own legal services.

f. Control of Funds. All funds of *PCA* shall be maintained in *PCA* deposit accounts, over which the officers or employees of *PCA* designated by the *Board* shall have signature authority

or in accounts, which are specifically restricted for the benefit of *PCA* (the “*PCA Accounts*”). *PV* shall disburse or shall cause the disbursement of such funds out of *PCA Accounts* in the manner described in or consistent with this *Agreement*, except to the extent that any of such funds represent restricted gifts to *PCA*, in which event the funds shall be dispersed in accordance with the applicable restrictions. The *Parties* shall promulgate specific procedures and guidelines as necessary to further implement the creation, handling and investment of the funds and the *PCA Accounts* described in this Section 5.f, subject to approval by the *Board*.

g. Reporting. *PCA* shall provide *PV* with all financial and other information and reporting that *PV* reasonably requests, within such times designates in order to enable *PV* to fulfill its duties and exercise its rights under this *Agreement*, including, without limitation, to ensure *PCA* alignment with the mission of the *Parties* as set forth in the recitals to this *Agreement*.

h. Power and Authority. *PCA* shall ensure that *PV* has the requisite power and authority necessary to carry out the duties of under this *Agreement*, subject in all respects to the *PCA Charters*.

## 6. FINANCIAL ARRANGEMENTS

a. Funding Eligibility. *PCA* shall be responsible for complying with applicable requirements for the purpose of receiving or maintaining *PCA*'s eligibility to receive from the *Chartering Authority* the per pupil allowance to which *PCA* is entitled under applicable law. *PCA* shall apply for all *State* aid or other monies it is eligible to receive from the *Chartering Authority*. *PCA* shall permit *PV* to review any such applications and reports prior to their submission, and *PV* may have the right to assume control of the application and report process, if and to the extent *PCA* and its *Board* reasonably deem appropriate.

b. Donations and Grants. *PV* may solicit and receive, on behalf of *PCA*, grants and donations consistent with the mission and tax-exempt purpose of *PCA*, provided however, that monies raised from such fund-raising activities, which are to create specific funding sources to and for *PCA*, shall be deposited in the *PCA Accounts* and used for the benefit of *PCA*.

### c. Service Fee and Third Party Costs.

i. Service Fee: As and for the *PV Services* provided by *PV* to *PCA*, for each fiscal year, *PCA* will pay to *PV* a service fee (the “*PV Service Fee*”) in the amount of twelve percent (12%) (3.5% allocated to operational/administrative services and, 8.5% to educational services.) of the *PCA*'s annual *Revenues* (the “*PV Service Fee*”). Beginning July 1, 2018, the *PV Service Fee* shall be paid by *PCA* to *PV* in twelve (12) monthly installments per year with each monthly payment being due no later than the tenth (10<sup>th</sup>) day of each month in which a payment is due. For purposes of this Section 6.c.i, the term *Revenues* shall include the full gross amount of *Revenues* received by or on behalf of the *PCA*, including, without limitation, *State* and local per pupil basic education funds and other public school *State* and local funding and federal funds specific to programs or students, but shall not include one-time federal restricted grant funds such as PCSGP grants. The amount of each monthly installment shall be based upon *PCA*'s current school year budget *Revenue*. At the end of each fiscal year after the P-2 ADA certification by the California Department of Education, which should occur no later than June 30th, a reconciliation of payments shall made based upon *PCA*'s actual *Revenues* in said year. In the event that the total amount of installment payments made by *PCA* for the subject year exceed the total amount due based upon *PCA*'s actual *Revenues*, shall refund the total amount of said overpayment to *PCA* within thirty (30) days of the end of the fiscal year. In the event that the total amount of installment payments made by *PCA* for the subject year is less than the total amount due based upon *PCA*'s actual *Revenues*, *PCA* shall pay the total amount of said underpayment to *PV* within thirty (30) days of the end of the fiscal year.

ii. Costs: In addition to the *PV Service Fee* provided for herein in Section 6.c.i., *PCA* shall also be responsible for all third party costs incurred by *PV* for the benefit of *PCA*, which may include, by way of example, and without limitation, marketing expenses, legal fees, personal property purchases (such as furniture and equipment).

iii. The *Board* may apply to *PV* for financing from time to time. Any financing extended by *PV* to *PCA* shall be separately documented. In addition, *PV* may, in its sole discretion, provide funds for operating losses of *PCA*, if any.

iv. *PV* must seek the approval of *PCA* prior to soliciting any non-governmental grants, donations or contributions on behalf of the *PCA*. Any such funds so received shall be used solely in accordance with the purpose(s) for which they were solicited, applicable terms and conditions or donor restrictions, as otherwise approved by the *Board* of *PCA*. Upon reasonable advanced request, *PV* shall provide evidence to the *Board* that *PCA* is in compliance with such requirements, and shall provide all reports, data and information reasonably necessary for *PCA* to meet any reporting requirements for such funding. Subject to applicable donor restrictions, the *Board* shall determine the allocation of any funds subject to this Section 6.c.iv. that remain unexpended following completion of the project or purpose for which the funds were originally received.

The *PV Service Fee* during any *Renewal Term* may be adjusted upon the mutual written agreement of the *Parties*. In the event that the *Parties* are unable to mutually agree upon the *PV Service Fee* payable to *PV* during any *Renewal Term*, then either *Party* shall have the ability to terminate this *Agreement* “for cause”.

## 7. USE OF MARKS

a. Each *Party* shall use the other *Party*'s *Marks* only in the manner and for the duration expressly permitted in writing by the other *Party*. Neither *Party* shall acquire any interest in the other *Party*'s *Marks*. Neither *Party* shall utilize the other *Party*'s *Marks* in any manner that would diminish their value or harm the reputation of the other *Party*.

b. Upon termination or expiration of this *Agreement*, neither *Party* shall have a right to make any use whatsoever of the *Marks* belonging to the other *Party*.

## 8. INDEMNIFICATION

a. Survival of Representations and Warranties. All representations and warranties hereunder shall be deemed to be material and relied upon by the *Parties* with or to whom the same were made, notwithstanding any investigation or inspection made by or on behalf of such *Party* or *Parties*. The representations and warranties covered in this *Agreement* will survive the termination or expiration of this *Agreement*.

b. Not Liable for Operation of PCA. *PV* agrees to indemnify *PCA* to the extent more specifically described in the balance of this Section 8, provided however, *PV* shall not be liable for any matter applicable to the proper operation of *PCA* and applicable academic standards, which shall be the duty of *PCA* and the *Board*, as set forth in Section 5.

c. Indemnification of PCA. To the extent permitted by applicable law, *PV* shall hold *PCA* and its officers, directors, successors, assigns, and agents (the “*PCA Indemnified Persons*”) harmless and indemnify each of them from and against any and all claims, losses, damages, liabilities, penalties, fines, expenses or costs (“*Claims*”), plus reasonable attorneys’ fees and expenses incurred in

connection with *Claims* and/or enforcement of this *Agreement*, plus interest from the date incurred through the date of payment at the prime lending rate as published in The Wall Street Journal, from time to time prevailing (collectively, the “*Indemnified Claims*”), incurred or to be incurred by any *PCA Indemnified Persons* resulting from or arising out of, directly or indirectly, any breach or violation of *PV*’s representations, warranties, covenants, or agreements contained in this *Agreement*, except to the extent caused by the gross negligence or willful misconduct of any *PCA Indemnified Persons*.

d. Indemnification of *PV*. To the extent permitted by applicable law, *PCA* shall hold *PV* and its officers, directors, successors, assigns, and agents of each of them (the “*Indemnified Persons*”), harmless and indemnify each of them from and against any and all *Indemnified Claims* incurred or to be incurred by any of *Indemnified Persons* resulting from or arising out of, directly or indirectly, any breach or violation of *PCA*’s representations, warranties, covenants or agreements contained in this *Agreement*, except to the extent caused by the gross negligence or willful misconduct of any *Indemnified Persons*.

e. Limitations on Damages and Warranties.

i. *PCA* EXPRESSLY UNDERSTANDS AND AGREES THAT *PV* MAKES NO WARRANTIES OF ANY KIND OR TYPE, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Notwithstanding anything in this *Agreement* to the contrary, in no event shall *PV* be liable in any way to *PCA* for any *Claims* related in any way to the quality or the provision of the *PV Services* provided by *PV* to *PCA* pursuant to this *Agreement*, except as provided in Section 8(e)(ii) below.

ii. Notwithstanding anything in this *Agreement* to the contrary and regardless of the nature of any claim or the form of any action that *PCA* may bring against *PV* as a result of or arising out of actions, errors or omissions of in failing to provide *PV Services* (“*Defective PV Service*”), *PCA*’s sole remedy shall be: (i) to demand that provide or arrange for providing the *PV Services* in accordance with this *Agreement*, or (ii) if cannot comply with (i) and the reason is not because of force majeure as described below, reimbursement of the relevant portion of the *PV Service Fee* that *PCA* paid to *PV* for such *Defective PV Service*; provided, that with respect to a *School Year*, in no event shall *PV* be required to reimburse *PCA* an amount in excess of the *PV Service Fee* for such *School Year*. For purposes of this Section 8(e)(ii) the “relevant portion of the *PV Service Fee*” shall equal the actual documented costs incurred by *PCA* to retain a third party to provide such *PV Service* during the applicable portion of the *School Year* for which such *PV Service* is required. Any reimbursement under this Section 8(e)(iii) must first be reduced by amounts that *PCA* owes to *PV* before the actions, errors or omission of *PV* giving rise to the claims. If *PCA* has not paid the *PV Service Fee* for the month the *Defective PV Service* occurs, *PCA*’s obligation to pay the relevant portion of the *PV Service Fee* for the *Defective PV Service* shall be cancelled (at which time, the obligation of to provide such *PV Services* shall be cancelled).

iii. Any other term, covenant or condition of this *Agreement* to the contrary notwithstanding, each of *PCA* and , and their respective officers, directors, employees and agents retain their statutory governmental, official and any other immunity provided pursuant to the laws of the *State* and do not waive the defenses of governmental and official immunity derived from such laws.

f. Indemnification of Third-Party Claims. The obligations and liabilities of any *Party* to indemnify the other under this Section 8 with respect to a *Claim* relating to or arising from third parties (a “*Third Party Claim*”) shall be subject to all applicable law and to the following terms and conditions:

i. Notice and Defense. The *Party* to be indemnified (the “*Indemnified Party*”) will give the *Party* from whom indemnification is sought (the “*Indemnifying Party*”) prompt written notice of any such *Third Party Claim*, and the *Indemnifying Party* may undertake the defense thereof by

representatives chosen by it. Failure to give notice shall not affect the **Indemnifying Party's** duty or obligations under this Section 8, except to the extent the **Indemnifying Party** is prejudiced thereby. If the **Indemnifying Party** undertakes the defense of a **Third Party Claim**, then the **Indemnifying Party** shall be deemed to accept that it has an indemnification obligation under this Section 8.f with respect to such **Third Party Claim**, unless it shall in writing reserve the right to contest its obligation to provide indemnity with respect to such **Third Party Claim**. So long as the **Indemnifying Party** is defending any such **Third Party Claim** actively and in good faith, the **Indemnified Party** shall not settle such **Third Party Claim**. The **Indemnified Party** shall make available to the **Indemnifying Party** or its representatives all records and other materials required by them and in the possession or under the control of the **Indemnified Party**, for the use of the **Indemnifying Party** and its representatives in defending any such **Third Party Claim**, and shall in other respects give reasonable cooperation in such defense.

ii. Failure to Defend. If the **Indemnifying Party**, within thirty (30) days after notice of any such **Third Party Claim**, fails to dispute the obligation of the **Indemnifying Party** with respect to such **Third Party Claim** and fails to defend such **Third Party Claim** actively and in good faith, then the **Indemnified Party** will (upon written notice to the **Indemnifying Party**) have the right to undertake the defense, compromise or settlement of such **Third Party Claim** or consent to the entry of a judgment with respect to such **Third Party Claim**, on behalf of and for the account and risk of the **Indemnifying Party**, and the **Indemnifying Party** shall thereafter have no right to challenge the **Indemnified Party's** defense, compromise, settlement or consent to judgment therein.

iii. Indemnified Party's Rights. Anything in this Section 8.f to the contrary notwithstanding, (i) if there is a reasonable probability that a **Third Party Claim** may materially and adversely affect the **Indemnified Party** other than as a result of money damages or other money payments, the **Indemnified Party** shall have the right to defend, compromise or settle such **Third Party Claim**, and (ii) the **Indemnifying Party** shall not, without the written consent of the **Indemnified Party**, settle or compromise any **Third Party Claim** or consent to the entry of any judgment which does not include as an unconditional term thereof the giving by the claimant or the plaintiff to the **Indemnified Party** of a release from all liability in respect of such **Third Party Claim**.

g. Payment.

i. With regard to **Indemnified Claims** between the **Parties**, **PV** shall promptly pay the **PCA Indemnified Persons** any amounts due under Section 8.c, and/or **PCA** shall promptly pay the **Indemnified Persons** any amounts due under Section 8.d. In the event that the **Indemnified Claims** between the **Parties** are disputed in whole or in part, then upon judgment, determination, settlement or compromise of such **Indemnified Claims**, the **Party** from whom indemnification is sought shall promptly pay the **Party** to be indemnified, the amounts so determined by judgment, determination, settlement or compromise.

ii. With regard to a **Third Party Claim**, the **Indemnifying Party** shall promptly pay the **Indemnified Party** any amount due under this Section 8. Upon judgment, determination, settlement or compromise of any **Third Party Claim**, the **Indemnifying Party** shall pay promptly on behalf of the **Indemnified Party**, and/or to the **Indemnified Party** in reimbursement of any amount theretofore required to be paid by it, the amount so determined by judgment, determination, settlement or compromise and all other **Claims** of the **Indemnified Party** with respect thereto, unless in the case of a judgment an appeal is made from the judgment. If the **Indemnifying Party** desires to appeal from an adverse judgment, then the **Indemnifying Party** shall post and pay the cost of the security or bond to stay execution of the judgment pending appeal. In the event of any payment under this **Agreement**, the **Indemnifying Party** shall be subrogated to the extent of such payment to all of the rights of recovery of any **Indemnified Party**, who shall execute all papers required and take all action necessary to secure such rights, including execution of such documents as are necessary to



enable the *Indemnifying Party* to bring suit to enforce such rights. The *Indemnifying Party* may not waive any such subrogation rights in settlement.

h. Adjustment of Liability. In the event an *Indemnifying Party* is required to make any payment under this Section 9 in respect of any damages, liability, obligation, loss, claim, or other amount indemnified hereunder, such *Indemnifying Party* shall pay the *Indemnified Party* an amount which is equal to the sum of (i) the amount of such damages, liability, obligation, loss, claim or other amount, minus (ii) the amount of any insurance proceeds the *Indemnified Party* actually receives with respect thereto, minus (iii) any third party payments actually received by the *Indemnified Party* with respect to such damages, liability, obligation, loss, claim or other amount after demand or notice to such third party from the *Indemnifying Party* (with the consent of the *Indemnified Party* which will not be unreasonably withheld).

## 9. TERM AND TERMINATION

a. Term. This *Agreement* shall have an initial term commencing on the *Effective Date* and ending on June 30, 2019 (the “*Initial Term*”), and shall automatically be renewed for additional renewal terms ending on June 30 of each subsequent year (each a “*Renewal Term*” and collectively with the *Initial Term* the “*Term*”) unless written notice of intent to terminate or renegotiate is given by either *Party* not later than March 31, prior to the end of the *Initial Term* or March 31, prior to the end of any *Renewal Term*.

b. Termination by PCA. *PCA* may terminate this *Agreement* in accordance with the following provisions:

i. Termination for Cause. Subject to the provisions of Section 9.b.ii below, *PCA* may terminate this *Agreement* for cause at any time during the *Term*. For purposes of this Section 9.b, the term “*for cause*” shall mean:

(A) *PV* becomes insolvent, enters into receivership, is the subject of a voluntary or involuntary bankruptcy proceeding, or makes an assignment for the benefit of creditors;

(B) *PV* violates any material provision of law with respect to *PCA* from which *PCA* was not specifically exempted;

(C) *PV* materially breaches any of the material terms and conditions of this Agreement;

(D) the *Parties* are unable to mutually agree upon the *PV Service Fee* payable to during any *Renewal Term*;

(E) *PV*'s corporate status is revoked by the California Secretary of State;

(F) *PV* loses its tax-exempt status; or

(G) the enactment, repeal, promulgation or withdrawal of any federal, *State* or local law, regulation, or court or administrative decision or order finding that this *Agreement*, the operation of *PCA* in conformity with this *Agreement* or *PCA*'s *Charter* with the *Chartering Authority* violates *PCA*'s, the *Chartering Authority*'s or the *State*'s responsibilities, duties or obligations under the federal or *State* constitutions, statutes, laws, rules or regulations, or any contract or agreement.

ii. Right to Cure. Prior to exercising its right to terminate this *Agreement* pursuant to Section 9.b.i, *PCA* shall give written notice of its basis for terminating this *Agreement* (a “*Termination Notice*”). If the termination is “for cause”, the *Termination Notice* shall specify the section of this *Agreement* upon which *PCA* is relying for the termination and the requirements for correction of the breach. Upon receipt of the *Termination Notice*, *PV* shall have sixty (60) days to remedy the breach. If the breach is not corrected within the cure period, *PCA* may immediately terminate the *Agreement*.

c. Termination by *PV*. *PV* may terminate this *Agreement* in accordance with the following provisions:

i. Termination For Cause. Subject to the provisions of Section 9.c.ii below, *PV* may terminate this *Agreement* for cause at any time during the *Term*. For purposes of this Section 9.c.i, the term “*for cause*” shall mean that:

(A) *PCA* materially breaches any of the material terms and conditions of this *Agreement*;

(B) *PCA* fails to comply with its Bylaws and such failure materially and adversely affects the ability of *PCA* to operate as contemplated by this *Agreement*;

(C) *PCA* violates any material provision of law with respect to *PCA* from which *PCA* was not specifically exempted;

(D) *PCA* takes any action which materially interferes with the ability of *PV* to perform under this *Agreement*;

(E) a *Chartering Authority* notifies either *Party* of its intention to revoke a *PCA*’s *Charter*, or does so;

(F) the *State* notifies either *Party* of its intention to revoke *PCA*’s *Charter* between the *Chartering Authority* and *PCA* pursuant to *State* statute, or does so;

(G) the *Parties* are unable to mutually agree upon the *PV Service Fee* payable to during any *Renewal Term*;

(H) the enactment, repeal, promulgation or withdrawal of any federal, *State* or local law, regulation, or court or administrative decision or order finding that this *Agreement*, the operation of *PCA* in conformity with this *Agreement* or *PCA*’s *Charter* with the *Chartering Authority* violates *PCA*’s, the *Chartering Authority*’s or the *State*’s responsibilities, duties or obligations under the federal or *State* constitutions, statutes, laws, rules or regulations, or any contract or agreement; or

ii. *PCA* Right to Cure. Prior to exercising its right to terminate this *Agreement* pursuant to Section 9.c.i, *PV* shall give *PCA* a *Termination Notice* specifying the section of this *Agreement* upon which *PV* is relying for the termination and the requirements for correction of the breach. Upon receipt of the *Termination Notice*, *PCA* shall have sixty (60) days to remedy the breach. If the breach is not corrected within the cure period, *PV* may immediately terminate this *Agreement*.

d. Termination Upon Agreement of the *Parties*. This *Agreement* may be terminated upon written agreement of the *Parties*.

e. Avoidance of Disruptions to Students. Notwithstanding the foregoing provisions of this Section 9, each *Party* shall use its good faith best efforts to avoid a termination of this



**Agreement** that becomes effective during the **School Year** because of the disruption to the educational program and the students. Therefore, in the event this **Agreement** is terminated by either **Party** prior to the end of the **Term**, absent unusual and compelling circumstances, the termination will not become effective until the end of the **School Year**.

f. Payment of **PV Service Fee**. Upon termination of this **Agreement**, **PCA** shall pay **PV** any previously due and unpaid portion of the **PV Service Fee** for **PV Services** performed by **PV** until the time of termination.

g. Assistance Following Termination by **PV**. In the event of termination of this **Agreement** by **PV**, **PV** shall provide reasonable assistance to **PCA** for the shorter of the remainder of the current **School Year** or ninety (90) days after the effective date of termination of this **Agreement** (the "**Termination Assistance Period**"), to assist in the transition to another service provider. During the **Termination Assistance Period**, will be entitled to receive and **PCA** shall continue to pay **PV**'s **PV Service Fee** and shall reimburse for all reasonable expenses incurred by **PCA** in providing such transition assistance.

h. Records upon Termination. Upon termination or expiration of this **Agreement** for any reason, shall give to **PCA** as soon as practicably possible all student, fiscal, and other **PCA** records.

## 10. PROTECTION OF STUDENT INFORMATION

The **Parties** each acknowledge that **PCA** is a California public entity subject to **State** and federal laws governing education, including the California Education Code, the California Student Online Personal Information Protection Act ("**SOPIPA**") (effective as of January 1, 2016), the federal Children's Online Privacy and Protection Act ("**COPPA**"), and the federal Family Education Rights and Privacy Act ("**FERPA**"). The **Parties** further acknowledge that **PV** is a "third party" under California Education Code Section 49073.1(d)(6), which defines "third party" as a provider of digital educational software or services, including cloud-based services, for the digital storage, management and retrieval of pupil records. As such the **Parties** agree to the following terms in compliance with California Educational Code Section 49073.1:

a. Ownership and Control of Public Records. The pupil records shall continue to be the property of and under the control of **PCA**. For purposes of this Section 10:

i. "pupil records" means both any information directly related to a pupil that is maintained by **PCA** and information acquired directly from the pupil through the use of instructional software or applications assigned to the pupil by a teacher or other **PCA** employee;

ii. "pupil records" does not mean de-identified information, including aggregated de-identified information, used by (i) to improve educational products for adaptive learning purposes and for customizing pupil learning, (ii) to demonstrate the effectiveness of **PV**'s products in the marketing of those products, or (iii) for the development and improvement of educational sites, services or application; and

iii. "de-identified information" means information that cannot be used to identify an individual pupil.

b. Ownership and Control of Pupil-Generated Content. To the extent **PV**'s services provided by **PV** contain any pupil-generated content from the pupils of **PCA**, the pupils may retain possession and control of their own pupil-generated content, or may transfer pupil-generated content to a personal account. In such case, **PCA** shall promptly notify **PV** and forward a copy of any such pupil request to **PV**,

and *PV* will process the written request and work with *PCA* to return the pupil-generated content in a format acceptable to *PCA* within five (5) business days after *PV* receives *PCA*'s request. For purposes of this *Agreement*, "pupil generated content" includes essays, research reports, portfolios, creative writing, music or other audio files, photographs and account information that enables ongoing ownership of pupil content, but does not include pupil responses to a standardized assessment where pupil possession and control would jeopardize the validity and reliability of that assessment.

c. Use of Pupil Records. *PV* shall not use any information in the pupil records for any purpose other than those required or specifically permitted by this *Agreement*.

d. Review of Pupil Records. A parent or legal guardian, or eligible pupil (meaning a pupil who has reached 18 years of age) may review personally identifiable information in the pupil's records and correct erroneous information by notifying either *PCA*'s or *PV*'s student services department in writing of such request. *PCA* will meet with the parent, legal guardian or eligible pupil to review and correct any information in the pupil's records that can be changed in accordance with *PCA*'s policies. *PCA* will notify *PV* of the need to review pupil records and/or make corrections to any pupil records in writing. Corrections or changes to pupil records must follow *PCA* or the *PCA Charter School*'s policies. *PV* shall provide records and/or correct such errors within five (5) business days of receipt of written notice. *PV* shall cooperate with *PCA* to review and/or correct pupil records.

e. Security and Confidentiality of Pupil Records. *PV* agrees to hold pupil records in strict confidence. *PV* shall not use or disclose pupil records received from or on behalf of *PCA* and except as permitted or required by this *Agreement*, as required by law, or as otherwise authorized in writing by *PCA*. *PV* agrees that it will protect the pupil records it receives from or on behalf of *PCA* according to commercially acceptable standards and no less rigorously than it protects its own confidential information. *PV* will designate and train responsible individuals to ensure the security and confidentiality of pupil records. *PV* shall develop, implement, maintain, and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all electronically maintained or transmitted pupil records received from or on behalf of *PCA*. Pupil records shall not be stored or transmitted outside of the United States.

f. Unauthorized Disclosure Notification Process. *PV*, within one (1) business day of discovery, shall report to *PCA* any use or disclosure of pupil records not authorized by this *Agreement*. *PV*'s report shall identify (i) the nature of the unauthorized use or disclosure, (ii) the pupil records used or disclosed, (iii) who made or is believed to have made the unauthorized use or received the unauthorized disclosure, (iv) what has done or shall do mitigate any effect of the unauthorized use or disclosure, and (v) what corrective action *PV* has taken or shall take to prevent future similar unauthorized use or disclosure. *PV* shall provide to *PCA* such other information, including written reports as reasonably requested by *PCA*. If the nature of the breach reported to *PCA* involves an unauthorized disclosure of pupil records, the parties will work together to prepare and send, within five (5) business days, written notification to the parents, legal guardians or eligible pupils detailing the breach and the next steps to be taken to address the specific unauthorized disclosure. Compliance with these requirements shall not, in itself, absolve *PV* of liability in the event of an unauthorized disclosure of pupil records.

g. Certification of Non-Retention and Destruction of Pupil Records. *PV* certifies that pupil records shall not be retained or available to *PV* upon completion of the term of this *Agreement*. At the termination of this *Agreement*, pupil records in the possession of *PV* shall be returned and/or destroyed. Upon termination, cancellation, expiration or other conclusion of this *Agreement*, *PV* shall return all pupil records to *PCA* in a format acceptable to *PCA*, or if return is not feasible as determined by *PCA* in written notice to *PV*, destroy all pupil records; provided, however, *PV* shall not destroy any pupil

records without express prior written permission of *PCA*. *PV* shall comply with all known litigation holds or orders to preserve pupil records.

h. Compliance with FERPA and other Applicable Laws. *PCA* and *PV* will jointly ensure compliance with the federal FERPA (as defined in this Section 10) (20 U.S.C. §1232g) by following the confidentiality provisions and access to/release of educational records requirements as set forth in this *Agreement*, and applicable *PCA* policies. The parties acknowledge and agree that the *PCA* is subject to federal, state and local laws relating to the protection of “personally identifiable information” (“*PII*”) of students, including FERPA. For purposes of this *Agreement*, the term “personally identifiable information” means any information that can be used on its own or with other information to (i) distinguish one person from another, (ii) identify, contact, or locate a single person, or (iii) de-anonymize anonymous data. *PV* is obtaining such *PII* as a “school official” under 34 CFR Section 99.31 for the purpose of providing the services under this *Agreement*. In addition to FERPA, *PV* shall comply with all federal, state and local laws, rules, regulations and ordinances that are now or may in the future become applicable to with regard to the *PV*’s being provided by and regarding the protection of pupil records and *PII*, including but not limited to California Education Code Section 49060 *et seq.*, COPPA and SOPIPA (as such terms are defined in this Section 10). *PV* acknowledges that it is familiar with these laws, as well as any other applicable requirements for the storage and transmission of pupil records, and *PV* will comply with all such requirements.

i. Prohibition on Targeted Marketing. *PV* shall not use *PII* in pupil records to engage in targeted advertising.

j. Cyber Liability Insurance and Indemnity. *PV* shall obtain and maintain for the *Term* of this *Agreement* Cyber Liability Insurance with limits of not less than Two Million Dollars (\$2,000,000) aggregate including but not limited to coverage for claims involving security and privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of information, business interruption, cyber extortion and corruption, and denial of service. *PV* shall indemnify, defend and hold *PCA* (including its officers, directors and employees) from and against all claims, losses, liabilities, damages, expenses or judgments involving a third party, including *PCA*’s costs and reasonable attorney’s fees, which arise as a result of any such unauthorized disclosures or misuse of pupil records through the *PV*’s provided by *PV*, excluding those claims, liabilities, damages or judgments arising from the sole active negligence or willful misconduct of *PCA*.

## 11. MISCELLANEOUS

a. Governing Law. This *Agreement* shall be governed by, construed, interpreted and enforced in accordance with the laws of the *State*, without giving effect to the principles of conflict of laws thereof. The *Parties* hereby irrevocably waive any objection which either may now or hereafter have to the laying of venue of any actions or proceedings arising out of or in connection with this *Agreement* brought in the courts of the *State* and hereby further irrevocably waive and agree not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum.

b. Alternative Dispute Resolution.

i. Good Faith Negotiation of Disputes. The *Parties* agree to cooperate in good faith in all actions relating to this *Agreement*, to communicate openly and honestly, and generally to attempt to avoid disputes. If, nevertheless, a dispute relating to any commercial transaction arises in connection with this *Agreement*, either *Party* may give notice to the other *Party* of intent to negotiate, and the parties agree to use their best efforts to resolve such dispute in a fair and equitable manner. In the event any dispute or claim arising out of or relating to this *Agreement* or the relationship resulting in or from this

*Agreement* (a “*Dispute*”), except for any *Excluded Claims* (as defined below), is unable to be resolved by the *Parties* (or if one of the *Parties* refuses to participate in such negotiations) within twenty (20) days from the notice of intent to negotiate, either *Party* may give written notice to the other (in accordance with Section 11.j) that the *Dispute* shall be resolved in accordance with this Section 11.b alternative dispute resolution procedures.

ii. Binding Arbitration Except With Respect to Excluded Claims. Any *Dispute*, except for any *Excluded Claims*, will be resolved by binding arbitration in accordance with the Commercial Arbitration Rules of Alternative Dispute Resolution, Inc. (the “*Arbitration Rules*”), except as stated below. Within seven (7) calendar days following the giving by either *Party* of a written notice to arbitrate, the *Parties* shall jointly select a single arbitrator who shall hear the *Dispute*. The arbitrator shall convene a hearing as soon as possible thereafter. Each *Party* may present witnesses, documentary, and other evidence in its behalf, but strict rules of evidence shall not apply. The arbitrator shall permit the filing of briefs upon request of either *Party*. The arbitrator shall issue a written opinion concerning the matters in controversy together with an award. The arbitrator shall issue the award within thirty (30) days following the close of the hearing, and judgment upon the award may be entered in any court having jurisdiction thereof.

iii. Notices. All *Notices* (defined below), arbitration claims, responses, requests and documents will be sufficiently given or served if mailed or delivered in the manner described in the notice provision of this *Agreement*.

iv. Award, Confirmation. Notwithstanding anything to the contrary in the Arbitration Rules or otherwise, the arbitrator is not empowered to award punitive damages. Any award rendered by the arbitrator may be entered as a judgment or order and confirmed or enforced by either *Party* in any court having competent jurisdiction thereof.

v. Expense Shifting For Arbitration Avoidance. Notwithstanding anything to the contrary in the Arbitration Rules or otherwise, and except for any *Excluded Claims*, which claims are not subject to arbitration, no *Party* may seek judicial relief. In the event any *Party* violates this provision and brings any action for judicial relief in the first instance without pursuing arbitration prior thereto, such *Party* will be liable to the other *Party* for, among other things, all of the other *Party*’s costs and expenses (including, without limitation, court costs and attorneys’ fees) incurred to stay or dismiss such judicial action and/or remove or remand it to arbitration. It shall not be a violation of this arbitration provision for the *Party* entitled to collect such costs and expenses to seek to have them included in a judicial order of dismissal, removal, or remand. In the alternative, such *Party* may seek an immediate and separate award of such costs and expenses at the outset of the arbitration, which the arbitrator must grant, and the *Party* may seek immediately to confirm such award of costs and expenses. In addition, if either *Party* brings any judicial action to vacate or modify any award rendered pursuant to arbitration, or opposes a judicial action to confirm such award, and the *Party* bringing or opposing such action or opposing confirmation of such award does not prevail, such *Party* will pay all of the costs and expenses (including, without limitation, court costs, arbitrators fees and expenses and attorneys’ fees) incurred by the other *Party* in defending against the action to vacate or modify such award or in pursuing confirmation of such award. The cost- shifting provisions of the preceding sentence shall apply equally to appeals of judicial decisions to which the preceding sentence applies. It shall not be a violation of this arbitration provision for the *Party* entitled to collect such costs and expenses to seek to have them included in a judicial order dealing with confirmation, vacation, or modification of an award, or any order on an appeal to which the preceding sentence applies.

vi. Excluded Claims. “*Excluded Claims*” means (i) any claim by either *Party* relating to its intellectual property rights; (ii) any claim by either *Party* arising under or related to the *Charter School Law*, or the Internal Revenue Code of 1986, as both may be amended, and (iii) any claim arising under or related to the protection of student information as detailed in Section 10.

c. Breach and Waiver. No failure on the part of any **Party** to enforce the provisions of this **Agreement** shall act as a waiver of the right to enforce any provision. Further, no waiver of any breach of this **Agreement** shall (a) be effective unless it is in writing and executed by the **Party** charged with the waiver, or (b) constitute a waiver of a subsequent breach, whether or not of the same nature. All waivers shall be strictly and narrowly construed. No delay in enforcing any right or remedy as a result of a breach of this **Agreement** shall constitute a waiver thereof. No waiver of any provision of this **Agreement** shall be deemed or shall constitute a waiver of any other provision. Nor shall such waiver constitute a continuing waiver unless otherwise expressly stated.

d. No Third Party Beneficiary Rights. With the exception of the **Chartering Authority**, no third party, whether a constituent of **PCA**, a member of the community, a student or parent of a student of any **PCA** or otherwise, may enforce or rely upon any obligation of, or the exercise of or failure to exercise any right of, **PCA** or **PV** in this **Agreement**. This **Agreement** is not intended to create any rights of a third party beneficiary.

e. Negligent, Wrongful or Unlawful Acts of a Party. Nothing in this **Agreement** shall affect or alter in any way responsibility of either **Party** of this **Agreement** for the negligent, wrongful or unlawful act of that **Party**'s employees, agents or contractors.

f. Delegation of Authority. Nothing in this **Agreement** shall be construed as delegating to **PV** any of the powers or authority of **PCA** or the **Board**, which are not subject to delegation by **PCA** or the **Board** under the **Charter School Law**, applicable **State** law or the **PCA Charter**.

g. Compliance with Laws. Unless specifically waived by appropriate governmental authority, **PV** shall comply with all applicable laws, rules, regulations, ordinances, orders or other requirements of the **State** and any governmental authority relating to its delivery of the goods or services specified in this **Agreement**.

h. Incorporation of Recitals. The recitals to this **Agreement** are hereby incorporated herein as an integral part of this **Agreement**.

i. Inspection and Access to Records. Upon reasonable notice, the **Parties** shall make available to each other and to the **Chartering Authority** for inspection and copying, all books, records, and documents relating to the **Parties**' obligations and performance under this **Agreement**.

j. Notices. All notices, demands, consents or other communications ("Notices") which either **Party** may be required or desire to give to the other **Party** shall be in writing and shall be deemed delivered when (a) personally delivered, (b) if mailed, five (5) business days after deposit in the United States mail, postage prepaid, certified or registered mail, return receipt requested, (c) if delivered by a reputable overnight carrier, one business day after delivery to such carrier, or (d) if delivered by facsimile, on the date the facsimile transmission is confirmed, provided that, on such date, a separate copy is also delivered pursuant to clause (b) or (c). Delivery by mail, overnight carrier or facsimile shall be addressed to the **Parties** as follows:

i. **PV**

ii. **PCA:**

Any **Party** may change its address for notice by notice given in accordance with the foregoing provisions. Notwithstanding the manner of delivery, whether or not in compliance with the foregoing provisions, any notice, demand or other communication actually received by a **Party** shall be deemed delivered when so



received.

k. The parties acknowledge that, in connection herewith, BLANK ROME, LLP, a limited liability partnership ("**BR**") has represented **PV** and **PCA**. Each **Party** acknowledges that (a) the foregoing has been discussed fully with that **Party**, (b) each **Party** could have been represented by independent or different counsel of that **Party's** own choosing, and (c) **BR** owes no duty to any **Party** other than **PV** and **PCA**. Each **Party** specifically consents to the foregoing dual representation by **BR** and waives any objection to the foregoing representation in connection with all matters relating to this **Agreement**.

l. Defined Terms and Use of Terms. All defined terms used in this **Agreement** shall be deemed to refer to the masculine, feminine, neuter, singular and/or plural, in each instance as the context and/or particular facts may require. Use of the terms "hereunder," "herein," "hereby," and similar terms refer to this **Agreement**.

m. Section Headings. The headings in this **Agreement** are for the convenience of the parties only, and shall have no effect on the construction or interpretation of this **Agreement** and are not part of this **Agreement**.

n. Exhibits and Schedules. Each exhibit and each schedule to this **Agreement** to which reference is made in this **Agreement** is hereby incorporated in this **Agreement** as an integral part thereof. In the event of a conflict between the terms and provisions of this **Agreement** and the terms and provisions of any exhibits or schedules, the terms and provisions of this **Agreement** shall control.

o. Entire Agreement. This **Agreement** constitutes the entire agreement between the **Parties** with respect to the subject matter herein, as of the **Effective Date**, and there are no understandings of any kind except as expressly set forth herein. Further, any and all prior understandings and agreements between the **Parties**, expressed or implied, written or oral, are superseded hereby.

p. Modifications and Amendments; No Parol Evidence. This **Agreement** (including any exhibits and schedules to this **Agreement**) is the entire agreement between the **Parties**, and may be altered, changed, added to, deleted from or modified only by agreement in writing by the **Parties**.

q. Assignment. Subject to **PV's** right to subcontract for any of the **PVvices** as set forth in Section 3.b, this **Agreement**, including without limitation, the rights granted herein, may not be assigned, delegated, transferred, pledged, or hypothecated by either **Party**, whether voluntarily or involuntarily without the prior written consent of the other **Party**; provided, however, that may assign its rights and obligations under this **Agreement** to a California nonprofit organization that is (1) related to by legal, beneficial or equitable ownership or other means of control (such as parent/subsidiary or corporations under common control) and (2) dedicated to managing charter schools in the **State**. This **Agreement** shall inure to the benefit of and shall be binding upon the **Parties** and their successors and assigns, and the name of a **Party** appearing herein shall be deemed to include the name of such **Party's** successors and assigns to the extent necessary to carry out the intent of this **Agreement**.

r. Counterparts. This **Agreement** may be executed in counterparts, each of which shall be deemed to be an original and both together shall be deemed to be one and the same agreement.

s. No Partnership. This **Agreement** does not constitute, and shall not be construed as constituting, a partnership or joint venture between the **Parties**.

t. Further Assurances. The **Parties** agree that they will execute and deliver or cause to be executed and delivered from time to time such other documents, including but not limited to a

license in customary form, and will take such other actions as the other **Party** reasonably may require to more fully and efficiently carry out the terms of this **Agreement**.

u. Severability. In case any one or more of the provisions or parts of a provision contained in this **Agreement** shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other provision or part of a provision of this **Agreement** in such jurisdiction, but this **Agreement** shall be reformed and construed in any such jurisdiction as if such invalid or illegal or unenforceable provision or part of a provision had never been contained herein and such provision or part shall be reformed so that it would be valid, legal, and enforceable to the maximum extent permitted in such jurisdiction.


v. Force Majeure. Neither **Party** shall be liable to the other **Party** for any delay or failure of performance of this **Agreement**, other than the payment of any monies owed by one **Party** to the other (including the **PVvice Fee**), if the delay or failure is caused by weather conditions, earthquake, fire, flood, externally caused transmission interferences, satellite failure, war, riot, acts of terrorism, civil disturbance, or any cause beyond the control of the non-performing **Party**. If a delay or failure of performance by a **Party** is caused by an event of force majeure, such **Party** shall notify the other **Party** and shall be released without any liability from its performance under this **Agreement** to the extent and for the period of time that such performance is prevented by the event of force majeure.

w. Negotiated Agreement. The provisions of this **Agreement** were negotiated by the Parties and this **Agreement** shall be deemed to have been drafted by the Parties, notwithstanding any presumptions at law to the contrary.



IN WITNESS WHEREOF, the Parties have executed and delivered this *Agreement* as of the date first written above.

**PROVENANCE, California non-profit corporation**

By:   
Name:  
Title:

**PACIFIC COAST ACADEMY**

By: 

# Appendix D: Education and Support Services Agreement Between Provenance and Pacific Coast Academy

## EDUCATION AND SUPPORT SERVICES AGREEMENT BETWEEN PROVENANCE AND PACIFIC COAST ACADEMY

This Education and Support Services Agreement (“*Agreement*”) is entered into as of July 1, 2020 (“*Effective Date*”), by and between Provenance, a California nonprofit public benefit corporation (“*Provenance*”) and Pacific Coast Academy, a public charter school organized as a California nonprofit public benefit corporation (“*School*”). Provenance and School may each be referred to herein as a “*Party*” or collectively as the “*Parties*” to this Agreement.

**WHEREAS**, Provenance, a nonprofit corporation with tax exempt status as a supporting organization under section 501(c)(3) of the Internal Revenue Code, is in the business of providing educational goods and administrative services to charter schools that are operated by separate corporations.

**WHEREAS**, School is authorized by Dehesa Elementary School District (“*District*”) to operate a California charter school for a term of five (5) years, from July 1, 2017 through June 30, 2022, pursuant to a petition granted by District dated 4/20/17 (“*Charter*”).

**WHEREAS**, subject to the terms and conditions contained in this Agreement, School now desires to contract with Provenance for instructional and operational support services.

**WHEREAS**, the Parties acknowledge and intend that the terms of this Agreement shall at all times be consistent with the terms of the Charter and that this Agreement provides for Provenance to deliver educational goods and task-related services that are performed at the direction of the governing body of School and over which the governing body of School retains ultimate decision-making authority.

**NOW, THEREFORE**, in consideration of their mutual promises set forth in this Agreement, the Parties agree as follows:

**1. Relationship of the Parties and Scope of Authority.** The relationship created by this Agreement between the Parties is that of an independent contractor, not a partnership, joint venture, nor employment relationship. Under this Agreement, Provenance will deliver goods and perform task-related services at the direction of the governing body of School and for which the governing body of School retains ultimate decision-making authority. The Parties understand and agree as follows:

a. The governing body of School shall at all times retain its duty to exercise its statutory, contractual, and fiduciary responsibilities governing operation of School. The governing body of School, and not Provenance, has fiduciary responsibility for School. The governing body of School is ultimately responsible for ensuring School adheres to all applicable law and is accountable to the authorizing District pursuant to the Charter.

b. School shall at all times remain an independent, self-governing public body that shall comply with applicable transparency laws, including, but not limited to,

the California Brown Act, Public Records Act, Political Reform Act, and, effective January 1, 2020, the provisions of Government Code section 1090, et seq.

c. To the extent not otherwise specified as a duty of Provenance pursuant to the scope of Services, all duties applicable to the proper operation of School and maintenance of applicable academic standards shall remain the responsibility of School.

d. Provenance will not be required to provide any service set forth in this Agreement to the extent that it is or becomes impracticable, in any material respect, as a result of a cause or causes outside Provenance's and/or School's reasonable control or would require Provenance or School to violate applicable law or cause Provenance to be considered an "entity managing a charter school" per Education Code section 47604.1(a).

e. Provenance will provide all Services in a manner it believes to be in the best interests of School and with due care, in good faith, and in exchange for reasonable compensation taking into account that Provenance is a nonprofit that is exempt from income taxation pursuant to Internal Revenue Code section 501(c)(3).

**2. Independent Contractor.** Nothing in this Agreement shall confer upon any Provenance or School employee any rights or remedies, including any right to employment, as an employee of the other Party. The Parties agree as follows:

a. All Provenance employees providing services to School shall be and remain employed by Provenance and shall at all times be subject to the direction, supervision, and control of Provenance. All School employees shall be and remain employed by School and shall at all times be subject to the direction, supervision, and control of School.

b. School shall not have any right to terminate the employment of any Provenance employee providing services to School. Provenance shall not have any right to terminate the employment of any School employee.

c. The Parties agree that Provenance shall not lease its employees to School. School shall employ all of its personnel, including certificated personnel responsible for the delivery of instruction. School shall determine and manage compensation (salary and benefit) plans for its employees; provided, however, that School shall oversee and may consult with Provenance and Provenance will assist with providing payroll and related services pursuant to the scope of Services.

d. Although the Parties do not contemplate that Provenance employees will provide any school-site or transportation services for School, Provenance certifies that any of its employees who perform school-site services or transportation services for School, or who may have substantial contact with students at School as determined by School in its reasonable discretion, shall be screened in compliance with Education Code section 45125.1 and Provenance shall otherwise comply with that statute.

**3. Services Provided by Provenance.** During the term of this Agreement, Provenance shall provide to School the services, including the staff necessary to provide the services, listed in Attachment A to this Agreement (the “**Services**”). Provenance is not obligated to devote all of its time or efforts to School, but shall devote the time, effort, and skill reasonably necessary to provide the Services to School. Provenance reserves the right to sub-contract with a third party for the provision of any of the Services. The Parties may mutually agree to modify the Services at any time by amending Attachment A in writing; provided, however, the Parties will also adjust the annual fee commensurately pursuant to Section 5 of this Agreement, if necessary, and Provenance shall only deliver task-related services that are performed at the direction of the governing body of School and for which the governing body of School retains ultimate decision-making authority. To the extent there are any conflicts between the terms of the Charter and the terms of this Agreement, the terms of the Charter shall control.

**4. Term.** The term of this Agreement shall commence on July 1, 2020 and continue through June 30, 2021. This Agreement will be automatically renewed unless either party provides Notice as set forth in Section 20 of this Agreement on or prior to April 1, 2021 that it will not be renewed. Upon automatic renewal, the parties’ obligations shall continue in full during the Term.

**5. Annual Fee.** For services in Exhibit A, School shall pay Provenance an annual fee of 3.35% of School’s revenue as calculated based on each reporting unit (i.e., charter school, department, location, central office, and any other additional reporting units that may be added at the discretion of School). Revenues shall not include one-time or federal, restricted grant funds such as PCSGP grants or other federal funding programs.

a. Beginning July 1, 2020, the annual fee shall be paid by School to Provenance in twelve (12) equal monthly installments per year with each monthly payment made through ACH transfer and received by Provenance by the 8th of each month.

b. Provenance will submit monthly invoices based upon School’s current school year budgeted revenue. Invoices may be adjusted based on the most current financial forecast.

c. **Right to Suspend Performance.** In the event of default or delay in payment greater than thirty (30) days from the date of the invoice, Provenance reserves the right to suspend part or all of its performance of duties under this contract until all amounts for Services and Expenses are paid in full. In the event School disputes all or any portion of an invoice, School shall notify Provenance within fifteen (15) days of receipt of the invoice and initiate the dispute resolution process under Section 19 of this Agreement.

d. **Late Payments.** Unless School receives prior written approval from Provenance, payments made after the payment terms are subject to a late payment

penalty equal to 5% of invoiced amount. If the fees are received in the ICS bank account by the 15th of the month no late fee will be assessed.

e. At the end of each fiscal year, after the P-2 ADA certification by the California Department of Education, which should occur no later than June 30th, a reconciliation of payments shall be made based upon School's actual revenues in said year. In the event that the total amount of installment payments made by School for the subject year exceeds the total amount due based upon School's actual Revenues, Provenance shall refund the total amount of said overpayment to School within thirty (30) days of the end of the fiscal year. In the event that the total amount of installment payments made by School for the subject year is less than the total amount due based upon School's actual Revenues, School shall pay the total amount of said underpayment to Provenance within thirty (30) days of the end of the fiscal year.

f. In the event this Agreement is renewed, the annual fee may be reviewed and renegotiated by the Parties. If neither Party provides a Notice of non-renewal prior to March 1, 2021, then this Agreement shall be renewed on the same terms with the same Annual Fee unless either party provides a notice of a proposed change to the Annual Fee prior to April 1, 2021, and the Parties agree to a change of the Annual Fee prior to May 1, 2021. If the Parties fail to agree to a change of the Annual Fee prior to May 1, 2021, then this Agreement shall terminate on June 30, 2021.

**6. Costs.** In addition to the Annual Fee, School shall reimburse Provenance for direct "pass-through" costs and expenses incurred in performing the Services, including, but not limited to: equipment, materials, or supplies purchased from third parties at the request of, or on behalf of School; platform subscription fees (i.e. student information systems, learning management systems); travel (including mileage, airfare, lodging, meals, and ground transportation); filing or corporate fees; marketing and development costs incurred solely for School (i.e. print materials, postage for mailers, and costs of newspaper, radio, television, billboard or other broadcast advertisements); and fees of other third parties consulted by Provenance at the request of or on behalf of School.

a. In the event that Provenance purchases equipment, materials, or supplies at the request of or on behalf of School, Provenance shall comply with the procurement policies and processes approved by the governing body of School and shall not include any mark-up, added fees or charges with the cost of equipment, materials, and supplies purchased from third parties.

b. Any equipment, materials, or supplies that Provenance purchases on behalf of School shall be and remain the property of School.

c. All reimbursable costs of Provenance charged to School shall be itemized on Provenance invoices with reference to specific dollar amounts and with backup documentation for such costs (e.g., copies of receipts or purchase orders).

**7. Annual Notices.** As a supporting organization to School, Provenance shall, at least annually, provide School with a copy of its most recent Form 990, a description of the support, in services and otherwise, provided to School, and its most current articles and bylaws, not later than the date on which the Form 990 is due to be filed, that being the 15th day of the 5th month after the close of the year for which the Form 990 is filed.

**8. Cooperation.** School shall make available to Provenance, in a timely manner, all data, files, documents, and other information and records necessary or appropriate for Provenance to provide the Services under this Agreement. School staff and the governing body of School as necessary, shall work closely and cooperatively with Provenance to facilitate Provenance's effective performance and delivery of the Services.

**9. Conflicts of Interest.** School and Provenance recognize that it is important that School be assured that Provenance staff acts at all times with integrity. School has adopted a conflict of interest code under the California Political Reform Act. Provenance acknowledges that School may require certain Provenance staff to file annual financial interest disclosures as consultants under that code and abide by the disclosure and disqualification provisions of that Act. Provenance also agrees to adopt and provide to School copies of conflict of interest policies required by the IRS, as well as an anti-nepotism policy and a policy regarding inconsistent employment for compensation, which policies shall meet Federal requirements for grant and funding program administration.

**10. Non-Exclusive, Non-Transferable Intellectual Property License.** Provenance grants School a non-exclusive, non-transferable irrevocable, United States limited license to use, display and print graphic images of the Provenance IP in connection with School's operation of the Charter. The Provenance IP is described in Attachment B and may include copyrights, patents, trademarks, technology, and intellectual property of every kind (the "**Provenance IP**"). The Parties acknowledge that Provenance has extensively invested in developing and improving the Provenance IP and in marketing, refining, advertising, promoting, and publicizing it, all of which have become well and favorably known to the public throughout the United States, and as a result of such efforts, Provenance has acquired valuable goodwill therein. The non-exclusive, non-transferable license granted to School is subject to the following terms and conditions:

a. **Ownership.** School acknowledges the ownership of the Provenance IP and shall do nothing inconsistent with such ownership. School acknowledges that all use of the Provenance IP shall inure to the benefit of and be on behalf of Provenance. School acknowledges that nothing in this Agreement shall give School any right, title, or interest in and to the Provenance IP other than the right to use the intellectual property in accordance with the terms of this Agreement.

b. **Quality Standards.** School shall not utilize the Provenance IP in any manner that would diminish their value or harm the reputation of Provenance or any other Provenance organization. The nature and quality of all services rendered by School in connection with the Provenance IP, all goods sold by School under the Provenance IP, and all related advertising, promotional and other related uses of the

Provenance IP by School shall conform to standards set by and be under the control of Provenance.

c. School agrees that School will not frame, copy, or feature any trademarks, logos, content from Provenance's websites or marketing materials at any website owned or controlled by School without Provenance's prior express written permission.

d. Neither School nor any entity owned or controlled by them will directly or indirectly file, apply for, prosecute, register, maintain, obtain, and/or acquire any domain names, trademark applications, or trademark registrations, for any mark or name comprised of or containing the Provenance IP, or for any other confusingly similar marks, names, or terms. Further, neither School nor any entity owned or controlled by School will directly or indirectly challenge, contest, or interfere with Provenance's ownership, use, registration, or enforcement of its Provenance IP.

e. School shall not have the right to grant a license, sublicense, or any other rights to the Provenance IP.

f. The license and rights granted to School herein are subject to any limitations imposed by any applicable government grant or government contract entered into by Provenance.

g. School shall use the Provenance IP only in the manner and for the duration expressly permitted in writing by Provenance.

h. Upon termination or expiration of this Agreement, School shall have no right to make any use whatsoever of the Provenance IP and must remove all Provenance IP previously used by School in accordance with Section 15 of this Agreement, Termination.

i. Infringement Proceedings. School shall promptly inform Provenance of any infringements or other violations of the Provenance IP. Provenance shall have the exclusive right, at its sole discretion, to determine whether to take any action, including litigation, against such infringements or other violations. For any such action Provenance decides to take: (a) School will reasonably cooperate with and assist Provenance; (b) Provenance shall bear all costs, attorney's fees, and expenses; and (c) Provenance shall receive and retain all monetary awards, judgments, damages, and settlement proceeds. If Provenance decides not to take any action against an infringement or other violation of the Provenance IP, Provenance will notify School of its decision, at which time School may request Provenance's permission for School to take action, including litigation. If Provenance permits School to take action: (a) Provenance will reasonably cooperate with and assist School; (b) School will bear all costs, attorney's fees, and expenses; (c) School will obtain Provenance's prior approval of any settlement, such approval to not be unreasonably withheld; and (d) School will receive and retain all monetary awards, judgments, damages, and settlements proceeds.



j. Notwithstanding the foregoing, School shall own all proprietary rights to curriculum or educational materials that: (1) are both directly developed and paid for by School; or (2) were developed by Provenance at the direction of the governing body of School with School funds dedicated for the specific purpose of developing such curriculum or materials unless otherwise agreed in writing.

k. The parties understand and agree that School may use Provenance IP during the Term of this Agreement subject to the terms of this Section 10 of this Agreement but is not under any obligation to do so and that School is free to use, display, or print other IP for, including, but not limited to, branding, marketing, or development purposes.

**11. Non-Exclusive, Non-Transferable Intellectual Property License.** School grants Provenance a non-exclusive, non-transferable irrevocable, United States limited license to use, display and print graphic images of School IP in connection with School's operation of the Charter. The School IP includes, but is not limited to, copyrights, patents, trademarks, technology, internet domains including <https://pacificcoastacademy.org>, email addresses including [@pacificcoastacademy.org](mailto:@pacificcoastacademy.org), intellectual property of every kind whether initially developed or administered by School or by Provenance (the "School IP"). The Parties acknowledge that School has extensively invested in developing and improving the School IP and in marketin, refining, advertising, promoting, and publicizing it, all of which have become well and favorably known to the public throughout the United States, and, as a result of such efforts, School has acquired valuable goodwill therein. The non-exclusive, non-transferable license granted to Provenance is subject to the following terms and conditions:

a. Ownership. Provenance acknowledges the ownership of the School IP and shall do nothing inconsistent with such ownership. Provenance acknowledges that all use of the School IP shall inure to the benefit of and be on behalf of School. Provenance acknowledges that nothing in this Agreement shall give Provenance any right, title, or interest in and to the School IP other than the right to use the intellectual property in accordance with the terms of this Agreement. Provenance agrees to execute any documentation and to take any other steps reasonably required to establish School is the sole party owing or having any interest in the School IP.

b. Quality Standards. School shall not utilize the School IP in any manner that would diminish their value or harm the reputation of School or any of its representatives. The nature and quality of all services rendered by Provenance in connection with the School IP, all goods sold by Provenance under the School IP, and all related advertising, promotional and other related uses of the School IP by Provenance shall conform to standards set by and be under the control of School.

c. Provenance agrees that Provenance will not frame, copy, or feature any trademarks, logos, content from School's websites or marketing materials at any website owned or controlled by Provenance without School's prior express written permission.

d. Neither Provenance nor any entity owned or controlled by it will directly or indirectly file, apply for, prosecute, register, maintain, obtain, and/or acquire any domain

names, trademark applications, or trademark registrations, for any mark or name comprised of or containing the School IP, or for any other confusingly similar marks, names, or terms. Further, neither Provenance nor any entity owned or controlled by it will directly or indirectly challenge, contest, or interfere with School's ownership, use, registration, or enforcement of its School IP.

e. Provenance shall not have the right to grant a license, sublicense, or any other rights to the School IP.

f. The license and rights granted to Provenance herein are subject to any limitations imposed by any applicable government grant or government contract entered into by School.

g. Provenance shall use the School IP only in the manner and for the duration expressly permitted in writing by School.

h. Upon termination or expiration of this Agreement, Provenance shall have no right to make any use whatsoever of the School IP and must remove all School IP previously used by Provenance in accordance with Section 15 of this Agreement, Termination.

i. Infringement Proceedings. Provenance shall promptly inform School of any infringements or other violations of the School IP. School shall have the exclusive right at its sole discretion to determine whether to take any action, including litigation, against such infringements or other violations. For any such action School decides to take: (a) Provenance will reasonably cooperate with and assist School; (b) School shall bear all costs, attorney's fees, and expenses; and (c) School shall receive and retain all monetary awards, judgments, damages, and settlement proceeds. If School decides not to take any action against an infringement or other violation of the School IP, School will notify Provenance of its decision, at which time Provenance may request School's permission for Provenance to take action, including litigation. If School permits Provenance to take action: (a) School will reasonably cooperate with and assist Provenance; (b) Provenance will bear all costs, attorney's fees, and expenses; (c) Provenance will obtain School's prior approval of any settlement, such approval to not be unreasonably withheld; and (d) Provenance will receive and retain all monetary awards, judgments, damages, and settlements proceeds.

j. Notwithstanding the foregoing, School shall own all proprietary rights to curriculum or educational materials that: (1) are both directly developed and paid for by School; or (2) were developed by Provenance at the direction of the governing body of School with School funds dedicated for the specific purpose of developing such curriculum or materials unless otherwise agreed in writing.

k. The parties understand and agree that Provenance may use School IP during the Term of this Agreement subject to the terms of this Section 11 of this agreement but is not under any obligation to do so.

**12. Confidentiality.** Each Party acknowledges that during the term of this Agreement, it will have access to certain Confidential Information of the other Party, as defined below. Each Party shall maintain and enforce reasonable administrative, technical, and physical safeguards to reasonably protect the confidentiality of the other Party's Confidential Information.

a. "**Confidential Information**" means non-public information marked either "confidential" or "proprietary," or that otherwise should be understood by a reasonable person to be confidential in nature. Confidential Information may include, but is not limited to, trade secrets, policies, procedures, intellectual property, business or strategic plans, contractual arrangements or negotiations, financial information and employee information. Confidential Information does not include any information that (i) is rightfully known to the recipient prior to its disclosure; (ii) is released to any other person or entity (including governmental agencies) without restriction; (iii) is independently developed by the recipient without use of or reliance on Confidential Information; (iv) is or later becomes publicly available without violation of this Agreement or may be lawfully obtained by a Party from a non-party; or (v) is a public record under California law.

b. If disclosure of Confidential Information is requested pursuant to law, statute, rule or regulation (including a subpoena, a request made to School under the California Public Records Act, or other similar form of process), the Party to which the request for disclosure is made shall (other than in connection with routine supervisory examinations by regulatory authorities with jurisdiction and without breaching any legal or regulatory requirement) provide the other Party with prior prompt written notice thereof to the extent practicable, and if practicable under the circumstances, shall allow the other Party to seek a restraining order or other appropriate relief.

c. The Parties understand and acknowledge that School's financial, educational, and student records are School property and may be subject to the California Public Records Act. All School records shall be physically or electronically available, upon School's request, at the physical record storage location. Records shall also be made available to School electronically on Provenance's software platforms when such platforms exist.

d. The records of School maintained by Provenance shall be made available to School's independent auditor upon request.

e. Upon the termination or expiration of this Agreement, Confidential Information of each Party in the possession of the other Party shall be returned and/or destroyed.

**13. Student Information.** Provenance and School will each comply with the federal Family Educational Rights and Privacy Act (20 U.S.C. § 1232g) ("**FERPA**"), federal

Children’s Online Privacy and Protection Act (15 U.S.C. §§ 6501–6506) (“**COPPA**”), and other applicable state and federal laws pertaining to student information and privacy. Provenance is a “third party” that may receive pupil records under California Education Code section 49073.1(d)(6).

a. Provenance shall be designated as having a legitimate educational interest in accessing School’s student education records, as that term is defined by and for purposes of FERPA, thereby allowing Provenance to access personally identifiable information from student education records from School in order to provide its services. For purposes of this Agreement, the term “personally identifiable information” (“PII”) means any information that can be used on its own or with other information to: (i) distinguish one person from another; (ii) identify, contact, or locate a single person; or (iii) de-anonymize anonymous data.

b. Provenance shall not use or disclose pupil records, including personally identifiable information, received from or on behalf of School except as necessary to provide the Services, as required by law, or as otherwise authorized in writing by School. Provenance shall protect the pupil records it receives from or on behalf of School no less rigorously than it protects its own Confidential Information. Provenance will designate and train responsible individuals to ensure the security and confidentiality of pupil records. Provenance shall develop, implement, maintain and use reasonable administrative, technical and physical security measures to preserve the confidentiality and availability of all electronically transmitted pupil records received from or on behalf of School. In the event of an unauthorized disclosure of PII, Provenance shall notify School as soon as practicable, and shall, upon School’s request, notify affected parents, legal guardians and eligible pupils using reasonably available technological means such as electronic mail.

c. Within sixty (60) days of the termination or expiration of this Agreement, Provenance shall certify in writing that protected student information in the possession of Provenance has been returned and/or destroyed.

d. Prohibition on Targeted Marketing. Provenance shall not use PII in pupil records to engage in targeted advertising contrary to California law.

e. Cyber Liability Insurance and Indemnity. Provenance shall obtain and maintain for the Term of this Agreement Cyber Liability Insurance with limits of not less than Two Million Dollars (\$2,000,000) aggregate, including, but not limited to, coverage for claims involving security and privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of information, business interruption, cyber extortion and corruption, and denial of service.

f. Provenance shall indemnify, defend and hold School (including its officers, directors and employees) from and against all claims, losses, liabilities, damages, expenses or judgments involving a third party, including School’s costs and

reasonable attorney's fees, which arise as a result of any such unauthorized disclosures or misuse of pupil records through the services provided by Provenance, excluding those claims, liabilities, damages or judgments arising from the sole active negligence or willful misconduct of School.

#### **14. Insurance.**

a. School shall maintain customary and reasonable insurance coverage, including professional liability for errors or omissions and/or directors and officers coverages, comprehensive general liability coverage, and automobile liability coverage. School shall name Provenance as an additional insured under all School's policies.

b. Provenance shall maintain customary and reasonable insurance coverage, including professional liability for errors or omissions and/or directors and officers coverages, comprehensive general liability coverage, and automobile liability coverage. Provenance shall name School as an additional insured under all Provenance's policies.

c. Each Party shall be responsible for obtaining and maintaining workers' compensation coverage and unemployment insurance for its employees.

d. The Parties' insurance coverages shall take into consideration that staff at School are employees of School, and not employees of Provenance.

#### **15. Termination.**

a. On or prior to April 1, 2021, either Party may terminate this Agreement without cause or a financial penalty upon notice set forth in Paragraph 20 of this Agreement to the other Party, and such termination shall be effective as of the end of the current Agreement to minimize disruptions to School's operations.

b. Either Party may terminate this Agreement for breach of a material term or condition of this Agreement upon thirty (30) days' written notice to the other Party. Such written notice shall identify the breach and provide fifteen (15) days for the other Party to cure.

c. In the event that any new enactment, repeal, or change of any federal, state, or local law, regulation, or court or administrative decision or order materially affects the performance of School and Provenance in conformity with this Agreement, the Parties shall promptly commence negotiations in good faith regarding a mutually agreeable approach (including, without limitation, an amendment to the Agreement) to address the statutory and/or regulatory changes. If, despite such good faith negotiations, the Parties are unable to agree upon an acceptable approach, then either Party may elect to terminate the Agreement without further obligation or liability to the other, by delivering written notice of termination to the other at least sixty (60) days in advance of the effective date of such termination, or in such lesser time as is reasonable under the circumstances.

d. In the event of termination for any reason, the following conditions shall apply:

i. School shall pay Provenance any due and unpaid portion of the annual fee and costs for Services performed by Provenance until the effective date of termination.

ii. Provenance shall provide reasonable assistance to School to transition to another service provider, during which time School shall reimburse Provenance for all reasonable expenses incurred by Provenance in providing such transition assistance.

iii. School shall cease all use of the Provenance IP, as described in Attachment B, upon the termination of Agreement.

iv. As soon as practicable, Provenance shall return to School and/or destroy, as appropriate, all student-related, fiscal, and other records of School maintained by Provenance.

**16. Liability.** Each of the Parties shall remain and be responsible for its own debts and obligations. Nothing in this Agreement shall be construed as imposing on a Party any liability arising out of the operations of the other Party, except as such liability may result from the performance of the first Party's obligations under this Agreement.

**17. Fiduciary Obligations.** The governing bodies for both Parties have reviewed the scope of Services and compensation provided in this Agreement in good faith and in a manner in which they believe to be in the best interests of their respective organizations, and with such care, including reasonable inquiry, as an ordinary prudent person in a like position would use under similar circumstances, and have determined that the Services contained herein are in the best interests of their respective organizations, and that the compensation to be paid is fair and reasonable.

**18. Assignment.** No Party shall assign this Agreement, any interest in this Agreement, or its rights or obligations under this Agreement without the express prior written consent of the other Party. This Agreement shall be binding on, and shall inure to the benefit of, the Parties and their respective permitted successors and assigns.

**19. Dispute Resolution.** The Parties shall attempt to negotiate in good faith to resolve any dispute arising from or relating to this Agreement before resorting to litigation. In the event of a dispute between the Parties, disputing Party must frame the issue in written format ("dispute statement"). School representative and Provenance Executive Director shall informally meet and confer in a timely fashion to attempt to resolve the dispute, not later than five (5) business days from receipt of the dispute statement. In the event that this informal meeting fails to resolve the dispute, both parties shall identify at least one Board member from



their respective boards who shall jointly meet with School representative and Provenance Executive Director and attempt to resolve the dispute within fifteen (15) business days from receipt of the dispute statement.

If this joint meeting fails to resolve the dispute, School representative and Provenance Executive Director shall meet to jointly identify a neutral third-party mediator to engage the Parties in a mediation session designed to facilitate resolution of the dispute. The format of the mediation session shall be developed jointly by School representative and Provenance Executive Director. Mediation shall be held within sixty (60) business days of receipt of the dispute statement. The costs of the mediator shall be split equally between the Parties. If mediation does not resolve the dispute, either party may pursue any other remedy available under the law. All timelines and procedures in this section may be revised upon mutual written agreement of the Parties.

**20. Notice.** All notices, requests, demands, or other communications (collectively “Notice”) given to or by the Parties under this Agreement shall be in writing and shall be deemed to have been duly given on the date of receipt if transmitted by email or personally served on the Party to whom Notice is to be given, or seventy-two (72) hours after mailing by United States mail first class, registered or certified mail, postage prepaid, addressed to the Party to whom Notice is to be given, at such Party’s address set forth below:

*To Provenance:*

Provenance  
Attn: Steven Lawrence  
1150 W 5<sup>th</sup> St.  
Azusa, CA 91702  
Email: [stevenl@inspireschools.org](mailto:stevenl@inspireschools.org)

*To School:*

Pacific Coast Academy  
Attn: Krystin Demofonte  
13915 Danielson St. # 103  
Poway, CA 92064  
Email: [Krystin@pacificcoastacademy.org](mailto:Krystin@pacificcoastacademy.org)

**21. Personal Property.** The Parties acknowledge that all personal property purchased by Provenance on behalf of School at 13915 Danielson, Poway, CA 92064 in suites 101 and 303 is owned by School. Provenance and School are in the process of identifying all property located at 14261, 14269 and 13915 Danielson, Poway, CA 92064 that School has an interest in. The price paid by Provenance to purchase such property as reflected in the invoices will be applied to reduce the amount reflected in School’s records as owed by Provenance to School pursuant to the Master Credit Agreement. In the event the original purchase price for a particular item cannot be identified Provenance and School will agree on a reasonable market value for the item(s) and such amount(s) will be applied to reduce the amount reflected in School’s records owed by Provenance to School pursuant to the Master Credit Agreement. In



addition, the Parties are in the process of identifying all property which is owned by Provenance and (a) which is in the possession of and being used by School or (b) is in the possession of and/or being used by individuals employed by Provenance who are being hired by School. Such property will be transferred to School and the invoiced amounts paid by Provenance for such property will be applied to reduce the amount owed by Provenance to School pursuant to the Master Credit Agreement.

**22. Headings.** The descriptive headings of the Sections and/or paragraphs of this Agreement are inserted for convenience only, are not part of this Agreement, and do not in any way limit or amplify the terms or provisions of this Agreement.

**23. Amendments.** No supplement, modification, or amendment of this Agreement or the Services described in Attachment A shall be binding unless in writing and executed by both Parties. The Parties anticipate additional and/or revised services to be provided through amendments to Attachment A and commensurate adjustment of the annual fee, if necessary. Such amendments may be negotiated directly by staff of School and Provenance at any time and shall be brought to the governing bodies of School and Provenance, respectively, to approve or ratify.

**24. Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter contained herein, specifically the provision of instructional and operational support services by Provenance and the payment for those services by School for the period July 1, 2020 through June 30, 2021, and any renewal period, and supersedes all agreements, representations and understandings of the Parties with respect to such subject matter made or entered into prior to the date of this Agreement. This Agreement shall have no effect on any prior agreements between the Parties with respect to any other subject matter, including, but not limited to, the Master Credit Agreement dated as of July 1, 2019, among Provenance, School and others, which agreements shall be and remain enforceable according to their terms. If School seeks to enter into a lease, promissory notes or other negotiable instruments, or to enter into a lease-purchase agreement or other financing relationships with Provenance, such agreements shall be separate documents and not be incorporated into this Agreement nor any amendments thereto. Such agreements shall be consistent with School's authority to terminate Provenance and continue operation of School.

**25. Arm's Length and Independent Counsel.** This Agreement has been negotiated at arm's length and between persons (or their representatives) sophisticated and knowledgeable in the subjects in this Agreement. Accordingly, any rule of law or legal decision that would require interpretation of any ambiguities against the Party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to affect the purpose of the Parties and this Agreement. Each Party has been advised by, or had opportunity to seek advice from, its independent counsel regarding this Agreement.

**26. No Waiver.** No waiver of any provision of this Agreement shall constitute, or be deemed to constitute, a waiver of any other provision, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the Party making the waiver.

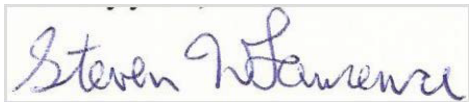
**27. Severability.** If any provision of this Agreement is invalid or contravenes California laws such provision shall be deemed not to be a part of this Agreement and shall not affect the validity of enforceability of its remaining provisions, unless such invalidity or unenforceability would defeat an essential purpose of this Agreement.

**28. Governing Law.** This Agreement shall be governed by and interpreted under the laws of the State of California.


**29. Authority to Contract.** Each Party warrants to the other that it has the authority to enter into this Agreement, that it is a binding and enforceable obligation of said Party, and that the undersigned has been duly authorized to execute this Agreement.

**30. Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument. A facsimile, .pdf, or other electronic copy of the fully executed original version of this Agreement shall have the same legal effect as an executed original for all purposes.

Provenance, a California nonprofit public benefit corporation

By:   
Name: Steven Lawrence  
Its: Executive Director  
Dated: June 15, 2020

Pacific Coast Academy, a California nonprofit public benefit corporation and charter school

By:   
Name: Kelly J. Durso  
Its: Board President  
Date: Jun 23, 2020, 2020

**ATTACHMENT A  
DESCRIPTION OF PROVENANCE SERVICES**

**1. Compliance Support**

- A. Compliance Support
  - a. Posting Board Agendas on Website
  - b. Posting approved minutes and policies on website
  - c. Support Compliance Timelines
- B. Consulting and information on Ed Code changes that impact Charter Schools

**2. Assistance with Audits**

**3. Group Rate for Medical Benefits / Benetrac**

- A. BeneTrac Site Maintenance
- B. Open Enrollment
- C. Manage group rates

**4. Access to the Enrichment Ordering System (EOS) and all related systems**

- A. EOS
- B. FTE System
- C. Curriculum Ordering System (COS)
- D. Lending Library Online System
- E. Vendor Portal
- F. Online Subscription Package (OSP) System

**5. EOS Services**

- A. EOS Maintenance
- B. Uploading of Student and Staff Data
- C. Programming & Implementation of School approved Planning Amounts
- D. All new development and updates to the system
- E. Supporting Documentation

- F. Reports from EOS
- 6. OSP Groups Licensing and Group Enrollment**
- A. OSP system maintenance
  - B. Maintain Single Sign-On through clever with the various subscriptions. (Subscriptions to vary year to year based on school input and availability)
  - C. Negotiate bulk pricing
  - D. Coordinate bulk purchases and subscriptions
- 7. Curriculum Order fulfillment**
- A. Manage standardized curriculum options
    - a. Manage Curriculum Ordering System (COS)
    - b. Load student accounts for Inspire managed curriculum
    - c. Provide information, support, and load all curriculum
    - d. Manage deduction of annual or multi-year planning amounts
  - B. Provide curriculum information and training for Homeschool Teacher Handbook
  - C. Maintain the curriculum support site with updated tutorials for school staff
- 8. Work with Charter Impact on Shared Employee Cost**
- A. Based on weekly hourly data reports provided by Charter Impact maintain a monthly spreadsheet that identifies cost distribution for each shared employee
- 9. Google Suite - Website - HST Handbook**
- A. Google Suite
    - a. Domain management
    - b. Email management
  - B. Maintain School Website
    - a. Design, launch, and maintain all websites
    - b. Coordinate with the web development team on daily website edits
    - c. Facilitate photoshoots to procure images for websites
  - C. Provide Template for HST Handbook

- D. As of July 1, 2021, School will own websites and email domains

**10. Monthly Payroll Support**

- A. Provide School bimonthly draft payroll master for review
- B. School will submit finalized payroll masters to Charter Impact

**11. Enrollment Training and Support**

- A. School will be responsible to hire and evaluate their enrollment team members
- B. Training and support to utilize Pathways to appropriately register new student
- C. Use of systems administration tools developed and deployed by Provenance
- D. Provenance will provide related operations data and analytics on a weekly basis
- E. Provide training and support for School Enrollment enrolment team members
- F. Lottery system management and implementation
- G. Create annual process to collect data from families who plan to return for the following school year

**12. School Pathways (SIS) and CALPADS Training and Support**

- A. School will be responsible to hire and evaluate their SIS and CALPADS team members
- B. Training and support focused on:
  - a. Maintenance of School Pathways
  - b. State and Federal Reporting
    - i. Fall I, II, and EOY CALPADS Reporting
    - ii. Civil Rights Data Collection Report
    - iii. CBEDS Report
  - c. Managing attendance data requests and reports
  - d. Monitoring, maintaining, and updating the school's data within CALPADS
  - e. Creating staff accounts
  - f. Updating and maintaining accurate data for staff

- i. Credentials
    - ii. SEID number
    - iii. Classification
    - iv. Personnel Information
    - v. Job Title
    - vi. Employment date
  - g. Working with staff to provide necessary access to data in Pathways related to job duties
  - h. Maintaining accurate FTE counts for all staff
  - i. Processing changes to Proof of Residence in Pathways
  - j. Reporting Immunizations
  - k. Facilitating student transfers between schools
  - l. Maintaining course catalogs
- C. Upon request, review and recommend updates to School’s attendance policies

**13. Records Training and Support**

- A. School will be responsible to hire and evaluate their records team members
- B. Train and support School records team around new enrollments, withdrawals, high school transcripts, work permit applications, and concurrent enrollment process
- C. Annually audit a random selection of records to ensure records are compliant with State requirements

**14. School Accountability & Compliance Training and Support**


- A. School will be responsible to hire and evaluate their SAA team members
- B. Train School SAA team members to ensure they are accurately verifying: independent study agreement, attendance logs, work samples, AWR, and household data collection form (HDCF)
- C. Train School team members to prepare all documents for Annual Audit Guide including:
  - i. CALPADS 1.18 and 1.17
  - ii. Student Selections: Master Agreement, Attendance, Work

Samples

- iii. Special Programs documentation (HDCF & EL)
- D. Train School team members to prepare all documents for State Attendance Reports:
  - i. 20-day Report
  - ii. P1
  - iii. P2
  - iv. EOY
  - v. Estimated Attendance Reports
- E. Provide training resources for the School team to support their teachers and families
- F. Facilitate periodic audits to ensure student agreement, attendance, and student work samples are correctly collected and stored
- G. Facilitate the process to prepare the School SAA team for the annual audit



## Attachment B

Mark	Class	Goods/Services	Reg. No.	Reg. Date
	41	Educational services in the nature of charter schools	5467904	May 15, 2018
INSPIRE CHARTER SCHOOLS	41	Educational services in the nature of charter schools	5467903	May 15, 2018
INSPIRATION STATION	41	Providing a website featuring blogs and non-downloadable publications in the nature of articles in the field of homeschooling and education	5545765	Aug. 21, 2018






# PCA 2020-21 SA Final 6 15 2020

Final Audit Report

2020-06-23

Created:	2020-06-19
By:	Amanda Panting (apanting@inspireschools.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAP801qVj2xS92jyGvaoRgqUgS7ia6MP9t

## "PCA 2020-21 SA Final 6 15 2020" History

-  Document created by Amanda Panting (apanting@inspireschools.org)  
2020-06-19 - 5:36:49 PM GMT- IP address: 47.153.222.221
-  Document emailed to Kelly J. Durso (kellyincali@gmail.com) for signature  
2020-06-19 - 5:38:35 PM GMT
-  Email viewed by Kelly J. Durso (kellyincali@gmail.com)  
2020-06-20 - 2:19:56 AM GMT- IP address: 66.249.84.171
-  Document e-signed by Kelly J. Durso (kellyincali@gmail.com)  
Signature Date: 2020-06-23 - 3:40:14 PM GMT - Time Source: server- IP address: 76.176.84.159
-  Signed document emailed to Amanda Panting (apanting@inspireschools.org) and Kelly J. Durso (kellyincali@gmail.com)  
2020-06-23 - 3:40:14 PM GMT



Adobe Sign

# Appendix E: Pacific Coast Academy Bylaws

## PACIFIC COAST ACADEMY

a California Nonprofit Public Benefit Corporation

### ARTICLE I

#### OFFICES

Section 1. PRINCIPAL OFFICE. The board of directors shall fix the location of the principal executive office of the corporation at any place within or outside the State of California. If the principal executive office is located outside the State of California, and the corporation has one or more offices in the State of California, the board of directors shall likewise fix and designate a principal office in the State of California.

Section 2. OTHER OFFICES. The corporation may also establish offices at such other places, both within and outside the State of California, as the board of directors may from time to time determine or the activities of the corporation may require.

### ARTICLE II

#### OBJECTIVES AND PURPOSES

The specific objectives and purposes of this corporation shall be to operate one or more California public charter schools.

### ARTICLE III

#### NONPARTISAN ACTIVITIES

The corporation has been formed under the California Nonprofit Public Benefit Corporation Law (the "Law") for the public, nonprofit, nonpartisan, and charitable purposes described in its articles of incorporation. Notwithstanding any other provision in these bylaws, this corporation shall not, except to an insubstantial degree, engage in any activities or exercise any

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3.00101/107064390v.1

powers that are not in furtherance of the purposes of this corporation, and the corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended ("IRC"), or (b) by a corporation contributions to which are deductible under IRC Section 170(c)(2).

## **ARTICLE IV**

### **DEDICATION OF ASSETS**

The properties and assets of this corporation are irrevocably dedicated to the charitable purposes described in Article III above and in the articles of incorporation of this corporation. No part of the net earnings, properties, or assets of this corporation, on dissolution or otherwise, shall inure to the benefit of its directors or officers, or to any individual. On liquidation or dissolution of this corporation, all remaining assets of this corporation, after payment, or provision for payment, of all debts and liabilities of this corporation, shall be distributed and paid over to an organization dedicated to charitable purposes that is exempt from federal income tax under IRC Section 501(c)(3) and that is exempt from California income tax under Section 23701d of the California Revenue and Taxation Code.

## **ARTICLE V**

### **MEMBERS**

Section 1. SOLE MEMBER. Inspire Charter Schools, a California Nonprofit Public Benefit Corporation exempt from federal income tax under IRC Section 501(c)(3) (the "Sole Member"), shall be the sole member of this corporation as the term "member" is defined in Section 5056 of the California Corporations Code (the "Code"). The Sole Member shall have all the rights granted to members by Section 5056 of the Code.

## **ARTICLE VI**

### **DIRECTORS**

Section 1. POWERS. Subject to the provisions of the Law and any limitations in the articles of incorporation and these bylaws, the activities and affairs of the corporation shall be managed and all corporate powers shall be exercised by or under the direction of the board of directors. Without prejudice to such general powers, but subject to the same limitations, it is hereby

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expressly declared that the board of directors shall have the following powers in addition to the other powers enumerated in these bylaws:

(a) To select and remove all of the other officers, agents, and employees of the corporation; prescribe any powers and duties for them that are consistent with law, with the articles of incorporation, and with these bylaws; fix their compensation; and require from them security for faithful service.

(b) To conduct, manage, and control the affairs and activities of the corporation and to make such rules and regulations that are consistent with law, the articles of incorporation, and these bylaws, as they deem to be appropriate and in the best interests of the corporation.

(c) To adopt, make, and use a corporate seal; and to alter the form of such seal.

(d) To borrow money and to incur indebtedness on behalf of the corporation, and to cause to be executed and delivered for the purposes of the corporation, in the corporate name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations, or other evidences of debt and securities.

(e) To change the principal executive office or the principal office in the State of California from one location to another; to cause the corporation to be qualified to conduct its activities in any other state, territory, dependency, or country and conduct its activities within or outside the State of California; and to designate any place within or outside the State of California for the holding of any board of directors meeting or meetings.

(f) To make donations for the public welfare or for community funds, hospital, charitable, educational, scientific, civic, religious, or similar purposes.

(g) To act as a trustee under any trust incidental to the principal objects of the corporation, and to receive, to hold, to administer, to exchange, and to expend funds and property subject to such trust.

(h) To receive endowments, devises, bequests, gifts, and donations of all kinds of property for its own use, or in trust, in order to carry out or to assist in carrying out, the objects and purposes of the corporation and to do all things and acts necessary or proper to carry out each and all of the purposes and provisions of such endowments, devises, bequests, gifts, and donations with full power to mortgage, sell, lease, or otherwise to deal with or dispose of the same in accordance with the terms thereof.

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(i) To sell any property, real, personal, or mixed, owned by the corporation at any time, and from time to time upon such terms as the board of directors may deem advisable, at public or private sale, for cash or upon credit.

(j) To retain sums received by the corporation uninvested, if, in the discretion of the board of trustees, such sums cannot be invested advantageously.

(k) To retain all or any part of any securities or property acquired by the corporation in whatever manner, and to invest and reinvest any funds held by the corporation, according to the judgment of the board of directors without being restricted to the class of investments that the board of directors is or may hereafter be permitted by law to make or any similar restriction; provided, however, that no action shall be taken by or on behalf of the corporation if such action is a prohibited transaction or would result in the denial of the tax exemption under IRC Section 501 or Section 23701 of the California Revenue and Taxation Code.

(l) To invest funds received by the corporation in stocks, bonds, mortgages, loans, whether secured or unsecured, or other investments as the board of directors shall deem advisable.

Section 2. NUMBER AND QUALIFICATION. The authorized number of directors shall be no less than three (3) and no more than eleven (11), unless changed by amendments to these bylaws. All directors are to be designated by the Sole Member. The board of directors shall consist of at least three (3) directors unless changed by an amendment to these bylaws.

Section 3. RESTRICTION ON INTERESTED PERSONS AS DIRECTORS. No more than 49 percent of the persons serving on the board of directors may be interested persons (as defined in this Section 3). An “interested person” is (a) any person compensated by the corporation for services rendered to it within the previous 12 months, whether as a full- or part-time employee, independent contractor, or otherwise, excluding any reasonable compensation, if any, paid to a director as director; or (b) any brother, sister, ancestor, descendant, spouse, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law, or father-in-law of any such person.

Section 4. TERM OF OFFICE; EVENTS CAUSING VACANCIES ON BOARD. Each director shall hold office for one (1) year. A director may serve multiple terms of service, subject to approval by the Sole Member. A vacancy or vacancies on the board of directors shall occur in the event of (a) the death, resignation, or removal of any director; (b) the declaration by resolution of the board of directors of a vacancy in the office of a director who has been convicted of a felony, declared of unsound mind by a court order, or found by final order or judgment of any court to have breached a duty under the Law, Chapter 2, Article 3; (c) the increase of the authorized number of directors;

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directors are to be designated, to designate the number of directors required to be designated at such meeting.

Section 5. RESIGNATION OF DIRECTORS. Except as provided below, any director may resign by giving written notice to the chairman of the board, if any, or to the president, or the secretary, or to the board of directors. The resignation shall be effective when the notice is given unless the notice specifies a later time for the resignation to become effective. If a director's resignation is effective at a later time, the Sole Member may designate a successor to take office as of the date when the resignation becomes effective. Except upon notice to the Attorney General of California, no director may resign if the corporation would then be left without a duly elected director or directors in charge of its affairs.

Section 6. REMOVAL OF DIRECTORS. A director may be removed by the Sole Member. The Sole Member, in its sole discretion, may remove a director at any time for any reason, with or without cause or advance notice.

Section 7. VACANCIES. Vacancies on the board of directors shall be filled solely by the Sole Member.

Section 8. PLACE OF MEETINGS AND MEETINGS BY TELEPHONE. Any meeting of the board of directors may be held at any place within or outside the State of California that has been designated from time to time by resolution of the board or in the notice of the meeting. In the absence of such designation, meetings shall be held at the principal executive office of the corporation. Any meeting, annual, regular or special, may be held by conference telephone or similar communication equipment, so long as all directors participating in the meeting can hear one another. All such directors shall be deemed to be present in person at such telephonic meeting. Prior written notice of any and all such meetings of the board of directors shall be provided to the Sole Member at least seventy-two (72) hours prior to the time of the holding of the meeting.

Section 9. ANNUAL AND REGULAR MEETINGS. The annual meeting of the board of directors shall be held each year on the date and time as may be fixed by the board of directors. At such annual meeting, officers shall be elected and any other proper business may be transacted. Other regular meetings of the board of directors shall be held at such time as shall from time to time be fixed by the board of directors. Notice of regular meetings shall not be required if the time and place of such meeting is fixed by these bylaws or by the board of directors.

Section 10. SPECIAL MEETINGS. Special meetings of the board of directors for any purpose or purposes may be called at any time by the chairman of the board, the president, any vice president, the secretary, or any two directors.

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Notice of the time and place of special meetings shall be delivered to each director personally or by telephone or sent by first-class mail, postage prepaid, or telegram, charges prepaid, addressed to each director at his or her address as it is shown on the records of the corporation. In case the notice is mailed, it shall be deposited in the United States mail at least four (4) days prior to the time of the holding of the meeting. In case such notice is delivered personally or by telephone or telegraph, it shall be delivered personally or by telephone or to the telegraph company at least twenty-four (24) hours prior to the time of the holding of the meeting. Any oral notice given personally or by telephone may be communicated either to the director or to the person at the office of the director who the person giving the notice has reason to believe will promptly communicate it to the director. The notice need not specify the purpose of the meeting or the place if the meeting is to be held at the principal executive office of the corporation.

Section 11. QUORUM. A majority of the authorized number of directors shall constitute a quorum for the transaction of business, except to adjourn as provided in Section 13 below. Every act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present shall be regarded as the act of the board of directors, subject to the provisions of Section 5212 of the Code (appointment of committees), Section 5233 of the Code (approval of contracts or transactions in which a director has a direct or indirect material financial interest), Section 5234 of the Code (approval of certain transactions between corporations having common directorships), Section 5235 (compensation of directors or officers), and Section 5238(e) of the Code (indemnification of directors). A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for such meeting, or such greater number as is required by the articles of incorporation, these bylaws, or the Law.

Section 12. WAIVER OF NOTICE; CONSENT. Notice of a meeting need not be given to any director who, either before or after the meeting, signs a waiver of notice, a consent to holding the meeting, or an approval of the minutes of the meeting. The waiver of notice or consent need not specify the purpose of the meeting. All such waivers, consents, and approvals shall be filed with the corporate records or made a part of the minutes of the meeting. Notice of meeting shall also be deemed given to any director who attends the meeting without protesting, before or at the commencement of the meeting, the lack of notice to that director.

Section 13. ADJOURNMENT. A majority of the directors present, whether or not constituting a quorum, may adjourn any meeting to another time and place. Notice of the time and place of holding an adjourned meeting need not be given, unless the meeting is adjourned for more than twenty-four (24) hours, in which case notice of such time and place shall be given prior to the time of the adjourned meeting, in the manner specified in Section 10 of this Article VI, to the directors who were not present at the time of the adjournment.

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Section 14. ACTION WITHOUT MEETING. Any action required or permitted to be taken by the board of directors may be taken without a meeting, if all directors shall individually or collectively consent in writing to such action. Such action by written consent shall have the same force and effect as a unanimous vote of the board of directors. The written consent or consents shall be filed with the minutes of the proceedings of the board.

Section 15. FEES AND COMPENSATION. Directors and members of committees shall receive no compensation for their services; provided however, that directors and members of committees may receive reimbursement of out-of-pocket expenses, as determined by resolution of the board of directors. Nothing contained herein shall be construed to preclude any director from serving the corporation in any other capacity as an officer, agent, employee, or otherwise, and receiving compensation for such services if compensation is awarded by the board of directors.

Section 16. RESTRICTION ON BOARD AUTHORITY. The board of directors shall not, without the prior written approval of the Sole Member, make material revisions to the charter that created the charter school that operates as, or is operated by, this corporation.

## ARTICLE VII

### COMMITTEES

Section 1. COMMITTEES OF DIRECTORS. The board of directors may, by resolution adopted by a majority of the directors then in office, designate one or more committees, each consisting of two or more directors, to serve at the pleasure of the board. Appointments to such committees shall be by a majority vote of the directors then in office. The board may designate one or more directors as alternate members of any committee, who may replace any absent member at any meeting of the committee. Any such committee, to the extent provided in the resolution of the board, may have all the authority of the board, except with respect to:

- (a) undertaking any final action on any matter that, under the Law, also requires approval of the Sole Member or board of directors;
- (b) the filling of vacancies on the board of directors or in any committee;
- (c) the amendment or repeal of bylaws or the adoption of new bylaws;
- (d) the amendment or repeal of any resolution of the board of directors that by its express terms is not so amendable or repealable;

(e) the appointment of any other committees of the board of directors or the members thereof;

(f) the expenditure of corporate funds to support a nominee for director after there are more people nominated for director than can be elected; or

(g) the approval of any contract or transaction to which the corporation is a party and in which one or more of its directors has a material financial interest, except as special approval is provided for in Section 5233(d)(3) of the Code.

Section 2. MEETINGS AND ACTION. Meetings and action of committees of the board shall be governed by, and held and taken in accordance with, the provisions of Article VI of these bylaws, Sections 8 (place of meetings and meetings by telephone), 9 (annual and regular meetings), 10 (special meetings), 11 (quorum), 12 (waiver of notice), 13 (adjournment) and 14 (action without meeting), with such changes in the context of those bylaws as are necessary to substitute the committee and its members for the board of directors and its members, except for the following: (a) the time of regular and annual meetings of committees may be determined by resolution of the board of directors as well as the committee; (b) special meetings of committees may also be called by resolution of the board of directors; and (c) notice of special meetings of committees shall also be given to all alternate members, who shall have the right to attend all meetings of the committee. Minutes of each meeting of any committee shall be kept and filed with the corporate records. The board of directors may adopt rules for the government of any committee not inconsistent with the provisions of these bylaws.

## ARTICLE VIII

### OFFICERS

Section 1. OFFICERS. The officers of the corporation shall be a president, a secretary, and a chief financial officer. The corporation may also have, at the discretion of the board of directors, a chairman of the board, one or more vice presidents, one or more assistant secretaries, one or more assistant treasurers, and such other officers as may be appointed in accordance with the provisions of Section 3 of this Article VIII. Any number of offices may be held by the same person, except that neither the secretary nor the chief financial officer may serve concurrently as the president or the chairman of the board.

Section 2. ELECTION. The officers of the corporation, except such officers as may be appointed in accordance with the provisions of Section 3 or Section 5 of this Article VIII, shall be

chosen by the board of directors, and each shall serve at the pleasure of the board, subject to the rights, if any, of an officer under any contract of employment.

Section 3. OTHER OFFICERS. The board of directors may appoint, and may empower the president to appoint, such other officers as the activities of the corporation may require, each of whom shall hold office for such period, have such authority, and perform such duties as are provided in the bylaws or as the board of directors may from time to time determine.

Section 4. REMOVAL AND RESIGNATION. Subject to the rights, if any, of any officer under any contract of employment, any officer may be removed, either with or without cause, by the board of directors or, except in case of an officer chosen by the board of directors, by any officer upon whom such power of removal may be conferred by the board of directors.

Any officer may resign at any time by giving written notice to the corporation. Any such resignation shall take effect at the date of the receipt of such notice or at any later time specified therein; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Any such resignation is without prejudice to the rights, if any, of the corporation under any contract to which the officer is a party.

Section 5. VACANCIES. A vacancy in any office because of death, resignation, removal, disqualification, or any other cause shall be filled in the manner prescribed in these bylaws for regular appointments to such office.

Section 6. CHAIRMAN OF THE BOARD. The chairman of the board, if such an officer be elected, shall, if present, preside at meetings of the board of directors and exercise and perform such other powers and duties as may be from time to time assigned to him or her by the board of directors or prescribed by the bylaws. If there is no president, the chairman of the board will in addition be the chief executive officer of the corporation and shall have the powers and duties prescribed in Section 7 of this Article VIII.

Section 7. PRESIDENT. Subject to such supervisory powers, if any, as may be given by the board of directors to the chairman of the board, if there be such an officer, the president shall be the chief executive officer of the corporation and shall, subject to the control of the board of directors, have general supervision, direction, and control of the activities and the officers of the corporation. He or she shall preside, in the absence of the chairman of the board, or if there be none, at all meetings of the board of directors. He or she shall have the general powers and duties of management usually vested in the office of president of the corporation and shall have such other powers and duties as may be prescribed by the board of directors or the bylaws.

Section 8. VICE PRESIDENTS. In the absence or disability of the president, the vice presidents, if any, in order of their rank as fixed by the board of directors or, if not ranked, a vice president designated by the board of directors, shall perform all the duties of the president, and when so acting shall have all the powers of, and be subject to all the restrictions upon, the president. The vice presidents shall have such other powers and perform such other duties as from time to time may be prescribed for them respectively by the board of directors or the bylaws and the president or the chairman of the board.

Section 9. SECRETARY. The secretary shall keep, or cause to be kept, at the principal executive office or such other place as the board of directors may direct, a book of minutes of all meetings and actions of directors, and committees of directors, with the time and place of holding, whether regular or special, and, if special, how authorized, the notice thereof given, the names of those present at directors and committee meetings, and the proceedings thereof.

The secretary shall give, or cause to be given, notice of all meetings of the board of directors required by the bylaws or by law to be given, and he or she shall keep the seal of the corporation, if one be adopted, in safe custody, and shall have such other powers and perform such other duties as may be prescribed by the board of directors or by the bylaws.

Section 10. CHIEF FINANCIAL OFFICER. The chief financial officer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and business transactions of the corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, retained earnings, and other matters customarily included in financial statements. The books of account shall at all reasonable times be open to inspection by any director.

The chief financial officer shall deposit, or cause to be deposited, all monies and other valuables in the name and to the credit of the corporation with such depositaries as may be designated by the board of directors. He or she shall distribute, or cause to be disbursed, the funds of the corporation as may be ordered by the board of directors, shall render to the president and directors, whenever they request it, an account of all financial transactions and of the financial condition of the corporation, and shall have such other powers and perform such other duties as may be prescribed by the board of directors or the bylaws.

If required by the board of directors, the chief financial officer shall give the corporation a bond in the amount and with the surety or sureties specified by the board for faithful performance of the duties of his or her office and for restoration to the corporation of all of its books, papers, vouchers, money, and other property of every kind in his or her possession or under his or her control on the death, resignation, retirement, or removal from office of the chief financial officer.

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**ARTICLE IX****INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES**

Section 1. DEFINITIONS. For the purposes of this Article IX, the definition of the terms "agent", "proceeding", and "expenses" shall be governed by Section 5238 of the Code.

Section 2. INDEMNIFICATION IN ACTIONS BY THIRD PARTIES. The corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any proceeding (other than an action by or in the right of the corporation to procure a judgment in its favor, an action brought under Section 5233 of the Code, or an action brought by the Attorney General of California or a person granted relator status by the Attorney General of California for any breach of duty relating to assets held in charitable trust) by reason of the fact that such person is or was an agent of the corporation, against expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with such proceeding if such person acted in good faith and in a manner such person reasonably believed to be in the best interests of the corporation and, in the case of a criminal proceeding, had no reasonable cause to believe the conduct of such person was unlawful. The termination of any proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in the best interests of the corporation or that the person had reasonable cause to believe that the person's conduct was unlawful.

Section 3. INDEMNIFICATION IN ACTIONS BY OR IN THE RIGHT OF THE CORPORATION. The corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action by or in the right of the corporation, or brought under Section 5233 of the Code, or brought by the Attorney General of California or a person granted relator status by the Attorney General of California for breach of duty relating to assets held in charitable trust, to procure a judgment in its favor by reason of the fact that such person is or was an agent of the corporation, against expenses actually and reasonably incurred by such person in connection with the defense or settlement of such action if such person acted in good faith, in a manner such person believed to be in the best interests of the corporation, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. No indemnification shall be made under this Section 3 for any of the following:

(a) Any claim, issue, or matter as to which such person shall have been adjudged to be liable to the corporation in the performance of such person's duty to the

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corporation, unless and only to the extent that the court in which such action was brought shall determine upon application that, in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for the expenses which such court shall determine;

(b) Amounts paid in settling or otherwise disposing of a threatened or pending action, with or without court approval; or

(c) Expenses incurred in defending a threatened or pending action which is settled or otherwise disposed of without court approval, unless it is settled with the approval of the Attorney General of California.

Section 4. INDEMNIFICATION AGAINST EXPENSES. To the extent that an agent of the corporation has been successful on the merits in defense of any proceeding referred to in Sections 2 or 3 of this Article IX or in defense of any claim, issue, or matter therein, the agent shall be indemnified against expenses actually and reasonably incurred by the agent in connection therewith.

Section 5. REQUIRED DETERMINATIONS. Except as provided in Section 4 of this Article IX, any indemnification under this Article shall be made by the corporation only if authorized in the specific case, upon a determination that indemnification of the agent is proper in the circumstances because the agent has met the applicable standard of conduct set forth in Sections 2 or 3 of this Article IX by:

(a) A majority vote of a quorum consisting of directors who are not parties to such proceeding; or

(b) The court in which such proceeding is or was pending upon application made by the corporation or the agent or the attorney or other person rendering services in connection with the defense, whether or not such application by the agent, attorney, or other person is opposed by the corporation.

Section 6. ADVANCE OF EXPENSES. Expenses incurred in defending any proceeding may be advanced by the corporation prior to the final disposition of such proceeding upon receipt of an undertaking by or on behalf of the agent to repay such amount unless it shall be determined ultimately that the agent is entitled to be indemnified as authorized in this Article IX.

Section 7. OTHER INDEMNIFICATION. No provision made by the corporation to indemnify its directors or officers for the defense of any proceeding, whether contained in the articles of incorporation, bylaws, a resolution of directors, an agreement, or otherwise, shall be valid unless consistent with this Article IX. Nothing contained in this Article IX shall affect any right to



indemnification to which persons other than such directors and officers may be entitled by contract or otherwise.

Section 8. FORMS OF INDEMNIFICATION NOT PERMITTED. No indemnification or advance shall be made under this Article IX, except as provided in Section 4 or Section 5(b), in any circumstance if it appears that:

(a) It would be inconsistent with a provision of the articles of incorporation, bylaws, or an agreement in effect at the time of the accrual of the alleged cause of action asserted in the proceeding in which the expenses were incurred or other amounts were paid, which prohibits or otherwise limits indemnification; or

(b) It would be inconsistent with any condition expressly imposed by a court in approving a settlement.

Section 9. INSURANCE. The corporation shall have the power to purchase and maintain insurance on behalf of any agent of the corporation against any liability asserted against or incurred by the agent in such capacity or arising out of the agent's status as such, whether or not the corporation would have the power to indemnify the agent against such liability under the provisions of this Article IX; provided, however, that the corporation shall have no power to purchase and maintain such insurance to indemnify any agent of the corporation for a violation of Section 5233 of the Code.

## ARTICLE X

### RECORDS AND REPORTS

Section 1. MAINTENANCE OF CORPORATE RECORDS. The corporation shall keep (a) adequate and correct books and records of account kept either in written form or in any other form capable of being converted into written form and (b) minutes, in written form, of the proceedings of the board of directors and committees of the board, which shall be promptly provided to the Sole Member. All such records shall be kept at the corporation's principal executive office, or if its principal executive office is outside the State of California, at its principal office in this state.

Section 2. MAINTENANCE AND INSPECTION OF ARTICLES AND BYLAWS. The corporation shall keep at its principal executive office, or if its principal executive office is not in the State of California, at its principal office in this state, the original or a copy of its articles of incorporation and bylaws, as amended to date, that shall be open to inspection by the Sole Member or the directors at all reasonable times during office hours. If the principal executive office of the

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corporation is outside the State of California and the corporation has no principal office in this state, the Secretary shall, upon the written request of the Sole Member or any director, furnish to such director a copy of the articles of incorporation or bylaws, as amended to date.

Section 3. INSPECTION. The Sole Member and every director shall have the absolute right at any reasonable time, and from time to time, to inspect all books, records, and documents of every kind and the physical properties of the corporation. Such inspection by the Sole Member or a director may be made in person or by agent or attorney and the right of inspection includes the right to copy and make extracts.

Section 4. ANNUAL REPORTS. The board of directors shall cause an annual report to be sent to the directors and the Sole Member within 120 days of the corporation's fiscal year end. That report shall contain the following information, in appropriate detail, for the fiscal year:

- (a) The assets and liabilities, including the trust funds, of the corporation as of the end of the fiscal year;
- (b) The principal changes in assets and liabilities, including trust funds;
- (c) The revenue or receipts of the corporation, both unrestricted and restricted to particular purposes;
- (d) The expenses or disbursements of the corporation for both general and restricted purposes; and
- (e) Any information required by Section 5 of this Article X.

The annual report shall be accompanied by any report thereon of independent accountants or, if there is no such report, by the certificate of an authorized officer of the corporation that such statements were prepared without audit from the books and records of the corporation.

Section 5. ANNUAL STATEMENT OF CERTAIN TRANSACTIONS AND INDEMNIFICATIONS. As part of the annual report to the Sole Member and all directors, the corporation shall annually prepare and mail or deliver to the Sole Member and each director within 120 days after the corporation's fiscal year end, a statement (described below) of any transaction or indemnification (i) in which the corporation was a party and (ii) in which an "interested person" had a direct or indirect material financial interest. For this purpose, an "interested person" is any director or officer of the corporation.

The statement shall include the following information:

(a) A brief description of any transaction during the previous fiscal year that involved more than \$50,000, or was one of a number of transactions in which the same interested person had a direct or indirect material financial interest involving, in the aggregate, more than \$50,000;

(b) The names of interested persons involved in such transactions described in the preceding paragraph (a), their relationship to the corporation, the nature of their interest in the transaction and, if practicable, the amount of that interest; provided, however, that if the transaction was with a partnership in which the interested person is a partner, only the interest of the partnership need be stated; and

(c) A brief description of the amount and circumstances of any indemnifications or advances aggregating more than \$10,000 paid during the fiscal year to any officer or director of the corporation under Article IX of these bylaws, unless that indemnification already has been approved by the directors under Section 5238(e)(2) of the Code.

## ARTICLE XI

### GENERAL MATTERS

Section 1. CHECKS, DRAFTS, EVIDENCES OF INDEBTEDNESS. All checks, drafts, or other orders for payment of money, notes, or other evidences of indebtedness, issued in the name of or payable to the corporation, shall be signed or endorsed by such person or persons and in such manner as, from time to time, shall be determined by resolution of the board of directors.

Section 2. CORPORATE CONTRACTS AND INSTRUMENTS; HOW EXECUTED. Except as otherwise provided in these bylaws, the board of directors may authorize any officer or officers, agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the corporation, and such authority may be general or confined to specific instances; and, unless so authorized or ratified by the board of directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

Section 3. REPRESENTATION OF SHARES OF OTHER CORPORATIONS. The chairman of the board, the president, or any vice president, or any other person authorized by resolution of the board of directors or by any of the foregoing designated officers, is authorized to vote on behalf of the corporation any and all shares of any other corporation or corporations, foreign or domestic,

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standing in the name of the corporation. The authority granted to said officers to vote or represent on behalf of the corporation any and all shares held by the corporation in any other corporation or corporations may be exercised by any such officer in person or by any person authorized to do so by a proxy duly executed by said officer.

Section 4. CONSTRUCTION AND DEFINITIONS. Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the Law shall govern the construction of these bylaws. Without limiting the generality of the foregoing, the singular number includes the plural, the plural number includes the singular, the masculine gender includes the feminine and neuter, and the term "person" includes both a corporation and a natural person. All references in these bylaws to the Law, the Law, or to the Code shall be deemed to be those in effect from time to time.

## **ARTICLE XII**

### **AMENDMENTS**

New bylaws may be adopted or these bylaws may be amended or repealed by solely the written consent of the Sole Member; provided, however, that if the articles of incorporation of the corporation set forth the number of authorized directors of the corporation, the authorized number of directors may be changed only by an amendment of the articles of incorporation.

**CERTIFICATE OF SECRETARY**

The undersigned, being the duly elected and acting Secretary of Pacific Coast Academy, a California nonprofit public benefit corporation, does hereby certify that the foregoing Bylaws constitute the Bylaws of this corporation as duly adopted at the meeting of the Sole Member on September 30, 2018.

IN WITNESS WHEREOF, the undersigned has executed this Certificate this 30th day of September, 2018.

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Cynthia Woodruff, Secretary

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# Appendix F: Nichols Separation Agreement

## SEPARATION AND RELEASE AGREEMENT

This Separation and Release Agreement (“Agreement”) is voluntarily entered into by and between Herbert Nichols III (“Employee”) and Provenance, a California nonprofit public benefit corporation (hereinafter “Employer” or “Provenance”) (collectively, the “Parties”) in order to resolve all outstanding issues and set forth all obligations between the Parties.

The Parties acknowledge and agree that this Agreement constitutes the sole obligation of each to the other with respect to the termination of the Parties’ relationship, and that no other promises, commitments, or representations have been made with or by either of the Parties to the other, except as set forth herein.

### RECITATIONS

- A. Employee has been employed by Employer on an at-will basis as an Executive Director;
- B. Employee has been on unpaid administrative leave since September 20, 2019;
- C. Further, a dispute has arisen as to the validity and/or enforceability of the Employment Agreement executed on or around June 1, 2019, and the applicability of the termination provisions therein;
- D. Notwithstanding the foregoing, and even if valid and enforceable, Employer contends that it has grounds to immediately terminate Employee’s employment pursuant to Section 9(c) of the Employment Agreement, which Employee disputes;
- E. The Parties wish to resolve any and all disputes arising out of Employee’s termination of employment with Employer and specifically with respect to Employee’s alleged entitlements on termination of employment on the terms set forth in this Agreement; and
- F. As of the date of this Agreement, Employee is over the age of forty (40) years.

### TERMS

**1. Separation Date.** Employer agrees to allow Employee to resign employment in lieu of termination. Employee’s last day of employment is October 11, 2019 (the “Separation Date”)

**2. Repayment of Outstanding “Pay Advances.”**

a. Beginning on or around November 20, 2017, Employee sought and received several payments alleged to be and characterized by Employee as “payroll advances” from Inspire Charter School – Los Angeles, Inspire Charter School – North (now known as Feather River), Inspire Charter School – South (now known as Cabrillo Point), Inspire Charter School – Kern (now known as Blue Ridge), Inspire Charter School – Central (now known as Yosemite Valley) (collectively the “Inspire Entities”) and Employer in varying amounts and collectively totaling One Million Fifty Five Thousand and Eight Hundred and Thirty Four

Dollars (\$1,055,834.00). Although it is undisputed that the total amount of One Million Fifty Five Thousand and Eight Hundred and Thirty Four Dollars (\$1,055,834.00) was disbursed to Employee, Employer contends that these “advances” were not fully disclosed to the Employer or the Inspire Entities. Employee contends that these “advances” were approved by his immediate supervisor and ultimately the Provenance board. Employee contends that, as of the Effective Date of this Agreement, he has paid back One Hundred Ninety Five Thousand Nine Hundred Ten Dollars and Eighty Nine Cents (\$195,910.89) and that the current outstanding balance owed by Employee to Employer is Eight Hundred Fifty Nine Thousand Nine Hundred Twenty Three Dollars and Eleven Cents (\$859,923.11) (“Outstanding Balance”). Employee further contends that, to the extent any Inspire Entities issued any of these “Payroll Advances,” these amounts have been credited back to the Inspire Entities by Provenance which contention has not yet been, to date, verified by Employer. To the extent that any representations by Employee as to the amount “advanced” to Employee or repaid to date to Employer is later found to be incorrect, Employee acknowledges, understands and agrees that the Outstanding Balance may be adjusted in the sole discretion of the Employer to reflect the correct amount of the amount owed to Employer; unless said amount “advanced” to Employee is found to have been less than set forth herein, or said amounts repaid to date have been more than set forth herein, in which case the Outstanding Balance shall be adjusted to reflect the correct amount owed by Employee to Employer.

b. Employee hereby agrees to repay Employer the verified Outstanding Balance owed to Employer, together with any penalties, interest or other amounts that may be assessed against Employer and/or the Inspire Entities by any federal or state governmental agency or authorizer as the result of Employee’s actions, including receipt of the Payroll Advances, by no later than **December 31, 2020** pursuant to a Promissory Note for the amount of the Outstanding Balance, in accordance with Section 5 herein.

c. Upon receipt of any payment by Employee towards Outstanding Balance, Employer will provide written verification to Employee by email to him at drnicknichols@gmail.com confirming the amount received.

**3. Excess Benefit Transaction – Internal Revenue Code (“IRC”) Section 4975 & Additional Wages.** The Parties agree that any inadvertent failure to charge the applicable federal interest rate on the Pay Advances resulted in an excess benefit transaction for purposes of IRC Section 4975 (the “Excess Benefit”). The Parties agree that Employee shall remedy such Excess Benefit by way of paying Employer and/or the Inspire Entities the Excess Benefit, plus interest (the “Excess Benefit Amount”). As soon as reasonably possible after the Effective Date, Employer shall provide Employee by way of email its determination of the Excess Benefit Amount as well as the calculation of the Excess Benefit Amount (the “Excess Benefit Calculation”). Employee shall have ten (10) business days to review and approve the Excess Benefit Amount and the Excess Benefit Calculation, which approval shall not be unreasonably withheld), which Excess Benefit Amount and Excess Benefit Calculation shall be determined by a CPA retained by Employer. Employee shall pay the full Excess Benefit Amount to Employer and to each of the Inspire Entities, as determined by the CPA, no later than twenty (20) days after the Excess Benefit Amount and Excess Benefit Calculation is provided to Employee. Employee and Employer agree to report such Excess Benefit and Excess Benefit Amount to the IRS as required by law, including but not limited to the Employee’s timely filing of a Form 4720,



*Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code.* The Parties also agree that to the extent the failure to include/report interest is deemed “wages” to Employee, Employer shall issue corrected Forms W-2C, *Corrected Wage and Tax Statement*, to Employee for such prior tax years. Inspire Entities may issue corrected Forms W-2C to Employee. Employee agrees to amend any applicable Form 1040, *U.S. Individual Income Tax Return*, and applicable state tax return, to report and pay any additional taxes resulting from such additional wages.

**4. Consideration.** In consideration and exchange for the releases, obligations and performance of material terms herein, Employer will offset the Outstanding Balance in the amount equal to three months of Employee’s **net** salary totaling Forty Four Thousand Nine Hundred Twenty Three Dollars and Eleven Cents (\$44,923.11) (the “Offset”) which amount reflects the Employee’s gross salary for three months totaling Eighty Eight Thousand Five Hundred Dollars (\$88,500.00) less regular federal and state payroll tax withholdings. Subject to the terms and conditions of this Agreement, the Outstanding Balance will be reduced to Eight Hundred Fifteen Thousand Dollars and Zero Cents (\$815,000.00) with the application of the Offset. Employee agrees that the Offset shall be in the nature of a settlement and/or severance benefit only and its existence shall not entitle Employee to any rights as an employee of Employer. Employee acknowledges that Employee would not otherwise be entitled to the consideration set forth in this paragraph were it not for the covenants, promises and releases set forth herein.

**5. Promissory Note and Deed of Trust.** Employee’s Offset to the Outstanding Balance is contingent and conditioned, in part, upon the Employee’s execution of a fully recourse Promissory Note (attached hereto as **Exhibit A** and incorporated by reference as though fully set forth herein) which is secured by real property and/or other property and memorialized in a form acceptable to Employer, including, but not limited to, a Deed of Trust (attached hereto as **Exhibit B** and incorporated by reference as though fully set forth herein). Employee understands, agrees and acknowledges that Section 5 is a material term of this Agreement.

**6. Acknowledgement of All Wages Paid.** Employee acknowledges that Employee has received all compensation and wages of any and all kind owed by Employer as of the Separation Date, including, but not limited to any accrued but unused Paid Time Off. As of the Separation Date, Employee’s accrued but unused Paid Time Off equals the net sum of Twenty Two Thousand Eight Hundred Ninety Nine Dollars and Seventy Nine Cents (\$22,899.79), which amount reflect the gross sum of Forty Thousand Eight Hundred Forty Six Dollars and Fifteen Cents (\$40, 846.15), less regular federal and state payroll tax withholdings. Employee agrees that Employer may overnight mail any accrued unused vacation pay as of the Separation Date. Employee agrees that Employee is not entitled to any other compensation from Employer pursuant to any agreement, policy, or practice.

**7. Older Workers Benefit Protection Act.** Employee acknowledges that Employee has read and understands this Agreement, has been advised to consult with an attorney regarding this Agreement, and has received all advice Employee deems necessary prior to executing this Agreement such that Employee is entering into this Agreement freely, knowingly and voluntarily.

Employee further acknowledges and agrees to the following:

a. Employee has been given twenty-one (21) days to consider whether to enter into this Agreement, and has taken as much of this time that Employee deems necessary to consider whether to enter into this Agreement.

b. This Agreement will not become effective until the eighth calendar day after Employee executes the Agreement (the "Effective Date"). Employee may revoke this Agreement by delivering a written notice of revocation to Employer directed to Steven Lawrence at Provenance at [stevenl@inspireschools.org](mailto:stevenl@inspireschools.org), on or before the seventh (7<sup>th</sup>) day after the Employee signs the Agreement in order for the revocation to be effective. If Employee does not revoke acceptance within the seven (7) day revocation period, this Agreement shall become binding and enforceable on the eighth (8<sup>th</sup>) day.

c. This Agreement does not waive or release any rights or claims that Employee may have under the Age Discrimination in Employment Act ("ADEA") that arise after the execution of this Agreement. Employee acknowledges that Employee has read and understands this Agreement, has been advised to consult with an attorney regarding this Agreement, and has received all advice that Employee deems necessary prior to executing this Agreement such that Employee is entering into this Agreement freely, knowingly, and voluntarily.

d. Nothing in this Agreement is intended to preclude or prevent Employee from filing an age or other discrimination or retaliation charge or claim under the ADEA with the federal Equal Employment Opportunity Commission ("EEOC"), although Employee may have no right to monetary or other relief or remedy by reason of the claims Employee has released in this Agreement. Further, nothing in this Agreement is intended to preclude or prevent Employee from participating in any investigation or proceeding conducted by the EEOC on any ADEA claim.

e. Nothing in this Agreement is intended to preclude or prevent Employee from challenging in any court or before any agency the knowing and voluntary nature of the waiver of any ADEA claim.

**8. Adequate Consideration.** Employee acknowledges the Offset and/or Employer's agreement to permit him to resign ("Severance Benefits"), whether taken alone or together, are adequate consideration for Employee's agreement to the release and other obligations set forth herein.

**9. No Injuries.** Employee acknowledges and agrees that as of the date Employee signed this Agreement, Employee has no work-related injuries or claims for worker's compensation which Employee has not disclosed to Employer.

**10. General Release of All Claims.** In exchange for the consideration described herein, Employee, on Employee's own behalf and on behalf of Employee's descendants, dependents, heirs, executors, legal representatives, administrators, agents, assigns, and successors (collectively, "**Releasors**"), hereby covenants not to sue and fully and unconditionally forever releases and discharges Employer and the Inspire Entities and each of their respective

past, present and future representatives, directors, board members, officers, employees, agents, attorneys, affiliates, members and shareholders, as well as all parent companies, subsidiaries, affiliates, agents, attorneys, predecessors, assignors and/or assigns (collectively, the “**Released Parties**”), from and against any and all claims, causes of action, judgments, liens, demands, damages, obligations, suits, contracts, liabilities, losses, costs and expenses, including but not limited to, attorneys’ fees and disbursements, or offsets of any nature whatsoever (collectively “**Claims**”) that Releasors now have, have had, or may hereafter have against the Released Parties arising out of the Parties’ business relationship, including those Claims arising out of or relating to Employee’s employment with Employer and/or the Inspire Entities or the cessation of employment, the Dispute and/or relating to: (i) Employee’s performance and reputation, (ii) harassment, (iii) discrimination, (iv) retaliation, and (v) any Claims arising under Title VII of the Civil Rights Act of 1964, as amended, the Civil Rights Act of 1866, the Age Discrimination in Employment Act, the Older Workers’ Benefit Protection Act, the Americans with Disabilities Act, Section 503 of the Rehabilitation Act of 1973, the Employment Retirement Security Act, as amended, the Immigration Reform and Control Act, California Occupational Safety and Health Act, or the Federal equivalent, the California Fair Employment and Housing Act, including, but not limited to, California Government Code §12940 et seq., the Fair Labor Standards Act, including, but not limited to, 29 U.S.C. §§ 207 and 216, the California Labor Code, including, but not limited to, California Labor Code § § 132a, 201, 202, 203, 204, 206.5, 210, 226, 226.7, 432, 510, 512, 1102.5, 1182.12, 1194, 1197, 1198, 1198.5, 2699 et seq., 2802, 6300 et seq., 6310, 6311, 6312, 6399.7, 6400 et seq., 6423, 6425, and 6427-6430, and California Labor Code § § 4553 and 4553.1, Title 8, California Code of Regulations, Section 3364. Except for any rights created by this Agreement, this General Release is intended to be interpreted as broadly as possible and to apply to any and all Claims available to Employee in any forum, including but not limited to Claims for negligence, assault, battery, failure to investigate, failure to take all reasonable steps to prevent harassment, failure to take all reasonable steps to prevent discrimination, failure to take all reasonable steps to prevent retaliation, failure to take all reasonable steps to correct harassment, failure to take all reasonable steps to correct discrimination, failure to take all reasonable steps to correct retaliation, all claims for rest or meal period violations, unfair competition, false imprisonment, intentional and/or negligent infliction of emotional distress, breach of implied covenant not to terminate except with good cause, constructive termination, tortious termination in violation of public policy, wage and hour violations, wrongful termination, constructive discharge, breach of implied-in-fact contract, breach of contract, failure to provide leaves, invasion of privacy, fraud, intentional and/or negligent misrepresentation, intentional interference with contractual relations, prospective economic advantage, violation of California Business and Professions Code Section 17200 et seq., unjust enrichment, defamation, breach of the covenant of good faith and fair dealing, and any alleged wrongful conduct or injury arising out of or in any way connected with any acts or omissions which have arisen, occurred or existed at any time prior to and including the Effective Date of this Agreement. **However, this Release does not waive, release or otherwise discharge any claim or cause of action that cannot legally be waived, including, but not limited to, any claim for unpaid wages, workers’ compensation benefits, unemployment benefits and any claims under section 2802 of the California Labor Code.** This Agreement shall not prevent Employee from filing a charge with the Equal Employment Opportunity Commission (or similar state or local agency) or participating in any investigation conducted by the Equal Employment Opportunity Commission (or similar state or local agency); *provided,*

*however*, that Employee acknowledges and agrees that any claims by Employee for personal relief in connection with such a charge or investigation (such as reinstatement or monetary damages) would be and hereby are barred.

**11. Waiver of Class Action Participation.** To the extent any claims are not subject to the General Release of All Claims herein, Employee agrees to waive any right to participate in any class action or multi-party proceeding (whether as a putative or certified class member) against the Released Parties for such claims, except as prohibited by law.

**12. Waiver of Civil Code §1542.** Employee expressly waives any and all rights and benefits conferred upon Employee by Section 1542 of the California Civil Code, which states as follows:

**“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”**

Employee expressly agrees that the Release given by this Agreement applies to all unknown, unsuspected and unanticipated claims, liabilities and causes of action that Employee may have against the Released Parties which have arisen, occurred or existed at any time prior to and including the Effective Date of this Agreement.

**13. Confidential and Proprietary Information.** Employee acknowledges that during the course of employment with Employer, Employee was privy to confidential and/or privileged information important to Employer and known to Employee only by virtue of employment with Employer. Employee further acknowledges Employee’s continuing obligations to Employer under the California Uniform Trade Secrets Act. Furthermore, in consideration of the Severance Benefits provided by Employer pursuant to this Agreement, Employee further agrees to the confidentiality terms that follow. Employee shall neither disclose, nor use, any information of Employer, or its clients, which Employer has treated as confidential, proprietary or trade secret (“Confidential Information”) including, but not limited to information technology systems, processes and code, pricing information, compensation, financial and accounting information of Employer, its operations, business or marketing plans or strategies, methods of doing business, lists and other information concerning its client’s students and potential students, employees, parents, vendors and others who do business with Employer, information that could either cause or potentially cause damage or injury to Employer or its client’s students, parents, vendors, or employees and/or any other information Employee reasonably should know is treated as confidential by Employer or its clients. The only allowed disclosure of Confidential Information is (i) with prior written consent of Employer; (ii) after the information is generally available to the public other than by reason of a breach by Employee of the agreement to maintain confidentiality; (iii) after the information has been acquired by Employee through independent means and without a breach of Employee’s duties to Employer under this Agreement or otherwise; (iv) pursuant to the order of a court or other tribunal with jurisdiction if Employee has given Employer adequate notice so that Employer may contest any such process. Employee must take all necessary and appropriate steps to protect and safeguard all proprietary, confidential and sensitive information of Employer and confirms all copies,



including any and all soft copies or computer versions, of any and all of Employer's materials in Employee's possession, whether or not such materials are Confidential Information, have been returned. Employee acknowledges and agrees this provision encompasses any and all identifying or confidential information of all former and current students of Employer's clients which is protected under the Family Educational Rights and Privacy Act.

**14. Nondisparagement.** Employee agrees that, as of the date the Employee signs this Agreement, Employee will not, in communication with any person or entity whatsoever, or any third-party media outlet, Facebook, Twitter, LinkedIn, Instagram, or other social media service or personal website, make any derogatory, disparaging, critical or negative statements, publications or comments, either written, oral or otherwise, referencing, relating to, about or regarding the Released Parties or any of the Released Parties' current employees, officers, directors or members of its Board of Directors. Employee further agrees to take all reasonable steps to prevent others including, but not limited to, Employee's family members from making such statements on Employee's behalf. However, this section will in no way prevent Employee from testifying truthfully pursuant to an enforceable subpoena. It is understood and agreed that this is a material term of this Agreement and that any breach by Employee at all of this term shall constitute a material breach.

Employer agrees that in response to any request for a reference by a prospective employer of Employee, Employer will state that Employee resigned, will only verify dates of employment and position held and will not reference Pay Advances as defined in paragraph 2.a. of this Agreement.


**15. Reserved.**

**16. Return of Property.** As a condition of receiving the Severance Benefits, Employee shall return to Employer all property in Employee's possession or control, including without limitation, company vehicles, equipment, telephones, credit cards, keys, pagers, tangible proprietary information, documents, computers and computer discs, files and data, which Employee prepared or obtained during the course of Employee's work with Employer.

**17. No Other Actions.** Employee warrants that Employee has not filed any lawsuits, charges, complaints, petitions, or accusatory pleadings against any Released Parties herein with any federal, state or local governmental agency or in any court, based upon, arising out of or related in any way to events occurring prior to the execution of this Agreement. Except as prohibited by law, Employee further agrees that Employee will not hereafter file, cause to be filed, or otherwise voluntarily participate in the filing, investigation, and/or prosecution of any such charges, complaints, petitions or accusatory pleadings in any court or with any governmental agency.

**18. No Admission of Liability.** The Parties agree that this Agreement, and the performance of the acts required by it, does not constitute an admission of liability or wrongdoing on the part of anyone, and will not be used for any purpose as an admission of liability or wrongdoing by any party or any Released Parties.

**19. Entire Agreement.** Except as expressly referenced in this Agreement, the Parties agree that this Agreement contains the entire agreement (including any attachments, exhibits, or other documents incorporated by reference) between them with respect to the matters addressed in this Agreement and that it is a final, complete and exclusive statement of the terms of the Agreement. It supersedes and replaces all prior negotiations and all agreements proposed or otherwise, whether written or oral, concerning the subject matter of this Agreement. It is agreed that there are no collateral agreements or representations regarding the subject matter of this Agreement that are not contained in this Agreement.

**20. Material Terms.** Employee understands, agrees and acknowledges that the terms of this Agreement are material, including without limitation, to Sections 2, 3, 5, 13-15. If, in the sole discretion of the Employer, Employee fails to comply with any material term of this Agreement, Employee understands, agrees and acknowledges that Employee foregoes the full amount of the Offset (set forth in Section 4) and Employee will be required to repay the entire Outstanding Balance to Employer in accordance with the time frame set forth in Section 2. If Employer believes that Employee has breached his obligations under sections 14 (nondisparagement) of this Agreement, Employer will notify Employee of the alleged breach. Employee and Employer will, thereafter, meet and confer as to whether a breach has occurred. Employee will have an opportunity to respond directly to the Board of Directors and provide any information Employee deems relevant to the determination of whether Employee has breached Section 14 of the Agreement. The Board of Directors shall consider all information provided by the Employee and shall act reasonably and fairly in determining whether it believes a breach has occurred. No such meet and confer requirement applies to Employee's breach and/or alleged breach of any other of the material terms of the Agreement. If Employee breaches any of the material provisions of the Agreement in the sole discretion of Employer, Employee understands, agrees and acknowledges that the opportunity to have the Employee's separation classified as a "resignation" shall be the sole and exclusive consideration and is adequate consideration for Employee's agreement for the releases contained herein. All other terms and conditions of this Agreement shall remain enforceable. **Employee Initial:** 

**21. Waiver/Modification.** No breach of any provision of this Agreement can be waived unless in writing. Waiver of any one breach shall not be deemed to be a waiver of any other breach of the same or any other provision of this Agreement. No changes in, additions to, or modifications of this Agreement shall be valid unless set forth in writing and executed by all Parties hereto.

**22. No Representations.** Neither Party has made, nor relied upon, any oral or written representations not contained in this Agreement and its incorporated documents.

**23. Own Attorneys' Fees and Costs.** The Parties agree that they shall bear their own respective costs and fees, including attorneys' fees, in connection with the negotiation and execution of this Agreement.

**24. Advice of Counsel.** Both Parties acknowledge that they have had the opportunity to consult with legal counsel prior to entering into this Agreement. Both Parties further represent that they are entering into this Agreement freely and voluntarily, and not relying on the

representations of any other party or of the counsel of any other party except the representations and warranties expressly set forth in this Agreement.

**25. Severability.** If any provision of this Agreement or the application thereof is held invalid, the invalidity shall not affect other provisions or applications of the Agreement which can be given effect without the invalid provisions or applications and to this end the provisions of this Agreement are declared to be severable.

**26. Governing Law; Venue.** This Agreement is made in California and shall in all respects be interpreted, enforced and governed by, the laws of the State of California without regard to the principles of conflicts of law. The parties agree that any and all claims arising out of or related to this Agreement or the matters referred to herein shall be heard and decided in the exclusive jurisdiction of the state or federal courts or other adjudicatory forum or tribunal located in Los Angeles County, California.

**27. Counterparts; Headings.** This Agreement may be executed in counterparts, and each counterpart, when executed, shall have the efficacy of a signed original. Photographic or faxed copies of such signed counterparts may be used in lieu of the originals for any purpose. The headings in this Agreement are only for convenience and ease of reference and are not to be considered in construction or interpretation.

**28. Future Attorneys' Fees and Costs.** In the event any litigation, arbitration, or other proceeding is brought for the interpretation or enforcement of this Agreement, or because of an alleged dispute, default, misrepresentation, or breach in connection with any of the provisions of this Agreement, the prevailing Party or Parties shall be entitled to recover reasonable attorneys' fees, costs, and expenses actually incurred in connection therewith, in addition to any other relief to which he, she, it, or they may be entitled.

**29. Enforcement or Breach of Agreement; Dispute Resolution.**

a. Except as provided in Section 29(e), any and all disputes, controversies, claims, or alleged breaches arising out of or relating to this Agreement (including without limitation the interpretation or enforcement thereof) shall be resolved through binding arbitration before a Retired Superior Court Judge at Judicate West (or a mutually agreeable arbitrator from Judicate West).

b. The hearing on any such dispute initiated pursuant to this section shall commence and be completed within 90 days of the party initiating arbitration with Judicate West, or as may be otherwise agreed by the Parties or as ordered by the arbitrator. The arbitration shall be subject to Judicate West's then-applicable Commercial Arbitration Rules.

c. Each party to such arbitration may be represented by an attorney or other representative selected by the party. The Parties shall initially split the cost (50%/50%) of the arbitrator's fees and costs, but the prevailing party shall be awarded its share of same in accordance with Section 28 above.

d. **Application for Emergency Injunctive and/or Other Equitable Relief.** Claims by Employer or Employee for emergency injunctive and/or other equitable relief relating



to unfair competition, nondisparagement and/or the use and/or unauthorized disclosure of trade secrets or confidential information shall be submitted to Judicate West for emergency treatment. The parties agree that the Judicate West administrator may select a neutral hearing officer (subject to conflicts) to hear the emergency request only. The hearing officer should be experienced in considering requests for emergency injunctive and/or other equitable relief. The hearing officer shall conform his/her consideration and ruling with the applicable legal standards as if this matter were heard in a court of law in the applicable jurisdiction for such a dispute.

e. In the event of Employee's default or breach of or under the Promissory Note (**Exhibit A**) and/or the Deed of Trust (**Exhibit B**), the rights and remedies of Employer shall proceed and be interpreted, determined and/or enforced in accordance of the terms therein and, in the Employer's sole option, may not be subject to the arbitration provision herein.

Employee Initial: HN

**30. Successors and Assigns.** The provisions of this Agreement shall be binding upon and inure to the benefit of the respective Parties and their heirs, executors, administrators, agents, representatives, successors, and assigns.

**31. Cooperation.** Employee agrees to fully cooperate in good faith with Employer and its attorneys, insurers, agents and investigators in connection with actions and proceedings to which Employer and/or its officers and employees, present or former, are party or involved and/or in connection with any investigation being conducted by or involving Employer or any litigation. Employee's cooperation shall include, but not be limited to, attendance at hearings, depositions, preparation for hearings or depositions, execution of declarations or any other assistance required by Employer. If Employee has to travel outside of his county of residence for such purposes, and only if his attendance or participation is requested by Employer, Employer will reimburse Employee for actual travel costs as mutually agreed upon in advance of said travel as is reasonable and appropriate for gas, airfare, train fare, and/or hotel stay.

**32. Notice.** With the exception of notice Employee may provide to Employer pursuant to Section 7(b) of this Agreement, all other notices or communications that any Party desires or is required to give shall be given in writing and shall to be deemed to have been given if by hand-delivery, sent by telecopy/facsimile with receipt confirmed, overnight mail or mail depositing in the United States mail, postage prepaid to the party at the address noted below, or such other address as a Party may designate in writing from time to time.

Employee: Herbert Nichols, III  
1191 Huntington Drive, #312  
Duarte, CA 91010

Employer: Provenance  
1740 E. Huntington Drive, #205  
Duarte, CA 91010  
Attn: Board Chair

**33. Execution of Further Documentation.** The parties shall execute any and all further documents that may be required to effectuate the purposes of this Agreement.

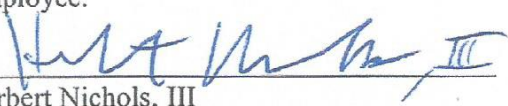
**34. No Assignment or Transfer of Claims.** Employee represents and warrants that he has not heretofore assigned, transferred or purported to assign or transfer to any other person or entity any rights, claims or causes of action herein that the Employee has released and/or discharged and no other person or entity has any interest in the matters herein released and discharged.

**EMPLOYEE ACKNOWLEDGES THAT EMPLOYEE HAS BEEN ADVISED IN WRITING TO CONSULT WITH AN ATTORNEY BEFORE SIGNING THIS RELEASE.**

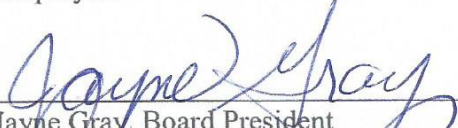
**THE PARTIES ACKNOWLEDGE THAT THEY HAVE EXECUTED THIS AGREEMENT FREELY AFTER INDEPENDENT INVESTIGATION AND WITHOUT FRAUD OR UNDUE INFLUENCE. THE PARTIES ACKNOWLEDGE THAT THEY HAVE READ THIS AGREEMENT AND FULLY UNDERSTAND EACH AND EVERY PROVISION CONTAINED HEREIN, AND INTEND TO BE BOUND BY ALL OF ITS TERMS.**

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the respective dates written below.

Date: 10-11-19

Employee:  
  
Herbert Nichols, III

Date: 10-13-19

Employer:  
  
Jayne Gray, Board President  
Provenance, a California nonprofit public benefit corporation

# EXHIBIT A



**SECURED PROMISSORY NOTE**

\$859,923.11

October 11, 2019

FOR VALUE RECEIVED, the undersigned Herbert Nichols III, an individual ("Borrower"), promises to pay to Provenance, a California nonprofit public benefit corporation ("Lender"), in lawful money of the United States of America, the principal amount of Eight Hundred Fifty Nine Thousand Nine Hundred Twenty Three and 11/100 Dollars (\$859,923.11), subject to and in accordance with the terms of this Secured Promissory Note (this "Note"). This Note, effective as of October 11, 2019, is Exhibit A to the Separation and Release Agreement between the Borrower and Lender, signed by Borrower on October 11, 2019.

1. Definitions. Capitalized terms used and not otherwise defined in this Note shall have the respective meanings set forth in this Section 1.

"Deed of Trust" means that certain Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing, dated as of October 11, 2019, made and given by Borrower, as trustor, to Fidelity National Title Company, as trustee, for the benefit of Lender, as beneficiary. The Deed of Trust, effective October 11, 2019, is Exhibit B to the Separation and Release Agreement between the Borrower and Lender, signed by Borrower on October 11, 2019.

(a) "Default Rate" means, with respect to any Obligation, a per annum rate equal to the rate otherwise applicable to such Obligation, plus 5.00%.

(b) "Interest Rate" means a fixed rate of 1.69% per annum.

(c) "Maturity Date" means December 31, 2020.

(d) "Obligations" means all debts, liabilities and obligations under this Note and the Deed of Trust owed by Borrower to Lender, including all interest, fees, costs and expenses (including reasonable attorneys' fees) payable by Borrower under this Note and the Deed of Trust. If any amount previously paid to Lender on account of any Obligation is thereafter restored or returned by Lender, whether in an insolvency proceeding of Borrower or for any other reason, such Obligation shall be reinstated and revived automatically as though such amount had not been paid to Lender.

2. Interest

(a) The outstanding unpaid principal balance owing from time to time under this Note shall accrue interest at the Interest Rate; provided, however, that upon the occurrence and during the continuance of an Event of Default, the outstanding unpaid principal balance owing from time to time under this Note shall accrue interest at the Default Rate. Accrued interest under this Note shall be computed on the basis of the actual number of days elapsed and a year of 365/366 days.

(b) In no event shall the interest rate hereunder or other charges hereunder, or both, exceed the highest rate permissible under any law which a court of competent jurisdiction shall deem applicable hereto. In the event that such a court determines that Lender has received

interest or other charges hereunder in excess of the highest permissible rate applicable to this Note, such excess shall be deemed received on account of, and shall automatically be applied to reduce, the principal balance hereof, any excess shall be promptly remitted to Borrower, and the provisions hereof shall be deemed amended to provide for the highest permissible rate.

3. Payments

(a) Principal and Interest. The entire unpaid principal amount of this Note, together with all accrued and unpaid interest, shall be due and payable on the Maturity Date.

(b) Optional Prepayment. Borrower may, from time to time, prepay the outstanding principal amount of this Note, in whole or in part, together with all accrued and unpaid interest as of the date of such prepayment, without premium or penalty.

(c) Application of Payments. All payments under this Note received by Lender shall be applied in the following manner: (i) first, to the payment of all expenses, charges, costs and fees incurred by or payable to Lender and for which Borrower is obligated pursuant to the terms of this Note or the Deed of Trust; (ii) second, to the payment of all interest (if any) accrued to the date of such payment; and (iii) third, to the payment of principal.

4. Secured Note. This Note and the other Obligations are secured by the Deed of Trust.

5. Events of Default. The occurrence of any of the following shall constitute an “Event of Default” under this Note:

(a) Failure to Pay. Borrower fails to pay principal, interest or any other amount required to be paid under the terms of this Note on the date due; or

(b) Breach of Covenants. Borrower fails to observe or perform any covenant, obligation, condition or agreement set forth in this Note or the Deed of Trust, and the continuation of such failure following the expiration of any applicable notice, cure or grace period, if any, provided for herein or therein; or

(c) Breach of Representations and Warranties. Any representation, warranty, certificate, information or other statement made or furnished by or on behalf of Borrower to Lender in or in connection with this Note or the Deed of Trust is determined to be false, incorrect, incomplete or misleading in any material respect when made or furnished; or

(d) Voluntary Bankruptcy or Insolvency Proceedings. Borrower (i) applies for or consents to the appointment of a receiver, trustee, liquidator or custodian of itself or of all or a substantial part of its property, (ii) is unable, or admits in writing its inability, to pay its debts generally as they mature, (iii) makes a general assignment for the benefit of its creditors, (iv) commences a voluntary case or other proceeding seeking liquidation, adjustment or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or consents to any such relief or to the appointment of or taking possession of its property by any official in an involuntary case or other proceeding commenced against it, or (v) takes any action for the purpose of effecting any of the foregoing; or



(e) Involuntary Bankruptcy or Insolvency Proceedings. Proceedings for the appointment of a receiver, trustee, liquidator or custodian of Borrower or of all or a substantial part of its property, or an involuntary case or other proceedings seeking liquidation, reorganization or other relief with respect to Borrower or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect is commenced and an order for relief entered or such proceeding is dismissed or discharged within 60 days of commencement; or

(f) Loan Documents. This Note or the Deed of Trust or any material term hereof or thereof shall be revoked or cease to be, or be asserted by Borrower not to be, a legal, valid and binding obligation of Borrower, enforceable in accordance with its terms.

#### 6. Rights of Lender upon Event of Default

(a) Upon the occurrence of any Event of Default (other than an Event of Default described in Section 5(d) and/or 5(e) above), and at any time thereafter during the continuance of such Event of Default, Lender may, by written notice to Borrower, declare the entire outstanding principal balance under this Note and all other Obligations to be immediately due and payable.

(b) Upon the occurrence of any Event of Default described in Section 5(d) and/or 5(e) above, immediately and without notice, the entire outstanding principal balance under this Note and all other Obligations hereunder shall automatically become immediately due and payable, without presentment, demand, protest or any other notice of any kind, all of which are expressly waived, anything contained herein to the contrary notwithstanding.

(c) In addition to the foregoing remedies, upon the occurrence or existence of any Event of Default, Lender may exercise any other right, power or remedy available under the Deed of Trust and applicable law.

(d) After the occurrence and during the continuance of any Event of Default, Borrower shall pay on demand, all reasonable fees and expenses, including reasonable attorneys' fees and expenses, incurred by Lender in the enforcement or attempted enforcement of any of the Obligations or in preserving any of Lender's rights and remedies (including, without limitation, all such fees and expenses incurred in connection with any "workout" or restructuring affecting this Note, the Deed of Trust or the Obligations or any bankruptcy or similar proceeding involving Borrower). The obligations of Borrower under this Section 6(d) shall survive the payment and performance of the Obligations and the termination of this Note and the Deed of Trust.

#### 7. Miscellaneous

(a) Notices. All notices or other communications required or permitted under this Note shall be in writing and shall be deemed given or delivered (a) on the date given, if delivered personally or sent by facsimile or e-mail transmission with confirmation of receipt, (b) on the date of delivery, if delivered by a nationally recognized overnight courier service, or (c) five days after mailing, if mailed by certified or registered mail, postage prepaid, return receipt requested, to the applicable party at its address set forth on the signature page hereto, or at such

other address as any such party may designate by written notice to the other parties in the manner set forth above.

(b) Governing Law. This Note shall be governed by and construed in accordance with the laws of the State of California applicable to a contract executed and performed in such state, without giving effect to the conflicts of laws principles thereof.

(c) Binding Effect; Assignment. Borrower shall not assign this Note or any of its rights or obligations hereunder without the prior written consent of Lender. Any attempt by Borrower to assign any of its rights or obligations under this Note in violation of this Section 7(c) shall be void. Subject to the foregoing, this Note shall be binding upon and inure to the benefit of Borrower and Lender and their respective heirs, executors, administrators, legal representatives, successors and permitted assigns.

(d) Amendments and Waivers. This Note may not be amended or modified except by a written instrument signed by Borrower and Lender, nor may any of the terms of this Note be waived except by a written instrument signed by the party waiving compliance.

(e) Severability. In the event any one or more of the provisions contained in this Note should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby (it being understood that the invalidity of a particular provision in a particular jurisdiction shall not in and of itself affect the validity of such provision in any other jurisdiction), and the balance of this Note shall be interpreted as if such provisions were so excluded and shall be enforceable in accordance with its terms.

(f) Nonwaiver. No failure or delay on Lender's part in exercising any right hereunder shall operate as a waiver thereof or of any other right nor shall any single or partial exercise of any such right preclude any other further exercise thereof or of any other right.

(g) Remedies Cumulative. The rights, powers and remedies of Lender under this Note shall be in addition to all rights, powers and remedies given to Lender by virtue of any applicable law, rule or regulation of any governmental authority or the Deed of Trust, all of which rights, powers, and remedies shall be cumulative and may be exercised successively or concurrently without impairing Lender's rights hereunder. Borrower waives any right to require Lender to proceed against any person or entity or to exhaust any collateral or to pursue any remedy in Lender's power.

(h) Consultation with Counsel; Mutual Drafting. Each of Borrower and Lender acknowledges and agrees that it fully understands its right to discuss all aspects of this Note and the Deed of Trust with an independent attorney, and that to the extent, if any, it has desired, it has availed itself of this right, that it has carefully read and fully understands all of the provisions of this Note and the Deed of Trust, and that it is voluntarily entering into this Note and the Deed of Trust. The provisions of this Note and the Deed of Trust have been carefully negotiated by Borrower and Lender, and such parties do not intend that the presumptions of California Civil Code Section 1654 and similar laws or rules relating to the interpretation of



contracts against the drafter of any particular clause should be applied to this Note or the Deed of Trust and therefore waive their effects.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, Borrower has executed this Note as of the date first written above.

“Borrower”

  
HERBERT NICHOLS III, an individual

Borrower’s Address for Notices:

Herbert Nichols III

1191 Huntington Drive #312  
Duarte, CA 91010  
E-Mail: drnicknichols@gmail.com

Lender’s Address for Notices:

Provenance  
1740 E. Huntington Drive, #205  
Duarte, CA 91010  
Attention: Board Chair

# EXHIBIT B

**RECORDING REQUESTED BY:**

Provenance

**AND WHEN RECORDED MAIL TO:**

Provenance  
1740 E. Huntington Drive, #205  
Duarte, CA 91010

Instructions to County Recorder:

Index this document as:

- (1) a deed of trust, and
- (2) a fixture filing

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Space Above This Line For Recorder's Use

**DEED OF TRUST, ASSIGNMENT OF RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING**

THIS DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Deed of Trust") is made as of October 11, 2019 by Herbert Nichols III, a married man, as his sole and separate property, as trustor ("Trustor"), whose mailing address is 1191 Huntington Drive, No. #312, Duarte, California 91010, in favor of Fidelity National Title Company, as trustee ("Trustee"), whose mailing address is 4210 Riverwalk Parkway, Suite 100, Riverside, California 92505, for the benefit of Provenance, a California nonprofit public benefit corporation, as beneficiary ("Beneficiary"), whose mailing address is 1740 E. Huntington Drive, #205, Duarte, California 91010.

1. GRANT IN TRUST. For the purpose of securing payment and performance of the Secured Obligations (as defined in Section 2 below), Trustor hereby irrevocably and unconditionally grants, conveys, transfers and assigns to Trustee, its successors and assigns, IN TRUST, WITH POWER OF SALE TOGETHER WITH THE RIGHT OF ENTRY AND POSSESSION, for the benefit and security of Beneficiary, all present and future rights, titles, interests, estates, powers and privileges that Trustor now has or may hereafter acquire in or to the following property and any interest therein (collectively, the "Trust Estate"):

1.1 The real property located in the County of Los Angeles, State of California, more particularly described in Exhibit A attached hereto (the "Real Property");

1.2 All buildings and other improvements and structures now or hereafter located on the Real Property (collectively, the "Improvements" and together with the Real Property shall sometimes be referred to as "Property");

1.3 All existing and future leases, subleases, subtenancies, licenses, agreements and concessions relating to the use, occupancy or enjoyment of all or any part of the Property, together with any and all guaranties and other agreements relating to or made in connection with any of the foregoing (individually, a “Lease”, and collectively, the “Leases”);

1.4 All rents, issues, income, revenues, royalties, profits, proceeds and earnings now or hereafter payable with respect to or otherwise derived from the ownership, use, management, operation, leasing or occupancy of the Property, including, without limitation, cash or security deposited under any of the Leases to secure the performance by the lessees of their obligations thereunder (collectively, the “Rents”);

1.5 All tenements, hereditaments, appurtenances, privileges, choses in action, options to purchase all or any part of the Property or any interest therein (and any greater estate in the Property now owned or hereafter acquired by Trustor pursuant thereto), and other rights and interests now or in the future benefiting or otherwise relating to the Property, including, without limitation, easements, rights-of-way, sidewalks, alleys and strips and gores of land adjacent to or used in connection with the Property, development rights, oil, gas or other mineral rights and all royalty, leasehold and other rights of Trustor pertaining thereto;

1.6 All water and water rights pertaining to the Real Property, and shares of stock evidencing the same, and all deposits made with or other security given to utility companies by Trustor with respect to the Property;

1.7 All policies of insurance and all claims, demands or proceeds relating to such insurance or condemnation awards, recoveries or settlements which Trustor now has or may hereafter acquire with respect to the Property, including all advance payments of insurance premiums made by Trustor with respect thereto;

1.8 All “fixtures” as that term is defined in the UCC (as that term is defined in Section 6 below), and which is adapted or applied to the use of the real property and is intended that it will be permanently attached or affixed to the real property;

1.9 All (a) accounts, general intangibles, chattel paper, letter of credit rights, deposit accounts, money, investment property, documents, certificates of title and instruments (whether negotiable or nonnegotiable), contract rights, insurance policies, and all rights to payment of any kind relating to or otherwise arising in connection with or derived from the Property or any other part of the Trust Estate, (b) refunds, rebates, reserves, deferred payments, deposits, cost savings and payments of any kind due from or payable by (i) any federal, state, municipal or other governmental or quasi-governmental agency, authority or district (individually, a “Governmental Agency”), or (ii) any insurance or utility company, in either case relating to any or all of the Trust Estate, and (c) refunds, rebates and payments of any kind due from or payable by any Governmental Agency for any taxes, assessments, or governmental or quasi-governmental charges or levies imposed upon Trustor with respect to or upon any or all of the Trust Estate;

1.10 All agreements, contracts, certificates, instruments, franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into, and all rights

therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Real Property and any part thereof and any Improvements or respecting any business or activity conducted on the Real Property or any part thereof and all right, title and interest of Trustor therein and thereunder, including the right, upon the happening of any default hereunder, to receive and collect any sums payable to Trustor thereunder; and

1.11 All supporting obligations for, additions, accessions, improvements and accretions to, substitutions and replacements for, and proceeds and products of, any of the foregoing.

2. SECURED OBLIGATIONS. Trustor makes the grant, conveyance, transfer and assignment set forth in Section 1 above FOR THE PURPOSE OF SECURING the following obligations (collectively, the "Secured Obligations") in such order of priority as Beneficiary may elect:

2.1 Payment of all sums at any time owing and the performance of all other obligations arising under that certain Secured Promissory Note, dated October 11, 2019, in the principal amount of ~~\$964,526.46~~ <sup>859,923.11 Hz</sup> made and given by Trustor to the order or in favor of Beneficiary and any and all modifications, replacements, extensions and renewals of the foregoing (collectively, the "Debt Instrument"), whether hereafter evidenced by the Debt Instrument or otherwise;

2.2 Payment of interest on such sums according to the terms of the Debt Instrument;

2.3 Payment of all other sums, including late charges and any attorney's fees and other advances made by Beneficiary hereunder as hereinafter provided, with interest thereon as hereinafter provided, which are due or payable to Trustee or Beneficiary under the provisions hereof;

2.4 Due, prompt and complete observance, performance and discharge of each and every obligation, covenant and agreement of Trustor contained herein and in the Debt Instrument, and all supplements, amendments and modifications thereto and all extensions and renewals thereof, or in any other instrument or document heretofore or hereafter executed by Trustor having reference to or arising out of the indebtedness evidenced by the Debt Instrument which recites that the obligations thereunder are secured hereby;

2.5 Payment of such additional sums as may be hereafter borrowed from Beneficiary by Trustor (or guaranteed by Trustor) when evidenced by a debt instrument or instruments (or guaranty or guaranties) which are by the terms thereof (or by the terms of any other instrument executed by Trustor in connection therewith) secured by this Deed of Trust, together with interest and late charges thereon according to the terms of such debt instrument or instruments; and

2.6 Performance of such future obligations which Trustor may agree to perform for the benefit of Beneficiary when Trustor executes a document or documents reciting that such obligations are secured hereby.



3. AFFIRMATIVE COVENANTS OF TRUSTOR. Trustor hereby agrees as follows:

3.1 Performance of Obligations. To pay, perform, observe and discharge each and every condition, obligation, covenant and agreement for which this Deed of Trust has been given as security as provided above.

3.2 Maintenance, Repair and Alterations. To keep the Trust Estate in good condition and repair; not to remove, demolish or substantially alter any of the Improvements without the prior written consent of Beneficiary; to notify Beneficiary in writing of any material damage or destruction to the Trust Estate or any portion thereof immediately upon Trustor obtaining knowledge of same, whether or not covered by insurance; to complete or restore promptly and in good and workmanlike manner any Improvements which may be constructed, damaged or destroyed on the Real Property and to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws, ordinances, regulations, covenants, conditions and restrictions (including, without limitation, the directives of any Governmental Agency) now or hereafter affecting the Trust Estate or any part thereof or requiring any alterations, improvements or additions to be made thereon; not to commit or permit any waste or deterioration of the Trust Estate; to keep and maintain abutting grounds, sidewalks, roads, parking and landscape areas in good and neat order and repair; to perform, in the event all or any portion of the Trust Estate constitutes a leasehold estate, each and every obligation of Trustor under the terms of the agreements creating such leasehold estate; and not commit, suffer or permit any act to be done in or upon the Trust Estate in violation of any law, ordinance or regulation.

3.3 Insurance

(a) Coverage. To keep the Improvements insured at all times against loss or damage with property hazard insurance in an amount at least equal to the full insurable value of the Improvements (including tenant improvements) on a replacement cost basis, and against any other risk or hazard required by Beneficiary, including, without limitation, earthquake, flood and business interruption (including rent loss and/or extra expense or as appropriate). All insurance policies shall (i) be in such form and with such endorsements as may be required by Beneficiary, (ii) provide a lender's loss payable endorsement or be endorsed with a standard non-contributory mortgage clause, as appropriate, in favor of Beneficiary, (iii) be underwritten by insurance providers acceptable to Beneficiary, and (iv) provide Beneficiary at least thirty (30) days' prior notice of cancellation, non-renewal or modification. The policy or policies evidencing all insurance required hereunder (or certificates of such insurance) shall be delivered to and held by Beneficiary. Trustor shall pay premiums on such insurance as they become due, and shall not permit any condition to exist on or with respect to the Property which would wholly or partially invalidate any insurance.

(b) Application of Proceeds. To pay to Beneficiary, promptly upon Trustor's receipt of same, any proceeds received by Trustor under any such insurance policy on account of any damage or destruction to the Improvements. Beneficiary shall have the right to join Trustor in adjusting any loss covered by any such insurance, and all loss under all such insurance shall be payable directly to Beneficiary, and Trustor hereby authorizes and empowers

Beneficiary, at Beneficiary's sole option and in Beneficiary's sole discretion as attorney-in-fact for Trustor, to make proof of loss, to adjust and compromise any claim under insurance policies, to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds, and to deduct therefrom Beneficiary's expenses incurred in the collection thereof. If Beneficiary elects not to exercise such right, Beneficiary shall be under no obligation to question the amount of any compensation, award, recovery, settlement, proceeds, damages, claims, rights of action or payments received under any policy of insurance on account of any damage or destruction to the Improvements, and may accept the same in the amount paid. In the event of any damage to or destruction of the Improvements, Beneficiary shall have the option, in its sole discretion, to: (i) apply, in the event Beneficiary determines that the security for the repayment of the indebtedness secured hereby has been impaired on account of such damage or destruction, all or any part of such proceeds to any indebtedness secured hereby in such order as Beneficiary may determine, whether or not such indebtedness is then due, (ii) release all or any part of such proceeds to Trustor, or (iii) hold the balance of such proceeds to be used to reimburse Trustor for the cost of reconstruction of the Improvements. In the event Beneficiary elects to so hold such insurance proceeds, the Improvements shall be promptly and diligently restored by Trustor to the equivalent of their condition immediately prior to such damage, destruction or casualty or to such other condition as Beneficiary may approve in writing, and the disbursement of such insurance proceeds shall be in accordance with disbursement procedures acceptable to Beneficiary. If Beneficiary elects to apply the insurance proceeds to the payment of the sums secured hereby, and after doing so Beneficiary reasonably determines that the remaining security is inadequate to secure the remaining indebtedness, Trustor shall, upon written demand from Beneficiary, prepay on principal such amount as will reduce the remaining indebtedness to a balance for which adequate security is present. Moreover, such application shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

3.4 Taxes. To (a) pay prior to delinquency, all real property taxes and assessments, general and special, and all other taxes, assessments and charges of any kind or nature whatsoever, which are imposed upon, assessed against or affect the Trust Estate or any part thereof, (b) pay when due all encumbrances, charges or liens of any kind or nature whatsoever, which create or may create a lien upon the Trust Estate or any part thereof or any interest therein, whether prior and superior or subject and subordinate to the lien hereof, and (c) deliver, upon Beneficiary's request, to Beneficiary, within ten (10) days after the date upon which any such tax, assessment, encumbrance, charge or lien is due and payable by Trustor, official receipts of the appropriate taxing authority (or other proof satisfactory to Beneficiary) evidencing the payment thereof.

3.5 Condemnation. Trustor, upon obtaining knowledge of the institution of any proceedings for the condemnation of the Trust Estate or any portion thereof, shall immediately notify Beneficiary of such fact in writing. Beneficiary shall have the right, but not the obligation, to participate in any such proceedings, to control same and to be represented therein by counsel of its choice at Trustor's expense, and Trustor shall deliver, or cause to be delivered, to Beneficiary such instruments as may be requested by it from time to time to permit such participation. All compensation, awards, recoveries, settlement, proceeds, damages, claims, rights of action and payments to which Trustor may become entitled to on account of such proceedings shall be paid to Beneficiary. Any sums so collected by Beneficiary shall first be

applied to reimburse Trustee and Beneficiary for all costs and expenses, including reasonable attorneys' fees, incurred in connection with the collection of such sums, and the balance shall be applied, in the event Beneficiary determines that the security for the repayment of the indebtedness secured hereby has been impaired on account of such condemnation, to any indebtedness secured hereby in such order as Beneficiary may determine, whether or not such indebtedness is then due. Any surplus remaining after payment and satisfaction of any indebtedness secured hereby shall be paid to Trustor as its interest may then appear. If Beneficiary elects to apply the condemnation proceeds to the payment of the sums secured hereby, and after doing so Beneficiary reasonably determines that the remaining security is inadequate to secure the remaining indebtedness, Trustor shall, upon written demand from Beneficiary, prepay on principal such amount as will reduce the remaining indebtedness to a balance for which adequate security is present. Such application shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. Beneficiary shall be under no obligation to question the amount of any compensation, awards, recoveries, settlement, proceeds, damages, claims, rights of action or payments received in any such condemnation proceeding, and may accept the same in the amount paid.

3.6 CC&Rs. To promptly and completely observe, perform and discharge each and every condition, obligation, covenant and agreement affecting the Property, whether the same is prior and superior or subject and subordinate hereto, including, without limitation, if the Property is or will be a condominium, community apartment or part of a planned development project, each and every provision to be performed by Trustor under any declaration of covenants, conditions and restrictions or the like pertaining thereto.

3.7 Actions Affecting Trust Estate. To appear in and defend, at Trustor's expense, any action or proceeding purporting to affect the Trust Estate, the security hereof or the rights or powers of Beneficiary or Trustee hereunder; and to pay all costs and expenses incurred by Beneficiary or Trustee, including attorneys' fees, in any such action or proceeding in which Beneficiary or Trustee may appear and in any suit brought by Beneficiary to foreclose this Deed of Trust or to exercise the power of sale hereunder.

3.8 Actions by Beneficiary to Preserve Trust Estate. Should Trustor fail to perform any of its obligations under this Deed of Trust, then Beneficiary, in its discretion, without obligation to do so and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereunder, may make or do the same. In connection therewith, and without limiting its general powers, Beneficiary shall have and is hereby given the right, but not the obligation: (a) to enter upon and take possession of the Trust Estate or any part thereof, (b) to make additions, alterations, repairs and improvements to the Trust Estate or any part thereof which Beneficiary may consider necessary or proper to keep the Trust Estate in good condition and repair, (c) to commence, maintain, appear and participate in any action or proceeding affecting or which may affect, or which is necessary to protect, the security hereof or the rights or powers of Beneficiary or Trustee hereunder, (d) to pay, purchase, contest or compromise any encumbrance, claim, charge or lien which in the judgment of Beneficiary may affect or appears to affect the security of this Deed of Trust or which create or may create a lien upon the Trust Estate or any part thereof or interest therein, whether prior and superior or subject and subordinate to the lien hereof, and (e) in exercising such powers, to pay necessary expenses incurred in connection therewith, to employ counsel and other consultants, and to pay such

counsel's or consultants' fees and expenses. Immediately upon demand therefor by Beneficiary, Trustor shall pay all costs and expenses incurred by Beneficiary in connection with the exercise by Beneficiary of the foregoing rights, together with interest thereon according to the terms of the Debt Instrument, and all such sums shall be secured by this Deed of Trust.

3.9 Inspections. Beneficiary, through its agents, representatives or employees, is authorized to enter at any reasonable time upon or in any part of the Property for the purpose of (a) inspecting same, and (b) performing any of the acts it is authorized to perform hereunder or under the terms of this Deed of Trust, the Debt Instrument, any guaranty thereof and any other instrument or agreement given to evidence or further secure the payment and performance of any obligation secured hereby. In the case of a request to transfer the Trust Estate or any part thereof in accordance with the terms hereof, Trustor shall pay all appraisal fees and related expenses incurred by Beneficiary in evaluating such request.

3.10 Books and Records. Trustor shall keep and maintain, or cause to be kept and maintained, proper and accurate books, records and accounts of the Trust Estate and of its own financial affairs to permit the preparation of financial statements therefrom. Beneficiary, through its agents, representative or employees, shall have the right, from time to time, at any time and at all times, during normal business hours, to examine, copy and audit such books, records and accounts. If the Property is at any time used for commercial or residential income purposes, Trustor shall deliver to Beneficiary, upon request, certified financial statements and profit-and-loss statements for Trustor and the Trust Estate prepared in accordance with generally accepted accounting principles.

3.11 Personal Property. Trustor shall not remove from the Property any Personal Property (as defined in Section 6 below) except in the ordinary course of business and then only if such removed property is replaced with similar property of comparable quality.

4. NEGATIVE COVENANTS OF TRUSTOR. Trustor hereby agrees as follows:

4.1 Other Financing. Trustor shall not create any mortgage, pledge, security interest, lien, charge or encumbrance of any kind upon the Trust Estate or any part thereof or any interest therein except for: (a) the lien of this Deed of Trust, (b) liens for taxes and assessments not yet delinquent, (c) liens existing as of the date of this Deed of Trust, and (d) such other liens or charges as are specifically approved in writing by Beneficiary.

4.2 Transfer. Trustor shall not, directly or indirectly, sell, convey, assign, further encumber, transfer, alienate or otherwise dispose of the Trust Estate or any part thereof or any interest therein, including, without limitation, air rights or development rights, whether voluntarily, involuntarily, by operation of law or otherwise, or lease all or any portion thereof or an undivided interest therein, or enter into an agreement so to do, without the prior written consent of Beneficiary. Any consent by Beneficiary permitting a transaction otherwise prohibited under this Section 4.2 shall not constitute a consent to or waiver of any right of Beneficiary to withhold its consent on any subsequent occasion to a transaction not otherwise permitted by the provisions hereof.



## 5. ASSIGNMENT OF RENTS AND PERFORMANCE OF LEASES

5.1 Assignment of Rents and Leases. Trustor hereby irrevocably absolutely and unconditionally assigns and transfers to Beneficiary all of Trustor's right, title and interest in and to the Leases and the Rents; provided, however, that so long as no Event of Default (as defined in Section 7.1 below) has occurred and is continuing, Trustor shall have the right under a license granted hereby to collect and receive all Rents as trustee for the benefit of Beneficiary and to apply the amounts so collected first to the payment of costs and expenses associated with the ownership maintenance, operation and leasing of the Property, including, principal, interest and all other amounts required to be paid under the Debt Instrument, before using or applying such Rents for any other purpose. No Rents or such other income shall be distributed or paid to Trustor, unless such costs and expenses which are then due have been paid in full. Thereafter, so long as no Event of Default has occurred, the balance may be distributed to Trustor. If an Event of Default has occurred and is continuing, Trustor's right to collect and receive the Rents under the license granted hereby shall cease and the license shall be revoked automatically and, pursuant to Section 7.2(a) below, Beneficiary shall have the sole right, with or without taking possession of the Property, to collect all Rents. This is an absolute assignment and not an assignment for security only.

5.2 Negative Covenants Regarding Leases. Trustor shall not, without the prior written consent of Beneficiary, (a) collect any rent from any lessee for a period of more than one month in advance, or (b) execute any further assignment of any of its right, title and interest in the Leases and the Rents.

5.3 Affirmative Covenants Regarding Leases. Trustor shall (a) observe, perform and discharge each and every obligation, term, covenant, condition and agreement of Trustor under the Leases, (b) enforce the performance of each and every obligation, term, covenant, condition and agreement in the Leases to be performed by any lessee or guarantor thereof, (c) keep the Property leased at a good and sufficient rental and on such other terms and conditions as are reasonably acceptable to Beneficiary, (d) execute and deliver to Beneficiary upon demand, at any time and from time to time, any and all assignments and other instruments which Beneficiary may deem advisable to carry out the true purposes and intent of the assignment set forth in Section 5.1 above, and (e) at the request of Beneficiary, cause any or all tenants under a Lease to execute a subordination, nondisturbance and attornment agreement and estoppel certificate in form and substance satisfactory to Beneficiary.

6. SECURITY AGREEMENT. This Deed of Trust shall constitute a security agreement as that term is used in the Uniform Commercial Code as adopted in the state in which the Property is located (the "UCC") and Trustor hereby pledges and grants to Beneficiary, as additional collateral for the Secured Obligations, a security interest in all of the property described in Section 1 above which may be personal property (collectively, the "Personal Property"). Trustor shall procure any documents, including, without limitation, mortgagee or landlord waivers or subordination agreements, in form and substance satisfactory to Beneficiary, with respect to any and all Personal Property (or fixtures which are a part of the Trust Estate), deliver to Beneficiary any instrument, mark any chattel paper, give any notice and take any other actions which are necessary or desirable to perfect or to continue the perfection and priority of the security interest created hereunder, or to protect the Personal Property or fixtures against the

rights, claims or interests of third parties, and to pay all costs incurred in connection therewith. Trustor hereby appoints Beneficiary as Trustor's true attorney-in-fact, coupled with an interest, to perform (but without any obligation to do so) any of the foregoing acts should Trustor fail to do so, irrevocable until such time as the Secured Obligations have been indefeasibly satisfied, to be exercised from time to time and at any time by Beneficiary following an Event of Default hereunder. Notwithstanding anything to the contrary contained in this Deed of Trust, Trustor agrees that Beneficiary is, and shall be deemed to be, the "secured party" as that term is defined in the UCC, and Beneficiary shall have all of the rights and remedies of a secured party under the UCC as well as any and all other rights and remedies available at law or in equity. Trustor, upon demand of Beneficiary, shall assemble the Personal Property and make it available to Beneficiary at the Property or a place which is reasonably convenient to Beneficiary, and Beneficiary's expense in retaking, holding, preparing for sale, selling or the like shall be borne by Trustor, such expenses to include Beneficiary's and Trustee's attorneys' fees incurred in connection therewith. Trustor agrees not to change Trustor's name or state of organization or residence, as the case may be, without Beneficiary's prior written consent.

## 7. EVENTS OF DEFAULT AND REMEDIES

7.1 Events of Default. Any of the following events shall, at Beneficiary's option, constitute an event of default (an "Event of Default") hereunder:

(a) Failure to Pay. The failure of Trustor to pay when due any installment of principal or interest under the Debt Instrument or any other sum as provided in the Debt Instrument or any other instrument or agreement secured hereby, whether at maturity, by acceleration or as part of a prepayment or otherwise;

(b) Failure to Perform. The failure of Trustor to promptly and completely observe or perform any term, condition, covenant, agreement or obligation contained in this Deed of Trust, the Debt Instrument or any other instrument or agreement secured hereby, and the continuation of such failure following the expiration of any applicable notice, cure or grace period, if any, provided for therein or herein;

(c) Failure to Comply. The failure of Trustor to comply with any term, condition, covenant, agreement, law, ordinance or regulation now or hereafter affecting the Trust Estate or any part thereof; or

(d) Other Defaults. The occurrence of any "Event of Default" as defined in the Debt Instrument.

7.2 Remedies. Upon the occurrence of any Event of Default, Beneficiary may, at its option, declare all indebtedness secured hereby, and the same shall thereupon become, immediately due and payable without any presentment, demand, protest or notice of any kind. Thereafter, Beneficiary may, at its option:

(a) Termination of License. Terminate Trustor's right and license to collect the Rents, and either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Trust Estate or any part thereof, in its own name



or in the name of Trustee, and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Trust Estate, or any part thereof or interest therein, make, modify, enforce, cancel or accept the surrender of any Lease, increase the income therefrom or protect the security hereof and, with or without taking possession of the Trust Estate, sue for or otherwise collect the Rents, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including, without limitation, attorneys' fees, upon any indebtedness secured hereby, all in such order as Beneficiary may determine. The entering upon and taking possession of all or any portion of the Trust Estate, the collection of such Rents and the application thereof as aforesaid, or any of such acts, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default and, notwithstanding the continuance in possession of all or any portion of the Trust Estate or the collection, receipt and application of Rents, Trustee or Beneficiary shall be entitled to exercise every right provided for in the Debt Instrument or this Deed of Trust or by law upon occurrence of any Event of Default, including the right to exercise the power of sale. Failure of Beneficiary at any time, or from time to time, to collect the Rents shall not in any manner affect the subsequent enforcement of Beneficiary of the right to collect the same.

(b) Appointment of Receiver. As a matter of right and without notice to Trustor or anyone claiming under Trustor, and without regard to the then value of the Trust Estate or the interest of Trustor therein, to apply to any court having jurisdiction to appoint a receiver or receivers of the Trust Estate, and Trustor hereby irrevocably consents to such appointment and waives notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases and all the powers and duties of Beneficiary in case of entry as provided in this Deed of Trust and shall continue as such and exercise all such powers until the later of (i) the date of confirmation of sale of the Trust Estate, (ii) the disbursement of all proceeds of the Trust Estate collected by such receiver and the payment of all expenses incurred in connection therewith, and (iii) the termination of such receivership with the consent of Beneficiary or pursuant to an order by a court of competent jurisdiction.

(c) UCC Remedies. Exercise any and all remedies available to a secured party under the UCC in such order and in such manner as Beneficiary, in its sole discretion, may determine; provided, however, that the expenses of retaking, holding, preparing for sale or the like, shall include reasonable attorneys' fees and other expenses of Beneficiary and Trustee and be secured by this Deed of Trust.

(d) Judicial Foreclosure of Deed of Trust. Commence an action to foreclose this Deed of Trust as a mortgage, or specifically enforce any of the covenants hereof.

(e) Power of Sale. Deliver to Trustee a written declaration of default and demand for sale, and a written notice of default and election to cause Trustor's interest in the Trust Estate or any portion thereof to be sold, which notice Trustee or Beneficiary shall cause to be transmitted and recorded, if applicable, in accordance with governing law.

(i) Upon receipt of such notice from Beneficiary, Trustee shall cause to be recorded, published and delivered to Trustor such Notice of Default and Election to

Sell as then required by law and by this Deed of Trust. Trustee shall, without demand on Trustor, after lapse of such time as may then be required by law and after recordation of such Notice of Default and after Notice of Sale having been given as required by law, sell the Trust Estate at the time and place of sale fixed by it in said Notice of Sale, either as a whole, or in separate lots or parcels or items as Beneficiary shall deem expedient, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale. Trustor hereby expressly waives any right which it may have to direct the order in which any of the Trust Estate may be sold when it consists of more than one lot or parcel, and such order of sale, whether in a single sale or in multiple sales held on different days or at different times, shall be at the sole discretion of Beneficiary. Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Trustor, Trustee or Beneficiary, may purchase at such sale to the extent permitted by law.

(ii) After deducting all costs, fees and expenses of Trustee and of this Deed of Trust, including costs of evidence of title and attorneys' fees of Trustee and Beneficiary in connection with such sale, and subject to applicable law, Trustee shall apply, in the following priority, the proceeds of sale to payment of: (A) first, all sums expended under the terms hereof, not then repaid, with interest thereon according to the terms of the Debt Instrument, (B) second, all other sums then secured hereby, in such order of priority and in such proportion as Beneficiary in its sole discretion may elect, and (C) the remainder, if any, to the person or persons legally entitled thereto.

(iii) Subject to applicable law, Trustee may postpone the sale of all or any portion of the Trust Estate by public announcement at the time and place of such sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement or subsequently noticed sale, and without further notice make such sale at the time fixed by the last postponement, or may, in its discretion, give a new notice of sale.

(f) Other Remedies. Exercise all other rights and remedies provided herein, in the Debt Instrument or any other document or agreement now or hereafter securing all or any portion of the obligations secured hereby, or provided by law. Upon the occurrence of an Event of Default hereunder, Beneficiary may proceed in any sequence to exercise its rights hereunder with respect to all or any portion of the Trust Estate and all or any portion of the Personal Property, and to exercise its rights under Section 6 above with respect to all or any portion of the Personal Property in accordance with the provisions of the UCC.

7.3 Remedies Not Exclusive; Waiver. No remedy herein conferred upon or reserved to Trustee or Beneficiary is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by the Debt Instrument or this Deed of Trust to Trustee or Beneficiary, or to which either of them may be otherwise entitled, may be exercised concurrently or independently, from time to time and as often as may be deemed expedient by Trustee or

Beneficiary. If there exists additional security for the obligations secured hereby, Beneficiary, at its sole option, and without limiting or affecting any of the rights or remedies hereunder, may exercise any of the rights or remedies to which it may be entitled hereunder either concurrently with whatever rights it may have in connection with such other security or in such order and in such manner as Beneficiary may deem fit without waiving any rights with respect to such other security.

8. SITE VISITS, APPRAISALS, OBSERVATION AND TESTING. Beneficiary, through its agents, representatives or employees, is authorized to enter at any reasonable time upon or any part of the Property for the purpose of performing appraisals, observing the condition thereof, taking and removing soil, groundwater or other material samples, and conducting tests on any part thereof. Trustor agrees to cooperate with Beneficiary and its agents, representatives or employees (and use best efforts to cause the tenants on the Property to cooperate with same) in permitting access to the Property and in obtaining samples, operating and other relevant information for the Property. Beneficiary shall have no obligation or duty to so, however, and no site visit, observation or testing by Beneficiary shall impose any liability on Beneficiary. In no event shall any site visit, observation or testing by Beneficiary be a representation that Hazardous Substances (as defined below) are or are not present in, on or under the Property, or that there has been or shall be compliance with any law, regulation or ordinance pertaining to Hazardous Substances or any other applicable governmental law. Neither Trustor nor any other party is entitled to rely on any site visit, observation or testing by Beneficiary. Beneficiary owes no duty of care to protect Trustor or any other party against, or to inform Trustor or any other party of, any Hazardous Substances or any other adverse condition affecting the Property. Beneficiary shall (a) give Trustor reasonable notice to avoid interfering with Trustor's use of the Property in exercising any rights provided for in this Section 8, and (b) reimburse Trustor for the cost of repair of any physical injury to the Property caused by Beneficiary in exercising such rights. For purposes of this Section 8, "Hazardous Substance" means any substance, material or waste which is or becomes designated, classified or regulated as being "toxic" or "hazardous" or which is or becomes similarly designated, classified or regulated under any federal, state or local law, regulation or ordinance.

9. MISCELLANEOUS

9.1 Governing Law. This Deed of Trust is to be governed and construed in accordance with the laws of the state in which the Property is located and federal law as applicable, except with respect to any portion of the Property located in another state, in which case the laws of the state in which such portion of the Property is located (and federal law as applicable) shall be applicable hereto, but only to the extent required for Trustee or Beneficiary to enforce or realize upon the rights and remedies hereunder with respect thereto.

9.2 Severability. In the event any one or more of the provisions contained in this Deed of Trust or in the Debt Instrument shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provision of this Deed of Trust, but this Deed of Trust shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein.

9.3 Amendment. This Deed of Trust cannot be modified, waived, discharged or terminated orally, but only by a written instrument signed by the party against whom enforcement of the modification, waiver, discharge or termination is asserted.

9.4 Waiver of Remedies. By accepting payment of any amount secured hereby after its due date, or an amount which is less than the amount then due, or the performance of any obligation required hereunder after the date required for such performance, Beneficiary does not waive its rights either to require prompt payment or performance when due of all other amounts or obligations so secured, or to declare a default as herein provided for the failure to so pay or perform.

9.5 No Implied Waiver. No waiver by Beneficiary of any default or breach by Trustor hereunder shall be implied from any omission by Beneficiary to take action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default identified in the waiver and such waiver shall be operative only for the time and to the extent therein stated. Waivers of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The consent or approval by Beneficiary to or of any act by Trustor requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act. No delay or omission of Trustee or Beneficiary in the exercising of any right or remedy available upon an Event of Default shall impair such right or remedy or any other right or remedy nor shall the same be construed to be a waiver of any Event of Default or any acquiescence therein, and no custom or practice which may develop between Trustor and Beneficiary during the term hereof shall be deemed a waiver of or any way affect the right of Beneficiary to insist upon the performance by Trustor of the obligations secured hereby in strict accordance with the terms hereof or of the Debt Instrument.

9.6 Full Reconveyance. Upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust and the Debt Instrument to Trustee for cancellation and retention and upon payment by Trustor of Trustee's fees, Trustee shall reconvey to Trustor, or the person or persons legally entitled thereto, without warranty, any portion of the Trust Estate then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in any reconveyance may be described as "the person or persons legally entitled thereto."

9.7 Notices. Whenever Beneficiary, Trustor or Trustee shall desire to give or serve any notice, demand, request or other communication with respect to this Deed of Trust, each such notice, demand, request or other communication (including communications by telegraph, telex or telecommunication facilities providing facsimile transmission) shall be in writing and shall be effective only if the same is delivered by personal service, mailed (postage prepaid, return receipt requested), or telegraphed, telexed or transmitted addressed to the address set forth herein. Any such notice if so mailed shall be deemed to have been received by the addressee on the third day following the date of such mailing. Any party may at any time change its address for such notices by delivering or mailing to the other parties hereto, as aforesaid, a notice of such change.

9.8 Acceptance by Trustee. Trustee accepts this trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.

9.9 Certain Actions of Trustee. At any time or from time to time without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and the Debt Instrument for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby or the effect of this Deed of Trust upon the remainder of the Trust Estate, Trustee may (a) reconvey any part of the Trust Estate, (b) consent in writing to the making of any map or plat thereof, (c) join in granting any easement thereon, or (d) join in any extension agreement or any agreement subordinating the lien or charge hereof.

9.10 Successor Trustee. Beneficiary acting alone may, from time to time, by written instrument executed and acknowledged by Beneficiary, mailed to Trustor and recorded in the County in which the Property is located, substitute a successor or successors to the Trustee named herein or acting hereunder.

9.11 Successors and Assigns. This Deed of Trust applies to and shall be binding on and inure to the benefit of all parties to this Deed of Trust and their respective successors and assigns.

9.12 Interpretation. In this Deed of Trust, whenever the context so requires, the masculine gender shall include the feminine and/or neuter and the singular number shall include the plural and conversely in each case. The word “include(s)” means “include(s) without limitation,” and the word “including” means “including, but not limited to.” No listing of specific instances, items or matters shall in any way limit the scope or generality of any language in this Deed of Trust.

9.13 Joint and Several Liability. All obligations of each Trustor hereunder shall be joint and several.

9.14 Headings. Headings are for convenience only and are not intended as a limitation on the content of the paragraph following or as an aid to the construction thereof.

9.15 Waiver. To the fullest extent permitted by law, Trustor waives the pleading of any statute of limitations as a defense to any and all obligations secured by this Deed of Trust.

9.16 Merger. No merger shall occur as a result of Beneficiary’s acquiring any other estate in or any other lien on the Trust Estate unless Beneficiary consents to such merger in writing.

9.17 Request for Notice. Trustor hereby requests that a copy of any notice of default and any notice of sale hereunder be mailed to it at the address set forth herein or at such other address as Trustor may designate pursuant to this Section 9.17. That address is also the mailing address of Trustor as debtor under the UCC. Beneficiary’s address given herein is the address for Beneficiary as secured party under the UCC.

9.18 Fixture Filing. This Deed of Trust constitutes a financing statement filed as a fixture filing pursuant to the UCC, as amended or recodified from time to time, covering any portion of the Trust Estate which now is or later may become a fixture attached to the Property.

[SIGNATURE PAGE FOLLOWS]



IN WITNESS WHEREOF, Trustor has caused this Deed of Trust to be executed as of the day and year first above written.

TRUSTOR:



\_\_\_\_\_  
HERBERT NICHOLS III, a married man, as his  
sole and separate property

NOTARY ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of San Diego )

On Oct 11, 2019 before me, Jeff B Langford Notary Public  
(insert name and title of the officer)

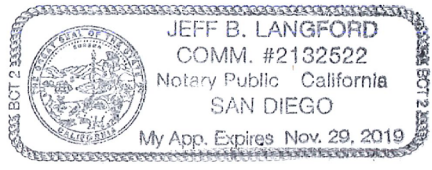
personally appeared Herbert Nichols III, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Handwritten Signature]

(Seal)



**EXHIBIT A**

**DESCRIPTION OF REAL PROPERTY**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED CHATSWORTH IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

That portion of Section 23, Township 2 North, Range 17 West, San Bernardino Base and Meridian, in the County of Los Angeles, State of California, according to the Official Plat of the survey of said land in the Bureau of Land Management, described as follows:

Beginning at the Northwest corner of Lot 1 of Section 22, Township 2 North, Range 17 West, San Bernardino Base and Meridian; thence East 2029.58 feet; thence South 150.00 feet to the true point of beginning; thence East 125.00 feet; thence South 80.00 feet; thence West 125.00 feet; thence North 80.00 feet to the true point of beginning.

For identification purposes only designated as Parcels 10, 11, 12, 13 and 14 in Block 11, as shown on map of Chatsworth Lake Manor Annex, filed in Book 25, Page 28 of Record of Surveys, in the Office of the County Recorder.

APN: 2006-009-036, 037, 038, 039



PROCOPIO  
525 B Street  
Suite 2200  
San Diego, CA 92101  
T. 619.238.1900  
F. 619.235.0398

GREGORY V. MOSER  
P. 619.515.3208  
greg.moser@procopio.com

DEL MAR HEIGHTS  
LAS VEGAS  
PHOENIX  
SAN DIEGO  
SILICON VALLEY

February 11, 2020

**VIA U.S. MAIL AND E-MAIL [laura@duggan-law.com]**

Laura C. McHugh  
DUGGAN LAW CORPORATION  
641 Fulton Avenue, Suite 100  
Sacramento, CA 92525

**Re: Herbert Nichols III; Separation and Release Agreement; Amount Currently Due and Owing**

Dear Laura:

We are in receipt of Herbert Nichols III's ("Mr. Nichols") payment of \$50,000.00 on January 17, 2020, and have applied it to outstanding principal and interest as discussed below. Based on our expert CPA's calculations, the principal balance due and owing by Mr. Nichols to Provenance and certain Inspire Charter Schools (together, the "Employer") related to certain alleged payroll advances made to him over an approximate 2-year period is \$840,032.15 as of January 17, 2020. Such balance of \$840,032.15 has not yet been reduced by any portion of the \$44,923.11 offset. The following also reflects the amount of the excess benefit which will be treated as additional wage income in 2017 and 2018.

The following provides the background regarding this matter, the repayment methodology in regards to the application of repayments, and the deemed excess benefit transaction amounts. We have also included at the beginning of this letter a short Summary of our conclusions.

### **I.** **Summary**

In summary, and as discussed below in more detail:

1. Mr. Nichols owed interest to the Employer in the amount of \$26,047.69 as of the date of the Promissory Note. This amount was not included in the Promissory Note amount of \$859,923.11 as we had to engage the services of a CPA to calculate this amount.

**procopio.com**

DOCS 3939587.1



2. Mr. Nichols owed additional interest (at the AFR rate of 1.69%) from the date of the Promissory Note, October 11, 2019, through the date of Mr. Nichols' payment of \$50,000 on January 17, 2020. Interest continues to accrue on the outstanding balance of the Promissory Note.

3. The excess benefit transaction amount (pursuant to IRC Section 4958), after using the Repayment Methodology described below, is a total of \$5,561.07, including \$105.09 at the end of the tax year 2017 and an additional \$5,455.98 at the end of the tax year 2018. As discussed below, repayments were first applied to outstanding interest at the time of payment, which may have the effect of reducing the amount of any possible deemed excess benefit. At the end of the tax years 2017 and 2018, there was still interest due and owing after the application of repayments, in the amounts of \$105.09 and \$5,455.98, respectively.

4. The Employer (or applicable school) will issue Mr. Nichols Forms W-2C (corrected Wage and Tax Statement) in the amounts of the excess benefit transaction amounts reflected above in #3 of this Summary, \$105.09 (2017) and \$5,455.98 (2018). Mr. Nichols will be expected to pay the Employer (or applicable school), when requested, Mr. Nichols' employee share of payroll taxes for such periods (e.g., employee share of FICA). We assume, but do not guarantee, that such total payroll tax amount will be approximately \$500.00 in total (7.65% employee's share of FICA x \$5,561.07). If such employee's share of payroll tax is not paid immediately upon request by the Employer, there is the potential that it could result in another possible excess benefit transaction to Mr. Nichols pursuant to IRC Section 4958.

## **II.** **Background**

As you know, the Parties, Herbert Nichols III and Provenance (Employer) entered into a Separation and Release Agreement, dated on or about October 11, 2019 (the "**Agreement**").

As noted in Section 2 of the Agreement, over an approximate 2-year period, Mr. Nichols caused certain funds (characterized as payroll advances) to be paid from certain Inspire Charter Schools (hereinafter Employer), totaling \$1,055,834.00 (the "**Advances/Loans**"). As of approximately October 11, 2019, Mr. Nichols paid Employer back a total of \$195,910.89, leaving a balance due, not including interest, of \$859,923.11. The Agreement included as part of its terms that Mr. Nichols enter into a Secured Promissory Note, dated October 11, 2019, reflecting that Mr. Nichols owed the Employer a principal balance of **\$859,923.11**, plus interest (the "**Promissory Note**").

Because no interest was previously charged on the Advances/Loans, the parties agreed at Section 3 of the Agreement that the Employer would determine the outstanding interest on the Advances/Loans and that Mr. Nichols would pay such amount to the Employer within 20 days ("**Outstanding Interest Amount**"). The Parties also agreed pursuant to Section 3 of the Agreement that such Outstanding Interest Amount would be treated as an excess benefit transaction thereby resulting in: (i) deemed additional wage income (W-2) earned by Mr. Nichols (the Outstanding Interest Amount); and (ii) the obligation of Mr. Nichols to pay such Outstanding Interest Amount to the Employer.



### III. Calculations – Repayment Methodology

The Outstanding Interest Amount (and possible excess benefit transaction amount (W-2 amount and amount that must be repaid by Mr. Nichols to the Employer)) as of the date of the Promissory Note was approximately \$26,047.70. Our accountants at Moss Adams, however, determined the outstanding principal and interest by allocating all repayments made by Mr. Nichols to Employer (over the 2-year term) first to outstanding interest (based on an AFR rate allowable for below market interest rate loans – IRC Section 7872), and then second to principal (the “**Repayment Methodology**”).

(Note: Using this Repayment Methodology does not guarantee the IRS will not determine a different methodology is more appropriate. With that said, the amount of deemed interest owed by Mr. Nichols at the end of 2017 and 2018 (after the application of repayments by Mr. Nichols as of such year-end), respectively, was \$105.09 to **South** (2017) and \$5,455.98 to **Provenance** (2018)). These amounts are deemed “excess benefit transaction” amounts and will be reported as additional W-2 income to Mr. Nichols for each of the tax years 2017 and 2018, and subject to applicable payroll taxes. The Employer will determine Mr. Nichols’ employee share of the payroll taxes, which we assume will not be substantial (*i.e.*, approximately \$500), and will ask that such amount be paid by Mr. Nichols immediately to the Employer (or specific party handling the payroll taxes). Otherwise, as noted above, there is a potential that the nonpayment of such payroll taxes by Mr. Nichols could result in a further deemed excess benefit transaction to Mr. Nichols. As for the \$105.09 and \$5,455.98, even though such amounts are excess benefit transaction amounts, we understand that they do not need to be repaid to the Employer as subsequent repayments made by Mr. Nichols were, pursuant the Repayment Methodology, allocated to such outstanding interest (and, therefore, treated as paid in full as of this time).

### IV. Calculation of \$840,032.15 Principal Owed As of January 17, 2020

Description	Amount
1. Promissory Note – 10/11/19	\$859,923
2. Interest Owed as of Promissory Note Date 10/11/19 (and not included in Promissory Note)	\$26,048
3. Interest Owed on \$26,048 from 10/11/19 – 12/31/19 (\$140) and 12/31/19 – 1/17/20 (\$19)	\$159
4. Interest Owed on \$859,923 Promissory Note from 10/11/19-12/31/19	\$3,902
5. Payment of \$50,000 on 1/17/20	<\$50,000>
6. Principal Balance as of 1/17/20	<u>\$840,032</u>





Again, we will let you know when the employee's share of payroll taxes is computed based on the deemed excess benefit amount of \$5,561.07. If you have any questions, please do not hesitate to call me at (619) 515-3208.

Sincerely,

A handwritten signature in blue ink that reads "Greg V. Moser".

Gregory V. Moser, of  
Procopio, Cory, Hargreaves & Savitch LLP

GVM:lcb

cc: Steven Lawrence (via e-mail only)

Provenance Excess Benefit Summary  
 Analysis RECAP for Procopio, Cory, Hargreaves Savitch LLP  
 01/27/20

1. Charter Schools advances were revised based on the advance schedule provided 12/26/19. Recalculations were done for application of repayments to interest and principal. Amounts applied to interest per each Charter School is listed below. This application causes an increase in principal effective 7/1/18:

a. South (CP)	\$1,351.54
b. North (FR)	\$ 386.73
c. Kern (BR)	\$ 483.42
d. LA	\$ 580.10
e. Clarksville	\$ 290.05
Total	\$3,091.84

Accrued unpaid interest through 7/1/18 was \$20.84 in the aggregate. The accrued unpaid interest was added to principal transferred to Provenance DO 7/1/18 (see recap summary). **Total due to Charter Schools \$3,112.68 which includes accrued interest to 7/1/18 as follows:**

f. South (CP)	\$1,362.21
g. North (FR)	\$ 388.99
h. Kern (BR)	\$ 486.24
i. LA	\$ 583.49
j. Clarksville	\$ 291.75
Total	\$3,112.68

For 2017, there was accrued unpaid interest in the amount of \$105.09 for South (CP). The 2017 unpaid interest was applied as paid in 2018 based on repayments made to South (CP).

2. Provenance DO – restated principal balances and accrued unpaid interest transferred from the Charter Schools effective 7/1/18 in the amount of \$374,625.38 (See recap summary). Application of associated interest charges for 2018 have been calculated from 7/1/18-10/11/19 (the promissory note date). Advances made from DO and repayments made to DO have associated interest charges, repayments applied to interest and principal.

There was accrued unpaid interest as of 12/31/18 in the amount of \$5,455.98. The 2018 unpaid interest was applied as paid in 2019 based on repayments made to DO. (See DO summary tab and calculations). There was no unpaid interest or accrued interest due to DO as of 10/11/19.

- a. Repayment allocated to interest and applied to additional principal owed to DO **\$22,935.02 interest accrued from 10/11/19-01/17/20 \$23,094.43.**

- b. Repayment allocated to interest, accrued unpaid interest and amounts applied to additional principal owed to Charter Schools as of 7/1/18 **\$3,112.68** (See number 1 above and recap summary).
  - c. Total Cash payments due to DO and Charter Schools as of 1/17/20 is **\$26,207.11**.
  - d. Herbert Nichols III made a \$50,000 payment on 1/17/20 which first reduced the total Cash payments due to DO and Charter Schools as of 1/17/20 in the amount of \$26,207.11 to \$0.
  - e. Second, of the remaining \$23,792.89 of the Nichols payment (\$50,000-\$26,207.11), the amount was applied to the Promissory Note as of 10/11/19 in the amount of \$859,923.11, first to the interest accrued from 10/11/19 to 1/17/20 using the interest rate according Paragraph 1(b) of the Promissory Note dated 10/11/19 of 1.69%, and second to the principal balance of the Promissory Note outstanding as of 10/11/19. Amount applied to interest \$3,901.93 and amount applied to principal \$19,890.96 (total applied \$23,792.89). Remaining principal balance on note as of 1/17/20 \$840,032.15.
3. **Amended W-2s, Payroll reports & 1040/540** - Amended W-2s are required representing accrued unpaid as of 12/31/18 (DO) and 12/31/17 (South) for below market loans under Internal Revenue Code Section 7872.
- a. Provenance DO **2018 W-2 Amendment filing Forms W-3c and W-2c** for below market interest loan through 12/31/18 as additional compensation (this includes principal transferred from Charter Schools accrued from 7/1/18 to 12/31/18) **\$5,455.98**  
**File Form 941-X for fourth quarter 2018 reporting additional wages of \$5,455.98, and pay associated payroll taxes.**  
**File CA EDD Form DE 9ADJ – Quarterly contribution and wage adjustment form for the fourth quarter 2018 reporting additional wages of \$5,455.98 and pay associated payroll taxes, if any.**
  - b. South (CP) **2017 W-2 Amendment filing Forms W-3c and W-2c** for below market interest on loan through 12/31/17 for **\$105.09** of additional taxable wages.  
**File Form 941-X for fourth quarter 2017 reporting additional wages of \$105.09, and pay associated payroll taxes.**  
**File CA EDD Form DE 9ADJ – Quarterly contribution and wage adjustment form for the fourth quarter 2017 reporting additional \$105.09 and pay associated payroll taxes, if any.**
  - c. Herbert Nichols III amends 2017 and 2018 Forms 1040 and 541 personal income tax returns reporting additional wages for each year.

# Appendix G: Inspire Sample Student Confirmation

## STUDENT ATTENDANCE INFORMATION REQUEST

Date

Parent/Guardian Name(s)

Street Address

City, CA Zip

SUBJECT: Your Help Needed to Verify Your Student's Attendance and Funding Information for Audit of Inspire Charter School/[Blue Ridge Academy Charter School](#)

Student: [student name]

Dear [parent or guardian name],

As part of a state compliance review, the Fiscal Crisis and Management Assistance Team (FCMAT) is auditing the attendance records and student funding of the former Inspire Charter School and the newly reorganized [Blue Ridge Academy Charter School \(Blue Ridge\)](#) for school years 2017-18, 2018-19 and 2019-20.

As part of the audit, FCMAT needs to confirm whether and when your student attended the charter school.

Any information you can provide will help with our audit and will be kept in the strictest confidence.

Please answer to the best of your ability the following questions about your student's enrollment and education funds:

1. Are you the parent and/or guardian? [*Please Circle ---- **Yes** or **No** ]*
2. What years was your student enrolled in Inspire or [Blue Ridge Academy Charter School](#)?

*Please Circle Years Enrolled:*

**2017-18**

**2018-19**

**2019-20**

3. What program was your student participating in?

- a. 2017-18: *Please Circle:*

**Non-Classroom-based Online Independent Study, or**

**Classroom Based, or**

**Both**

b. 2018-19: *Please Circle:*

**Non-Classroom-based Online Independent Study**, or

**Classroom Based**, or

**Both**

c. 2019-20: *Please Circle:*

**Non-Classroom-based Online Independent Study**, or

**Classroom Based**, or

**Both**

4. Was your student enrolled in another school, such as another public or private school, at the same time they attended Inspire or **Blue Ridge**?

*Please Circle ---- **Yes** or **No***

a. If you Circled **Yes**, which years and at what other school were they enrolled *Please Circle the Year and write in which school:*

i. 2017-18 – School Name \_\_\_\_\_

ii. 2018-19 – School Name \_\_\_\_\_

iii. 2019-20 – School Name \_\_\_\_\_

5. Did your student receive Education Funds of **\$2,600 (K-8)**, **\$2,800 (9-12)** or other amount \$ \_\_\_\_\_ in 2017-18, 2018-19 or 2019-20?

*Please Circle ---- **Yes** or **No***

a. If you Circled **Yes**, in which years were education funds received.

*Please Circle the year(s) education funds were received*

**2017-18**

**2018-19**

**2019-20**

b. If you Circled **No**, Please Circle the reason education funds were not received.

i. Funds were frozen

ii. Charter had no money

iv. Enrolled midyear

v. Other:

*Please Explain* \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Please sign and date in the space provided at the end of this letter.

Your timely response is appreciated. You can send us your responses either by mailing this form to FCMAT in the enclosed addressed postage-paid envelope to:

Kern County Superintendent of Schools  
Attn: FCMAT, [Jeff Potter](#)  
Fiscal Intervention Specialist  
1300 17<sup>th</sup> Street  
Bakersfield, CA 93301-4533

Or

Scan and email your response to [Jeff Potter at jpotter@fcmat.org](mailto:jpotter@fcmat.org).

If you have any questions, please feel free to call me. We would appreciate your response within two weeks of the date of receipt of this letter.

Sincerely,

[Samantha Haynes](#)  
Executive Director/Principal

**Parent/Guardian Signature,**

**Sign Here** 

\_\_\_\_\_

**Date:** \_\_\_\_\_

**Print Name:**

\_\_\_\_\_



## Appendix H: Letter to Inspire Charter Schools



**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

San Francisco Regional Office  
44 Montgomery Street, Suite 2800  
San Francisco, CA 94104

**DIVISION OF ENFORCEMENT**

January 7, 2021

**VIA EMAIL (preynolds@shufirm.com)**

Inspire Charter Schools  
c/o Paul A. Reynolds, Esq.  
401 West A Street, Suite 2200  
San Diego, CA 92101

Re: In the Matter of Inspire Charter Schools (SF-4333)

Dear Mr. Reynolds:

We have concluded the investigation as to Inspire Charter Schools. Based on the information we have as of this date, we do not intend to recommend an enforcement action by the Commission against Inspire Charter Schools. We are providing this notice under the guidelines set out in the final paragraph of Securities Act Release No. 5310, which states in part that the notice “must in no way be construed as indicating that the party has been exonerated or that no action may ultimately result from the staff’s investigation.” (The full text of Release No. 5310 can be found at: <http://www.sec.gov/divisions/enforce/wells-release.pdf>.)

Sincerely,

A handwritten signature in blue ink that reads "Jason H. Lee".

Jason H. Lee  
Assistant Regional Director