

AGREEMENT BETWEEN MIDLAND ISD AND MIDLAND COMMUNITY COLLEGE DISTRICT

This Agreement (the “Agreement”) is made and entered into as of _____ (“Commencement Date”) by and between MIDLAND INDEPENDENT SCHOOL DISTRICT, a public independent school district and political subdivision of the State of Texas, (“District”) and MIDLAND COMMUNITY COLLEGE DISTRICT (“Operating Partner” or “OP”) (together, the “Parties”) to operate Pre-K Academy at Midland College (the “School”). The purpose of this Agreement is to set forth the objectives, understandings, and agreements of the Parties in connection with the establishment and operation of Senate Bill No. 1882, adopted by the 85th Texas Legislature in 2017, codified as Texas Education Code §§ 11.174 and 42.2511 (“SB 1882”), which allows this cooperative partnership between a public education institution and an in-district charter.

ARTICLE I. RECITALS

- 1.01 Independent School District. The District is an independent school district created in accordance with the laws of Texas.
- 1.02 Authority to Contract. The Board of Trustees of the District is empowered by Texas Education Code (“TEC”), §§ 11.157 and 11.174, to contract with a public or private entity for that entity to provide educational services for the District.
- 1.03 Statutory Authorization. This Agreement is made pursuant to and in accordance with SB 1882, which allows school districts to partner with either an open-enrollment charter school or other eligible entity to operate a district campus, including an in-district charter as in this Agreement.
- 1.04 Institution of Higher Education. Midland Community College District is a Texas public junior college and is an organization that is exempt or has applied for exemption from taxation under Section 501(c)(3), Internal Revenue Code of 1986 (26 U.S.C. § 501(c)(3)), and is hereby contracted to operate a charter granted to the School under TEC Subchapter C, Chapter 12 and is eligible under TEC §§ 11.174 and 12.101(a) to operate the School.
- 1.05 Charter Granted & Term of Charter. On this Commencement Date, the District hereby grants the School a charter in accordance with and under TEC Chapter 12, Subchapter C, specifically §§ 12.052, 12.0521, or 12.0522. This is not an in-district charter with the lowest performance rating in accordance with TEC § 12.0522(c), such that this Agreement is subject to the 15% limit in TEC § 12.0522(c). The District shall ensure that the charter is properly authorized under TEC Chapter 12, Subchapter C. A charter granted under TEC Chapter 12, Subchapter C begins on August 1, 2019 and expires on July 31, 2029 unless the specified performance goals set forth in **Addendum A-3** are substantially met, as determined by the Board of Trustees of the District in accordance with TEC § 12.0531. Failure of the Texas Commissioner of Education to approve the Parties’ relationship as an eligible partnership under TEC 11.174 shall render this Agreement null and void.
- 1.06 Consideration. In consideration of the mutual agreements set forth in this Agreement, and for other good and valuable consideration, the Parties agree as follows:

ARTICLE II. PURPOSE OF AGREEMENT

- 2.01 Contract for Services. This Agreement constitutes a contract for services.

- 2.02 Premise of Agreement. This Agreement is predicated on an understanding that students benefit when decisions regarding educational programs, operations, and student services are made at the school level and that autonomy and accountability are mutually reinforcing principles.
- 2.03 Student Achievement. The primary purpose of this Agreement is to improve student outcomes by allowing the District to partner with OP to operate the School as an independent campus subject to transparent accountability requirements, which are set by TEC Chapters 39 and 39A. The provisions of this Agreement shall be construed and applied to achieve this purpose.
- 2.04 Continuation of Agreement for the Benefit of Students. The Parties intend that this Agreement shall continue in effect and may be renewed for successive five (5) year terms in accordance with the provisions of Article IV.

ARTICLE III. DEFINED TERMS

- 3.01 School Campus. “School Campus” has the meaning assigned in the Texas Administrative Code Title 19, § 97.1051(3) and includes all components of the operation of the campus, including, without limitation, the grade levels served, the courses taught, the instructional materials, staffing, budgetary allocations, scheduling, transportation, and other services and responsibilities associated with school operation.
- 3.02 Facilities. “Facilities” are defined as the building(s) located on the School Campus and related equipment, furnishings, and property improvements, including any athletic fields and related improvements, and the land on which the building(s) and related improvements are located as more fully defined in Article XIII.
- 3.03 Material Breach. A “Material Breach” of this Agreement shall include the failure of a Party to comply with or fulfill any material obligation, condition, term, representation, warranty, provision, or covenant contained in this Agreement, including without limitation any failure by either Party to meet generally accepted fiscal management and government accounting principles, or comply with all Applicable Law under Paragraph 3.04.
- 3.04 Applicable Law. “Applicable Law” means all state and federal laws, rules, regulations, and administrative and judicial determinations and decisions that govern the performance of this Agreement, as they currently exist or as they may be adopted, amended, or issued during the Term of this Agreement under Paragraph 4.01.

ARTICLE IV. TERM AND TERMINATION

- 4.01 Term. The term of this Agreement shall begin on the Commencement Date and end on June 30, 2029 (“Term”). At the end of the Term, and if the Agreement has not been terminated, then the Parties may elect to renew this Agreement for another five (5) years. This Agreement is subject to the termination provisions detailed in this Agreement.
- 4.02 Notice of Non-Renewal. If this Agreement has not been terminated *and* the District anticipates opting to not-renew the Term of this Agreement, then no later than June 30, 2028, the District shall notify the OP in writing of its intent to not-renew this Agreement.
- 4.03 Termination Right to a Public Hearing. If the School successfully achieves the student outcome goals specified in **Addendum A-3**, attached, the District must hold a public hearing at least sixty (60) days prior to any District action to terminate the Agreement. If the School fails to achieve

the student outcome goals specified in **Addendum A-3**, the District shall not extend this Agreement without a public hearing at least sixty (60) days prior to any District action to extend or renew this Agreement.

- 4.04 Termination by Mutual Consent. This Agreement may be terminated at any time by mutual written agreement of OP and the District if termination is effective no sooner than the end of the then current school year.
- 4.05 Termination for Cause. Either Party may terminate this Agreement if the other Party fails to remedy a Material Breach of this Agreement within sixty (60) days after written notice by the non-breaching Party of such Material Breach; provided, however, that if the breach would affect the safety or well-being of a student or is not reasonably capable of being cured, then no such notice and opportunity to cure shall be required.
- 4.06 Termination Related to Program Performance. The District may terminate this Agreement if the School does not comply with the program requirements of TEC §§ 29.1532, 29.154 and the student outcome goals specified in **Addendum A-3**, attached, after the second year of School operation under this Agreement. Termination under this paragraph shall be effective at the end of the then current school year so long as written notice of such termination is provided no later than thirty (30) days after receipt of the Commissioner of Education’s evaluation or the determination of student outcome goals.
- 4.07 Material Reduction in Students. The District may terminate this Agreement if there is a material reduction in per-student funding available from the State of Texas below the amount for the prior fiscal year. “Material reduction” means a reduction of students by more than five percent (5%) of current funding per student per half day.

ARTICLE V. RELATIONSHIP OF THE PARTIES

- 5.01 Nature of Relationship. The relationship between the Parties hereto shall be that of contracting parties. OP shall operate as an independent contractor to the District and shall be responsible for delivering the services required by this Agreement. The relationship between and among the Parties was developed and entered into through arms-length negotiations and is based solely on the terms of this Agreement and such contracts and agreements as may be created in the future from time to time between the Parties and reduced to writing.
- 5.02 No Agency. Neither Party will be the agent of the other Party except to the extent otherwise specifically provided by this Agreement. Neither Party has the express nor implied authority to bind the other Party to any contractual duty other than what is specifically stated in this Agreement. Furthermore, both Parties shall represent to third parties and shall disclaim to such third parties, the extent of that Party’s binding authority, which must be approved by the Parties’ respective governing boards held in accordance with the Texas Open Meetings Act (appearing in minutes of such meeting) and as agreed to in writing by the Parties.
- 5.03 No Common Control. Neither Party is a division, subsidiary, affiliate, or any part of the other Party, nor has the right or authority to exercise any common control of any other Party. Nothing herein shall be construed to create a partnership or joint venture by or between the District and the OP.

- 5.04 Assurance of Independence. The OP and/or the School's governing body shall remain independent of the District. Both OP's and the School's governing bodies are not and shall not be comprised of any members of the District's Board of Trustees, the District's Superintendent, or any staff member responsible for granting this Agreement.

ARTICLE VI. APPLICABLE LAWS

- 6.01 Compliance with Applicable Law. The Parties shall perform their respective obligations under this Agreement in compliance with Applicable Law. The Parties stipulate that Applicable Law includes, but is not limited to, Title VI of the Civil Rights Act of 1964, as amended; Title VII of the Civil Rights Act; Title IX of the Education Amendments of 1974; Section 504 of the Rehabilitation Act of 1973 ("Section 504"); the Age Discrimination Act of 1975; the Americans with Disabilities Act; the Individuals with Disabilities in Education Act ("IDEA"); the Family Educational Rights and Privacy Act of 1974 ("FERPA"); the Every Student Succeeds Act to the extent specified in the Act; the Texas Education Code to the extent the School is not exempt; record retention laws and conflicts of interest laws under the Texas Local Government Code; the Texas Local Government Code, to the extent it applies to school districts; and any amendments, interpretations, and reauthorizations of the foregoing.
- 6.02 Scope of Applicable Law. The Parties agree that certain laws and regulations that apply to other schools within the District may not apply to the School or its operation as a consequence of the grant of a campus charter under Texas Education Code, Chapter 12. The Parties further agree that, except as provided in this Agreement, as identified in **Addendum A-2**, or required by Applicable Law, no provision, rule, or guideline of Texas law otherwise applicable to a governing body or school shall apply to the School or its operation.
- 6.03 Immunity. Nothing contained in this Agreement shall be read to waive the immunity granted by TEC, Chapter 22, Subchapter B, and TEC, Chapter 12, Subchapter C.

ARTICLE VII. GOVERNING POLICIES

- 7.01 Limitation on Authority. An educational or administrative service necessary for operation of the School, but not specifically reserved for the District to provide under this Agreement, shall be provided and solely managed by OP insofar as such delegation is permitted by state and federal law. A service is provided by OP if OP performs the service, contracts for its performance, or otherwise ensures and oversees provision of the service. Neither this paragraph nor this Agreement prohibits the District from contracting with another entity for the provision of services for the campus. Any and all services contracted for or performed for the School must be made in accordance with the responsibilities detailed in this Agreement.
- 7.02 Policy Election. OP shall operate in accordance with the District's Charter Policy specified in **Addendum A-1** and other policies specified in **Addendum A-2**, as they currently exist or as they may be amended, so long as any such amendment does not constitute a Material Breach of this Agreement. If both Parties agree that an amendment amounts to a Material Breach, then the Parties may agree to operate under a prior (non-amended) policy so long as the prior policy is in compliance with the then-current Applicable Laws.
- 7.03 Adoption and Publication of School Policies. The Advisory Board of the School (further described in Article X) shall recommend policies addressing matters not specified in **Addendum A-2**, attached to this Agreement, at a meeting open to the public. OP shall have the final

decision in adopting policies applicable to the School, other than the policies specified in **Addendum A-2**. All policies adopted by OP shall comply with Applicable Law. OP shall also provide drafts of proposed policies or proposed amendments to policies currently in effect to the District for review and comment no later than 30 days prior to the meeting at which the policies are to be considered for adoption or amendment. OP will publish adopted policies and District Board Policies applicable by law or by election under this Agreement on the School's website.

- 7.04 Future Waivers and Exemptions. Pursuant to 19 TAC § 97.1075(d)(6), the School is exempt from laws and rules to the fullest extent allowed by TEC, Chapter 12, Subchapter C, and is exempt from all District policies except for laws, rules, and policies that are specifically identified as applicable to the School in this Agreement and/or incorporated by reference herein. The Parties will collaborate in applying for waivers from any restrictions imposed by Applicable Law when it is jointly determined that such waiver would expand opportunities for students enrolled in the School. If the District is relieved from compliance from certain state or federal law or regulation through a waiver, adoption, or amendment of a local innovation plan under Chapter 12A, Texas Education Code, the School is automatically relieved from compliance regardless of whether such relief is addressed in this Agreement. Further, if a waiver from a local policy, procedure, protocol, or other requirement is granted to another school in the District that serves students at the same grade levels offered at the School, and the policy is not waived by this Agreement, the waiver applies to the School unless the District notifies the School otherwise in writing within 60 days of the waiver's application to the other school(s).

ARTICLE VIII. PERFORMANCE REQUIREMENTS

- 8.01 Student Outcome Goals. The primary responsibility of OP under this Agreement is to ensure that the annual student outcome goals specified in **Addendum A-3**, or as amended, are achieved. Prekindergarten performance objectives may be based on TEC § 29.154, (which includes, but is not be limited to, diagnostic reading and the number of kindergarten students who were enrolled in the School's prekindergarten program in the previous school year), and/or 19 TAC §102.1003(c), (d) (which lists the Texas Prekindergarten Guidelines). Student outcome goals shall be evaluated as to their developmental appropriateness. Additional objectives as well as a timeline may be developed for charters established at campuses that do not meet state accountability standards.
- 8.02 Performance Measurement, Methods, and Timeline. The Parties agree that achievement of annual student academic and financial performance targets agreed upon by the Parties and specified in **Addendum A-3** will be determined using the methods, indicators, and timelines specified in that Addendum.
- 8.03 Performance Consequences. The Parties agree to specific consequences in the event that the OP does or does not meet the annual academic or financial performance expectations and goals described in **Addendums A-4** and **A-5**.
- 8.04 Responsibilities of OP Governing Board. The governing board of OP agrees that it is responsible for ensuring that OP achieves performance goals specified in **Addendum A-3** and is obligated to oversee management of the School and intervene as required to ensure that performance goals are achieved.

- 8.05 Monitoring Performance. The District shall retain the right to monitor the performance of the School and OP under **Addendum A-3**.

ARTICLE IX. RESPONSIBILITIES

- 9.01 OP Responsibilities: The OP shall have the sole authority over matters involving academic curriculum and the instructional program (except for Special Education as detailed in Paragraph 9.02.1 below). In accordance with Paragraph 11.01, OP shall have sole authority to select, reassign at the School, or request removal by the District of District employees. OP shall have sole authority to hire or terminate OP's employees. OP must employ at least one employee at the School.

9.01.1 *Administration.* OP shall select and manage the School's Campus Chief Operating Officer, Principal, Assistant Principal, and any other role designated as an administrator, who will be employed by the OP.

9.01.2 *Teaching Staff.* OP shall select and manage the School's teachers, teaching assistants, para-professionals, curriculum specialists, program coordinators, and any other academic instructional role, who will be employed by the OP.

9.01.3 *Miscellaneous Staff.* OP shall also select and manage the School's guidance counselors, librarians, extracurricular activity instructors, physical education instructors, and any other role directly involved in overseeing/creating academic curriculum, who will be employed by the OP..

9.01.3 *Maintenance:* OP shall maintain the School Campus and Facilities by overseeing and contracting for the maintenance of the campus via janitorial staff, grounds keeping, and necessary repair work. OP shall provide the utilities for operating the School.

- 9.02 District Responsibilities: The District shall maintain control of and shall be responsible for all non-academic and non-curriculum staff and personnel, which includes but is not limited to the below. The amount the District retains for these services may not exceed the District average cost per student for similar services rendered.

9.02.1 *Special Education:* The District shall have authority to operate, maintain, oversee, and intervene in the School's Special Education program, which OP shall comply with in accordance with State and Federal laws, including but not limited to the IDEA and Section 504. The District shall retain final say in Special Education matters.

9.02.2 *Record Keeping:* The District shall appoint the personnel responsible for maintaining necessary records, which shall include, but not be limited to, federal funds. The OP is responsible for all record keeping, save for federal funds, including but not limited to determining the eligibility requirements for the students and entering students into the District student information system.

ARTICLE X. SCHOOL OPERATIONS

- 10.01 OP's Governing Board. OP represents that a true and accurate list of its current directors ("Directors") is attached to this Agreement as **Addendum A-9**. If there is any change to the Directors during the Term of this Agreement, OP shall provide written notice to the District of

the change within 30 days. No District Board of Trustees member, Superintendent, or any staff member responsible for granting this Agreement shall be appointed to OP's Governing Board. District staff may not comprise a majority of OP's Governing Board.

10.02 Budgetary Authority of OP. OP has sole authority to approve or amend the budget for the School.

10.03 Campus Chief Operating Officer ("COO"): The Chief Administrator of the School shall be the COO, who shall be appointed by the OP. The COO shall oversee the School's day-to-day operations. The COO shall be assigned to record, prepare, disseminate, and maintain meeting minutes. The School's overall educational framework, mission, budgetary approval, and policies shall be developed and adopted by OP with input from the Advisory Board. The School shall be subject to the direction, control, policies, practices, and procedures of the COO, subject to the requirements of this Agreement and input from the Advisory Board. The COO shall ensure that the curriculum meets the requirements of state law, subject to the academic program review and input from the Advisory Board.

10.03.1 *Principal.* The head of the School shall be the School Principal, who shall be subject to the control of the COO but may be required to report to and attend Advisory Board meetings, if requested.

10.03.2 *OP Employee.* OP shall hire and manage at least one employee at the School, which may be, but is not limited to, the COO.

10.04 Advisory Board. At the mutual suggestion of both Parties as evidenced by the adoption of a formal resolution by each Party's governing body, the OP and the District may appoint an Advisory Board. The Advisory Board shall consist of five (5) members: two (2) appointed by the District, two (2) appointed by OP, and the fifth member shall be appointed by the four (4) appointed members. In the event that the four (4) members cannot reasonably choose a fifth member, the two (2) members appointed by OP shall recommend a person and the two (2) members appointed by the District shall recommend a person, and the fifth member shall be selected by casting lots. Each member spot shall be replaced in the manner in which the member was appointed (e.g. if a member appointed by the District leaves, the District shall appoint the replacement member). At least a quorum of the Advisory Board shall meet on a monthly basis to hear any matters related to the School. The District and OP shall have access to any and all meeting minutes. No District Board of Trustees member shall serve on the Advisory Board.

10.02.1 *Chairman.* The Advisory Board shall elect a "Chairman" of the Board who shall oversee meetings and the Advisory Board. The Chairman's term shall last two (2) years at which time the Advisory Board shall elect another Chairman. Nothing herein prevents a Chairman from having consecutive terms.

10.02.2 *Vice Chairman.* The Vice Chairman ("Vice Chair") shall be elected by the Advisory Board at the first meeting of the Advisory Board. The Vice Chair shall stand in for the Chairman during his or her unavailability or in the event that a majority of the Advisory Board finds that there is a conflict which should recuse the Chairman from a matter. The Vice Chair shall serve a term of two (2) years. Nothing herein prevents a Vice Chair from having consecutive terms.

- 10.05 Grade Levels. Beginning in the 2019-2020 school year the School will serve students in Prekindergarten 3 and Prekindergarten 4. OP shall not change the grade levels previously served at the School without the District's written consent.
- 10.06 Enrollment Policies. All students who are eligible to attend a Midland ISD school are eligible to attend the Pre-K Academy at Midland College. Prekindergarten students who meet the requirements of TEC § 29.153 shall be eligible for free enrollment at the School. Prekindergarten students who do not meet the requirements of TEC § 29.153, shall be eligible for enrollment at the School under TEC § 29.1531. 51% of the enrollment slots will be filled with eligible students and 49% of enrollment slots will be for non-eligible students. Students who reside in the De Zavala Elementary School and Milam Elementary School enrollment zones will be given priority for enrollment in 2019-2020. If there are more applicants than the number of available slots, a lottery will be conducted to determine who receives the available slots. The Parties will collaborate and agree on a process for enrollment of students into the School, which may include an application. In addition to the agreed-upon admission policies, the following applies:
- 10.06.1 OP is prohibited from discriminatory admission, suspension, or expulsion of a student on the basis of a student's national origin, ethnicity, race, religion, disability, gender, or academic achievement.
- 10.06.2 Subject to Paragraph 10.07, OP shall give preference for admission to students who were previously enrolled at the School.
- 10.07 Discipline and Expulsion Policies. Subject to TEC §§ 37.005(c), 37.007(h), OP shall comply with the District's discipline policies. OP understands that TEC §§ 37.005(c), 37.007(h) limits suspension and expulsion of prekindergarten students.
- 10.08 Schedule. OP shall have sole authority in determining the school day, school year, bell schedule, schedule for before and after-school services and for extra-curricular activities. OP's schedule shall comply with the State of Texas' required minutes of instruction. OP agrees to provide this information to the District no later than 45 days before start of school and to confer with the District prior to altering.
- 10.09 District Meetings, Initiatives, and Training. School staff under the supervision and control of OP will not be required to participate in District training events or other meetings unless directed by OP. OP agrees that all School staff shall comply with and receive training required by Applicable Law.
- 10.10 Contractor Criminal History Background Checks. The District shall conduct criminal history background checks for all vendors and contractors selected by the District as well as for all District employees. OP shall conduct criminal history background checks for all vendors and contractors selected by OP as well as for all OP employees, or OP may contract with the District for such checks. The District and OP shall adhere to reporting requirements, definitions, and laws further detailed in Paragraph 11.03.
- 10.11 Technology Infrastructure; Network Services. The District shall be responsible for providing, repairing, and maintaining technology infrastructure and network services at the School to the extent reasonably necessary to permit OP to establish its own internet and phone service at the School of a standard reasonably comparable to other District schools. OP shall provide the

District with a list of equipment purchased and collaborate with the District to ensure consistency between the standard equipment and the needs of the School. The initial information technology equipment located at the School as of the commencement of the Term is included in the term “furnishing.”

- 10.12 Media Requests. The Parties agree to collaborate on responses to any media requests or press releases related to the School. The Parties shall collaborate prior to responding to any media request or making a press release and further agree that any statement made will have prior approval by each Party, which shall be reasonably and timely granted. This requirement does not apply to general communications regarding OP or the District that may include references to the School.
- 10.13 Communications with Students’ Parents. The Parties agree to jointly approve a protocol for both general and urgent communications with students’ parents within 60 days of the execution of this Agreement.
- 10.14 Child-Care Licensing. OP is responsible for ensuring that the School meets at least the minimum requirement to comply with applicable child-care licensing standards adopted by the Department of Protective and Regulatory Services under Human Resources Code § 42.042. OP shall bear the financial cost of ensuring compliance with the same.

ARTICLE XI. STAFFING

- 11.01 Employment. OP and the District shall have the respective authority to select personnel and staff positions as detailed and limited by Article IX. However, OP shall have sole authority to determine whether any open positions exist in the School and shall have initial and final authority to approve the position of a District employee applicant to the School, irrespective of seniority or other District-imposed criteria, as detailed and limited by Article IX. Both Parties agree to not recruit and/or hire the other party’s employees until and unless the employee is released from his/her employment. Any and all personnel and staff who apply for and are selected for a position at the School and who are current District employees shall become OP’s employees. OP shall have authority to supervise, manage, hire, discipline, and terminate OP’s employees. OP shall explain to the School’s staff that they may be subject to separate rules for the School. Any and all personnel and staff who were not originally District employees and instead were hired directly by OP for the School, are not District employees and instead are employees of OP. OP’s employees are eligible for the Teacher Retirement System of Texas (“TRS”). OP shall notify TRS of its eligible employees who elect to participate in TRS.
- 11.02 Documentation. The OP shall explain to the School’s Principal and administrative team that District procedures surrounding employment contracts shall be applicable to all District employees, and as such the administration shall document employment and performance concerns in accordance with the District’s policies specified in **Addendum A-2**.
- 11.03 Criminal History Background Checks. Unless contracted for by the District as stated in Paragraph 10.12, OP shall perform all criminal history background checks required by Applicable Law, including without limitation those required for School personnel, applicants, vendors, contractors, and volunteers and shall take action required by law upon completing the background check. OP and the School’s employees shall adhere to the laws in Senate Bill 7 in the 85th Texas Legislature and codified in TEC §§ 21.006 and 22.087, and shall adhere to any District policies relating to TEC §§ 21.006 and 22.087. OP shall notify the District of any

unlawful conduct or criminal misconduct discovered by or reported to the School's principal, School's COO, or School's Advisory Board within seven (7) business days of notice. OP shall comply with any subsequent investigation by the District as OP understands that the District is bound by the reporting requirements of TEC §§ 21.006 and 22.087. Additionally, OP also understands that the District's Superintendent may investigate and report any educator misconduct that he or she believes in good faith may be subject to sanctions under 19 Administrative Code, Chapter 249 and/or Chapter 247, Educators' Code of Ethics. OP's failure to comply with this paragraph's reporting requirements shall amount to a Material Breach of this Agreement.

- 11.04 Child Abuse Reporting. All District and OP employees working at the School shall comply with all Applicable Law governing mandatory child abuse and neglect reporting, including but not limited to the Texas Family Code Chapter 261, TEC §§ 38.004, 38.0041, and the Texas Administrative Code § 61.1051.
- 11.05 Certified Personnel. OP's employees shall, at a minimum, have the qualifications required by Applicable Law for the assigned role except to the extent a requirement has been lawfully waived or the individual is subject to a lawful exemption.
- 11.06 Employment Records. OP is responsible for maintaining the employment records for all School Personnel (both District employees and OP employees). The employment records of District employees are the property of the District and OP shall make these employment records available to the District. All employment records of OP employees only are the property of OP.
- 11.07 Employee Complaints and Grievances. The Parties agree that the District's employees' complaints and grievances will be governed by the District's policies and OP's employees' complaints and grievances will be governed by OP's policies.
- 11.08 Non-Solicitation. OP agrees it will not solicit or hire any District employees unless and until it receives written confirmation from the District that the employee has been released from any contractual obligations with the District. The District agrees it will not solicit or hire any employee of OP unless it receives written confirmation from OP that the employee has been released from any contractual obligation with OP. Nothing in this Agreement alters the nature of OP employees or changes the employment relationship between any employee and his/her employer.
- 11.09 Teacher Retirement System. An employee of the OP is eligible for membership in and benefits from the Teacher Retirement System of Texas if the employee would be eligible for membership and benefits if holding the same position at the District.
- 11.10 District Non-Renewal. For purposes of personnel and employment decisions under Article XI of this Agreement, OP shall notify the District at least thirty (30) days prior to the District's non-renewal deadline which District employees will not be accepted or asked to return to the School for the following school year.
- 11.11 Nepotism Restrictions. The School shall comply with all nepotism restrictions as more fully described in **Addendum A-10**, including its ATTACHMENT, both of which are attached to this Agreement. All persons employed by School prior to the effective date of this Agreement will be considered grandfathered in and exempt from nepotism restrictions.

ARTICLE XII. ACADEMIC PLAN

- 12.01 Curriculum and Program. OP will have sole authority to approve all curriculum decisions beyond the minimum requirements in TEC 29.1532 (relating to Prekindergarten Program Requirements), lesson plans, instructional strategies, and instructional materials, as defined in TEC, §31.002(1), to be used at that campus. This authority includes sole authority over educational programs for specific, identified student groups, such as gifted and talented students, students of limited English proficiency, students at risk of dropping out of school, and other statutorily defined populations.
- 12.02 Educational Plan. OP will implement the education plan described in its proposal to operate the School, attached as **Addendum A-3**. OP will ensure that curriculum satisfies the minimum requirements outlined in TEC § 29.1532. OP agrees to notify the District of any significant alteration of this plan.
- 12.03 Selection of Instructional Materials. OP has sole authority to select instructional materials (as defined in TEC, §31.002(1)) for the School and any other standards that may be required under Applicable Law.
- 12.04 Assessments. OP has sole authority over the selection and administration of student assessments not required by state or federal law.
- 12.05 Extracurricular Programming and Participation. Students enrolled at the School may join any extra-curricular activity offered to District students to the same extent as other students so long as participation does not interfere with the School's schedule, tutorials, or other parts of the program as determined by the OP School leader and so long as such enrollment adheres to the rules and guidance of the University Interscholastic League ("UIL").
- 12.06 Student Behavior. Students enrolled at the School will be required to follow the District's Code of Student Conduct. OP reserves the right to develop its own Code of Student Conduct. OP agrees that it will not modify expulsion provisions without consent of the District and agrees to notify the District of any other modification in writing at least 60 days in advance of implementation. OP agrees that a student shall not be suspended or expelled from the School for attendance or academic performance reasons.
- 12.07 Due Process. OP will cooperate with the District to ensure that due process is afforded with respect to student removals and expulsions.

ARTICLE XIII. FACILITIES

- 13.01 Facilities. OP shall provide facilities, in the form of classrooms, office furniture, equipment, and storage areas for the School at the cost detailed in Article XIV, and provide utilities in accordance with Facility Plan attached as **Addendum A-7**. Facilities do not include classroom materials (e.g. books, notepads, pencils, etc.) or any other resources needed for the School's academic curriculum.
- 13.02 Ownership. The Parties acknowledge that all Facilities are owned by OP.
- 13.03 Permitted Use. During the Term of this Agreement, OP shall use and occupy the Facilities for the operation of the School as permitted by Applicable Law. To the extent OP wishes to use the Facilities for educational activities, separate from the School but associated with its educational

purposes, this Agreement shall not cover such use. Additionally, any use of the Facilities by any other individual, group, or organization shall be governed by the OP's facilities use policies and not this Agreement.

- 13.04 Furniture and Equipment for Classrooms and Instructional Areas. In consultation with the District regarding the furniture and equipment needs of the OP classrooms, OP will supply existing chairs, desks, bookcases, bookshelves, file cabinets, computer tables, conference tables, and other furniture as reasonably required for the School. Such furniture and equipment does not include classroom materials (e.g. books, notepads, pencils, etc.) or any other resources needed for the School's academic curriculum. OP also may furnish other furniture, fixtures, and equipment, at OP's cost and expense, as OP determines what is needed to implement the Program. The title to all furniture and equipment supplied by the District for use by OP remains vested in the District. The title to all furniture and equipment purchased with federal, state, or local funds for use by OP at the School remains vested in OP. The title to all furniture and equipment provided by OP with funds other than funds received from this Agreement remains vested in OP. OP and the District shall tag and identify their respective property so that ownership is clear. Each Party shall maintain an inventory list of all of its assets located at the School.
- 13.05 Order and Maintenance. Subject to Paragraph 9.02.1, OP shall keep the School in a neat and orderly manner. Both Parties shall comply with the Applicable Laws regarding standards of safety and health of students. OP shall be responsible for routine maintenance and major repairs of the School including, upgrades, HVAC equipment, roof repairs, and parking lot repairs. OP shall maintain all other portions of the School in a neat and orderly manner.
- 13.06 Insurance Coverage. In addition to the requirements of Article XV below, each Party, at its own expense, shall maintain its own insurance throughout the Term of this Agreement. The insurance required under this Agreement shall be bound to the following:
- 13.06.1 Comprehensive or commercial general liability insurance for not less than \$1,000,000 (combined single limit for bodily injury and property damage per occurrence and in the aggregate). Each Party may elect to carry what other insurance that Party decides is necessary or advisable for its obligations under this Agreement. Such insurance shall be written to cover claims incurred, discovered, manifested, or made during or after the Term:
- i) Automobile insurance to cover losses for motor vehicles accidents by that Party; and
 - ii) Workers Compensation insurance as may be required by Applicable Law for that Party.
- 13.06.2 OP shall obtain and maintain property insurance for the School as it deems necessary and advisable to carry. Each Party may elect to carry insurance to insure its own personal property located at the School.
- 13.06.3 Neither Party will be responsible for the negligence or liability of the other Party.

ARTICLE XIV. FINANCIAL MATTERS

- 14.01 Payment Sources & Structure. The Parties understand that this Agreement allows for the School to receive the District's usual funds from the State's Foundation School Program ("FSP Funds") that all eligible students within the District receive, and to receive *additional* SB 1882 funds ("SB 1882 Funds") for those eligible students due to this partnership Agreement.
- 14.02 FSP Funds. FSP funds are based primarily on the weighted average-daily-attendance ("WADA") allocation received by the District under TEC Chapter 42, Tiers I and II for eligible students enrolled in the District and in actual attendance at the School. The Parties understand and agree that the District shall retain the necessary FSP Funds and federal funds to pay for the educational and support services that the District is required to provide under Paragraph 9.02 of this Agreement, which include but are not limited to: Special Education services, eligibility determination, and agreed upon aspects of the record keeping requirements. The amount the District retains for these required services may not exceed the District average cost per student for similar services rendered. Any unused FSP Funds or federal funds, which OP is legally able to receive, shall be held by the District in a designated account for the School and spent in accordance with the budget and at OP's direction.
- 14.02.1 *Instructional Materials Allotment.* The Instructional Materials Allotment attributable to the School shall not be included in FSP Funds calculation and shall be held by the District and spent in accordance with the budget in collaboration with the OP and the District.
- 14.03 SB 1882 Funds. The Parties agree that the District shall withhold no more than 5% of all SB 1882 Funds annually for District administrative services, including mandatory state and federal reporting and data system administration and authorizing oversight. Itemization and cost of administrative services for 2018-2019 are set forth in **Addendum A-8**, attached. The Parties understand and agree that SB 1882 Funds are separate from the FSP Funds retained to pay for educational and support services. The District shall also hold 5% of all SB 1882 Funds as a contingency for OP. If the contingency funds are not needed, then OP shall receive the funds. 90% of all SB 1882 Funds shall be paid directly to OP. Both Parties acknowledge and agree that the goal of this Agreement is to focus effort, money, assistance, and aid to the School's students.
- 14.04 Individual Service Pricing. The District may annually publish a service menu and price list for educational and support services other than or in addition to what the District is required to provide under Paragraph 9.02. If the District opts to publish a service menu and price list, the District must do so no later than April 1 for the following school year. Such services may include but are not limited to: professional development; participation of School students in extra-curricular activities; transportation for field trips; and transportation or food services needed on days in which the District is not operating (if the School operates on a different schedule than other District schools). Prices will be stated in a per-pupil, per-square foot, or per-day basis format. Prices will be the at-cost prices for District schools.
- 14.05 Distribution of Funding Allocation. Payments of the funding allocation set forth above shall be made in monthly installments on the 15th day of each month during the term, commencing on September 15, 2019 and shall be held by the District in a designated account for the School and spent in accordance with the budget and at OP's direction. Payments shall be issued on an average monthly basis, based initially on a projected first-year enrollment of 38 students at an estimated 88% attendance rate; an estimated 0 Limited English Proficient ("LEP")

students; and an estimated __38__ economically disadvantaged students, over 11 equal periods, provided that the 11th payment may be withheld by the District to allow for any required adjustments for the reasons stated below. The estimated weights will be adjusted to actual weights for purposes of determining the compensation hereunder and the amount of the 11th month payment. The 11th payment shall not be withheld for more than 30 days, and if the District is unable to determine the actual weights within 30 days after the 11th payment is initially due, it shall make such payment based on estimated weights as described above; any adjustment determined thereafter shall be held by the District in a designated account for the School and spent in accordance with the budget and at OP's direction upon such determination if warranted, or shall be withheld in 10 equal amounts from the next payment due to OP if the final determination indicates an overpayment based on actual weights. In the event that the 15th shall fall on a Saturday or Sunday, payment shall be made on the *following* Monday. In the event that the 15th shall fall on a holiday, payment shall be made on the preceding day or preceding Friday as applicable.

- 14.06 Limitations. Payment shall be issued contingent on current Average Daily Attendance (“ADA”) and Full Time Equivalent (“FTE”) records (as applicable) in balance thirty (30) days after receipt of the monthly invoice for the periods covered in this Agreement, and submitted to the District. In no case shall the District be obligated to pay any amount for students not included in the District’s eligible ADA count to the Texas Education Agency. Notwithstanding any terms herein to the contrary, the District’s obligation to compensate OP is expressly subject to the receipt, adjustment, or modification of funds by the District from the State of Texas specifically allocated for those eligible students in attendance at OP. In the event that such funding is not received or reduced, the District shall not be obligated to OP in any amount, and OP may terminate this Agreement, and any prior payments made by the District shall be retained by OP in consideration of and as payment for educational services provided up to the date of such termination. This paragraph shall not be construed to relieve the District of any responsibility or obligation to OP if the District fails to receive funding as a result of a failure by the District or its agents or contractors to fulfill requirements necessary for securing funding from the State of Texas.
- 14.07 Procedure for Initiating Payment. By January 31 of each calendar year under this Agreement, OP shall submit its projected enrollment for the upcoming school year to the District, which shall use the projected enrollment to calculate the monthly payments for the next school year. For the second year of School’s operation, attendance rates and percentages of LEP and economically disadvantaged students shall be calculated based on actual figures from the first year of operation. For the third year and succeeding years, attendance rates and percentages of LEP and economically disadvantaged students shall be calculated based on an average of the prior two (2) years.
- 14.08 Refund upon Termination. In the event of termination during the Term of this Agreement, OP agrees to refund to the District within ninety (90) days of the date of termination, all advanced but unearned funds.
- 14.09 Federal and State Grants. In addition to the funding described above, OP may also be eligible for Federal entitlement grants, such as Title I, as approved by the Federal granting agencies and the State. Such funding must be spent as approved and designated by Federal and State agencies. OP admits knowledge of and agrees that the District’s obligation hereunder for payment of Federal and/or State grants is limited to and expressly subject to receipt of any funds from the Texas Education Agency. In the event the District is ever required to refund any funds received

from TEA specifically designated for any Federal or State grant program, then it is understood and agreed that OP shall be liable for and shall refund such amounts received. If OP obtains a federal or state grant specifically for the School and for a cost originally assigned to the District, OP shall use the grant money for the cost and the District shall not pay for the cost.

- 14.10 Contracting, Purchasing and Procurement. OP may establish school-level systems for obtaining, contracting with, and paying its vendors for goods it acquires and services it provides under this Agreement. OP will ensure compliance with applicable state and federal contracting and payment laws. OP reserves the right to contract for any services it deems beneficial in operation of the School.
- 14.11 Accounting and Audits. OP shall comply with generally accepted fiscal management and accounting principles. The Parties shall comply with the financial performance goals detailed in **Addendum A-4**, which shall include, but is not limited to a completion of OP's annual financial report, receipt of an unqualified audit opinion, and specific consequences in the event that OP does not meet the financial performance goals. In addition to any audits required by Applicable Law, OP shall submit to the District within 180 days following the end of each fiscal year during the Term of this Agreement, financial statements audited by an independent certified public accountant. The District shall also retain the right to conduct its own campus audit of the School and annual audit of OP as it deems necessary. OP agrees to comply with all rules, regulations, ordinances, statutes, and other laws, whether local, state or federal, including, but not limited to, all audit and other requirements of the Single Audit Act of 1984. In the event an audit occurs and any expenditures relating to this Agreement are disallowed, OP agrees to reimburse the District immediately for the requisite full amount.

ARTICLE XV. RECORDS AND REPORTING

- 15.01 Records Management System. The District shall maintain a records management system that conforms to the system required of school district under the Local Government Records Act, Section 201.001 *et seq.*, Local Government Code, and rules adopted thereunder; provided, however, that records subject to audit shall be retained and available for audit for a period of not less than five (5) years from the latter of the date of termination or renewal of this Agreement.
- 15.02 State and Federal Reporting. OP shall report timely and accurate information to the District as necessary for the District to comply with all applicable state and federal requirements. OP shall report information in the manner requested by the District and correct any demonstrable errors as requested by the District, provided that the manner of reporting or correction requested is not unduly burdensome to OP.
- 15.03 Lawful Disclosure. To the extent that OP or the District will come into possession of student records and information, and to the extent that OP or the District will be involved in the survey, analysis, or evaluation of students incidental to this Agreement, both parties agree to comply with all requirements of the FERPA and the Texas Public Information Act. In the event that the District is required to furnish information or records of the School pursuant to the Texas Public Information Act, OP shall furnish such information and records to the District, and the District shall have the right to release such information and records. Either OP or the District may object to disclosure of information and records under FERPA or the Texas Public Information Act.

ARTICLE XVI. INTELLECTUAL PROPERTIES

- 16.01 Proprietary Materials. Each of the Parties shall own its own intellectual property including without limitation all trade secrets, know-how, proprietary data, documents, and written materials in any format. Any materials created exclusively by the District for the School shall be owned by the District, and any materials created exclusively by OP for the School shall be OP's proprietary material. The Parties acknowledge and agree that neither has any intellectual property interest or claims in the other Party's proprietary materials. Notwithstanding the foregoing, materials and work product jointly created by the Parties shall be jointly owned by the Parties and may be used by the individual Party as may be agreed upon by both Parties from time to time.
- 16.02 Name. OP owns the intellectual property right and interest to the name "Midland Community College District." The Parties agree that the name "Pre-K Academy at Midland College" may be used by either Party during the Term of the Agreement. The Parties agree that after the expiration or termination of this Agreement, the District shall not use the name "Pre-K Academy at Midland College" for its own individual purposes.

ARTICLE XVII. INSURANCE

- 17.01 Insurance Coverage. OP shall secure and keep in force during the Term of this Agreement commercial general liability insurance coverage, including contractual coverage, automobile liability insurance coverage, and sexual misconduct and molestation coverage, with minimum liability limits of \$1,000,000 per occurrence, with a \$2,000,000 annual aggregate. The District is to be named as an additional insured under such coverage for any liability arising, directly or indirectly, under or in connection with this Agreement, or with regard to the operations of the School or any event arising therefrom. The District shall maintain casualty insurance on the Facilities and on its personal property and commercial general liability coverage applicable to any services it provides at the School, in substantially the same manner as it maintains such insurance with respect to other District schools. OP shall also maintain (a) broad form casualty coverage for all personal property located or used at the School, including the Furnishings, which coverage shall be on a full replacement value basis, and (b) worker's compensation insurance to the extent required by the laws of the State of Texas. Any deductible or other similar obligation under OP's insurance policies shall be the sole obligation of OP and shall not exceed \$25,000. Notwithstanding the foregoing requirement regarding insurance coverage, the District shall have the right to self-insure part or all of said insurance coverage in the District's sole discretion. In the event that the District elects to self-insure all or any part of any risk that would be insured under the policies and limits described above, and an event occurs where insurance proceeds would have been available but for the election to self-insure, the District shall make funds available to the same extent that they would have been available had such insurance policy been carried.
- 17.02 Form of Policies. All of OP's insurance policies shall be issued by insurance companies qualified to operate in Texas and otherwise reasonably acceptable to the District. Such policies shall name the District, and such other related parties as the District elects, as additional insureds. Evidence of insurance shall be delivered to the District on or before the Possession Date, and thereafter within thirty (30) days prior to the expiration of the term of each such policy, or immediately upon OP's obtaining a new policy. Such coverage may be maintained under a blanket insurance policy of OP.

- 17.03 Evidence of Insurance. Upon request, a Party will furnish a certificate of insurance to the other Party evidencing the required coverage within thirty (30) days after the Possession Date of this Agreement and annually thereafter. Each Party will provide to the other Party notice of any cancellation or material adverse change to such insurance within thirty (30) days of such occurrence.
- 17.04 Cooperation. To the extent that it is reasonably practicable, each Party will comply with any information or reporting requirements required by any of the other Party's insurers.
- 17.05 Insurance Companies. All insurance coverage described in this Article shall be obtained from companies that are authorized to do business in the State of Texas.

ARTICLE XVIII. INDEMNIFICATION

- 18.01 **OP AGREES TO COMPLY WITH THE FOLLOWING INDEMNITY PROVISION:**

OP covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the DISTRICT and the elected officials, employees, officers, directors, volunteers and representatives of the DISTRICT, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the DISTRICT directly or indirectly arising out of, resulting from or related to OP'S activities under this AGREEMENT, including any acts or omissions of OP, any agent, officer, director, representative, employee, consultant or subcontractor of OP, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this AGREEMENT. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of the DISTRICT, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT OP AND THE DISTRICT ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE DISTRICT UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

The provisions of this INDEMNIFICATION are solely for the benefit of the Parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

OP shall advise the DISTRICT in writing within 24 hours of any claim or demand against the DISTRICT or OP known to OP related to or arising out of OP'S activities under this AGREEMENT.

ARTICLE XIX. SERVICE-LEVEL AGREEMENTS

- 19.01 District Authority. The District has sole decision-making authority regarding the delivery of any service related to transportation, food services, janitorial, security, or related services. The District shall coordinate and cooperate with OP to determine dates of contracted service at the

School and OP shall allow service contractors on School grounds absent any serious and legitimate complaints or concerns.

ARTICLE XX. GENERAL AND MISCELLANEOUS

- 20.01 Entire Agreement. This Agreement, including all referenced attachments and terms incorporated by reference contains the entire agreement of the parties. All prior representations, understandings, and discussions are merged into, superseded by and canceled by this contract.
- 20.02 Severability. The parties intend that each provision hereof constitute a separate agreement between or among them. Accordingly, the provisions hereof are severable and in the event that any provision of this Agreement shall be deemed invalid or unenforceable in any respect by a court of competent jurisdiction, the remaining provisions hereof will not be affected, but will, subject to the discretion of such court, remain in full force and effect, and any invalid or unenforceable provision will be deemed, without further action on the part of the parties, amended and limited to the extent necessary to render the same valid and enforceable and reflect the intent of the parties.
- 20.03 Waiver. No waiver of any provision of this Agreement will be effective unless in writing, nor will such waiver constitute a waiver of any other provision of this Agreement, nor will such waiver constitute a continuing waiver unless otherwise expressly stated.
- 20.04 Venue and Jurisdiction. OP and the District agree that this Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the Parties created hereunder are performable in Midland County, Texas. Any action or proceeding to enforce the terms of this Agreement or adjudicate any dispute arising out of this Agreement shall be brought in a court of competent jurisdiction in Midland County or in the United States District Court for the Western District of Texas, Midland-Odessa Division.
- 20.05 Governing Law. The laws of the State of Texas, without regard to its conflict of laws provisions, will govern this Agreement, its construction, and the determination of any rights, duties, obligations, and remedies of the parties arising out of or relating to this Agreement.
- 20.06 Assignment. Except as otherwise provided in this Agreement, neither Party may assign or delegate any rights or obligations under this Agreement without the prior written consent of the other Party.
- 20.07 Successors and Assigns. This Agreement will be binding upon, and inure to the benefit of, the parties and their respective successors and permitted assigns.
- 20.08 Headings and Captions. The headings and captions appearing in this Agreement have been included only for convenience and shall not affect or be taken into account in the interpretation of this Agreement.
- 20.09 Competition. OP, its subsidiaries, and/or its related entities shall not fund or operate any educational institution in the District's Attendance Area during the Term of this Agreement.
- 20.10 Days. Any timeline in this Agreement referencing "days" shall mean calendar days.
- 20.11 Notice. Any notice or communication required or permitted hereunder shall be given in writing, sent by (a) personal delivery, or (b) expedited delivery service with proof of delivery, (c) United

States mail, postage prepaid, registered or certified mail, or (d) via facsimile, telegram or e-mail, address as follows:

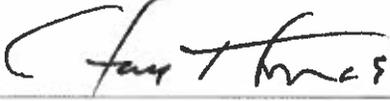
If to the OP:

Steve Thomas
President of Midland College
Midland College
3600 N Garfield Street
Midland, Texas 79705

If to the DISTRICT:

Orlando Riddick
Superintendent of MISD
Midland ISD
615 W. Missouri Ave.
Midland, Texas 79701

Entered into this 19th day of March 2019
Amended on this 21st day of May 2019

By: 

President
Midland Community College District

By: 

Superintendent
Midland Independent School District

ADDENDUMS REFERENCE

Addendum A-1: District's Charter Policy

Addendum A-2: Adopted School Policies

Addendum A-3: Student Outcome Goals

Addendum A-4: Financial Performance Goals

Addendum A-5: Performance Consequences

Addendum A-6: Charter Proposal (Application)

Addendum A-7: Facility Plan

Addendum A-8: District Services and Fees

Addendum A-9: OP's Governing Board

Addendum A-10: Nepotism

ADDENDUM A-2

The below shall serve as the governing policies for the School partnership between OP and the District. The Parties have reviewed and agreed that the following District Policies shall be applied and enforced at the School (all policies below include Legal, Local, Regulation, and Exhibit, when applicable, and unless otherwise stated):

The policies of Midland College will serve as the governing policies for the Pre-K Academy at Midland College. If there are necessary policies not currently in existence as part of the current Midland College policies, then the Pre-K Academy at Midland College will follow the relevant MISD Policies.

Student Outcomes Performance Measure Midland ISD / Midland College (Addendum A-3)

Performance Measure #1	2019-20	2020-21	2021-22	2022-23	2023-24
District Rating	C Rating	C Rating	C Rating	C Rating	C Rating

Measurements will be based on all students who are enrolled by January 1st and have EOY assessment completed.

Performance Measure #2		2019-20	2020-21	2021-22	2022-23	2023-24
Social/Emotional Learning		Percentage meeting grade level expectation by end of year	Percentage meeting grade level expectation by end of year	Percentage meeting grade level expectation by end of year	Percentage meeting grade level expectation by end of year	Percentage meeting grade level expectation by end of year
Goal Progress Measures (GPMs)	GPM #1: 4 year olds will score 44 on the Approaches to Learning CLI Task	70%	75%	75%	75%	75%
	GPM #2: 3 year olds will achieve a score of 30 on the Approaches to Learning CLI Task	70%	75%	75%	75%	75%

Performance Measure #3		2019-20	2020-21	2021-22	2022-23	2023-24
Instructional Achievement - literacy		Percentage meeting grade level expectation by end of year assessment	Percentage meeting grade level expectation by end of year assessment	Percentage meeting grade level expectation by end of year assessment	Percentage meeting grade level expectation by end of year assessment	Percentage meeting grade level expectation by end of year assessment
Goal Progress Measures (GPMs)	GPM #1: 4 year olds will produce sounds for 40 letters	70%	75%	75%	75%	75%
	GPM #2: 3 year olds produce sound for first letter of own name	70%	75%	75%	75%	75%

Student Outcomes Performance Measure Midland ISD / Midland College (Addendum A-3)

Performance Measure #4		2019-20	2020-21	2021-22	2022-23	2023-24
Instructional Achievement - mathematics		Percentage meeting grade level expectation by end of year assessment	Percentage meeting grade level expectation by end of year assessment	Percentage meeting grade level expectation by end of year assessment	Percentage meeting grade level expectation by end of year assessment	Percentage meeting grade level expectation by end of year assessment
Goal Progress Measures (GPMs)	GPM #1: 4 year olds will count by rote to 30	70%	75%	75%	75%	75%
	GPM #2: 3 year olds will count by rote to 10	70%	75%	75%	75%	75%

Performance Measure #5		2019-20	2020-21	2021-22	2022-23	2023-24
Parent and Community Engagement		Annual presentation of the impact of a multiyear high quality Pre-K program to Community Partners in early care and education in the community	Annual presentation of the impact of a multiyear high quality Pre-K program to Community Partners in early care and education in the community	Annual presentation of the impact of a multiyear high quality Pre-K program to Community Partners in early care and education in the community	Annual presentation of the impact of a multiyear high quality Pre-K program to Community Partners in early care and education in the community	Annual presentation of the impact of a multiyear high quality Pre-K program to Community Partners in early care and education in the community
Goal Progress Measures	GPM #1 – Parent and Community onsite meetings	Yes	Yes	Yes	Yes	Yes
	GPM #2 – Community Outreach	Yes	Yes	Yes	Yes	Yes

ADDENDUM A-4

Financial Performance Goals:

1. OP submits a complete annual financial report and data submitted to the District within 180 days following the end of the fiscal year
2. OP obtains an unmodified opinion in the annual financial audit on the financial statements as a whole
3. The audit report is free of any instances of material weaknesses in the internal controls over financial reporting
4. The OP is in compliance with the payment terms of all debt agreements at fiscal year end
5. The OP makes timely payments to the Teachers Retirement System (TRS), Texas Workforce Commission (TWC), Internal Revenue Service (IRS), and other government agencies.

Addendum A-5

Performance Consequences

The goal progress measures (Addendum A-3) will be monitored and presented to the MISD Board at least once a year. Upon reporting, if goal progress measures are not met, then OP is required to develop and implement an improvement plan which will be publicly reported to the MISD Board.

The District may terminate this agreement if the OP fails to achieve the student outcome goals specified in Addendum A-3 for three consecutive years of the school operating under this agreement.

Termination under this paragraph shall be effective at the end of the then current school year so long as written notice of such termination is provided no later than thirty (30) days after the Commissioner of Education's academic ratings or the determination of student outcome goals by the District.

The district may also terminate the agreement if the OP does not maintain the Financial Performance Goals established in Addendum A-4.

Addendum A-7

Facility Plan:

The Pre-K Academy at Midland College will operate at the Midland College Main Campus (3600 N. Garfield, Midland, TX 79705). It will be adjacent to the existing HLG Children's Center at Midland College. The charter will open in existing or temporary classrooms while a permanent facility is constructed at the same location.

Addendum A-8

District Services and Fees

Service or Fee	Cost	Rate
Speech Pathology services	\$65	Hourly

ADDENDUM A-9

BOARD OF TRUSTEES

The policy making and supervisory functions of the administration of the college, as provided by state law, are vested in a nine-person Board of Trustees. The Board delegates the professional responsibility to the President of the college, who is assisted by other administrative officers.

The Board of Trustees normally meets at 4 pm on the third Tuesday of every month except for July and December. There is no meeting in July, and the December meeting is held earlier in the month due to the holidays.

G. Larry Lawrence
Place 3

Stephen N. Castle
Place 5

Charlene R. McBride
Place 6

Linda J. Cowden
Chairperson
Place 2

Will R. Green
Place 7

Kenneth A. Peeler
Place 9

Paul L. Morris
Vice Chairperson
Place 4

Steven C. Kiser
Place 1

Ralph L. Way Secretary
Place 8

ADDENDUM A-10

NEPOTISM RESTRICTIONS AT CHARTER SCHOOLS

I. NEPOTISM RESTRICTION ON SCHOOL SUPERVISORS

Principals and supervisors at a charter school may hire and/or retain employees at the same school or work location who are related within the first, second, or third degree of consanguinity or affinity. Notwithstanding this provision, principals and supervisors are subject to the prohibition against employees reporting directly or indirectly to their own relatives, as described herein:

A charter school employee shall not be assigned to work in a school, building, or department where the employee reports directly or indirectly to an administrator to whom the employee is related within the second degree by blood or marriage. If such situations develop as a result of marriage, administrative transfer due to reorganization, or similar circumstance, both of the employees involved shall bring it immediately to the attention of the appropriate administrator for resolution.

II. LIMITED NEPOTISM RESTRICTION RELATING TO THE SCHOOL'S CHIEF ADMINISTRATIVE OFFICIAL

There is no restriction against the top administrative official at a charter school, whatever the official title, (e.g., superintendent, president, founder of schools, CEO etc.) from appointing a person, to whom the official is related, to a position at the charter school, whether as an employee or as an independent contractor. However, if the person appointed to a position at the charter is related to the top administrative official by consanguinity (blood) within the third degree or by affinity (marriage) within the second degree, the official shall, before making the appointment, make a determination that the positives of appointing the person outweighs any possible negatives associated with a nepotistic appointment.

III. LIMITED NEPOTISM RESTRICTION RELATING TO SCHOOL BOARD MEMBERS

There is no restriction against the charter appointing a person, who is related to charter board member, to a position at the charter school, whether as an employee or as an independent contractor. However, if the person appointed to a position at the charter is related to a charter board member by consanguinity (blood) within the third degree or by affinity (marriage) within the second degree, the top administrative official at the school shall, before making the appointment, make a determination that the positives of appointing the person outweighs any possible negatives associated with a nepotistic appointment.

ATTACHMENT TO ADDENDUM A-11

The following illustrations depict the relationships that violate the nepotism restrictions set forth in **EXHIBIT B**.

CONSANGUINITY (Blood Kinship):

Charter School top administrative official or board member is prospective employee's:

First Degree	Parent	Child		
Second Degree	Grandparent	Grandchild	Sister/Brother	
Third Degree	Great-Grandparent	Great-Grandchild	Aunt/Uncle	Niece/Nephew

AFFINITY (Marriage Kinship):

Charter School top administrative official or board member's spouse is the prospective employee.

OR

Charter School top administrative official or board member's spouse is prospective employee's:

OR

Prospective employee's spouse is Charter School top administrative official or board member's:

First Degree	Parent	Child	
Second Degree	Grandparent	Grandchild	Sister/Brother

NOTE: The spouses of two persons related by blood are not by that fact related. The affinity chart supposes only one affinity relationship between the Charter School top administrative official or board member and prospective employee through either of their spouses.