

DCSD Ben Franklin Academy Contract and Attachments

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Section 1: Introduction

This Contract, entered the 1st day of February, 2011 between Douglas County RE 1 School District (the "District" or the "Authorizer") and the Ben Franklin Academy, a public school organized as a Colorado nonprofit corporation (the "School" or "Ben Franklin Academy") (collectively, the "Parties").

Recitals

1.1 Reference Charter Schools Act.

WHEREAS, the Colorado General Assembly has enacted the Charter Schools Act, §22-30.5-101, C.R.S., and following, for certain purposes as enumerated in §22-30.5-102(2) and (3), C.R.S.;

1.2 Reference submission date for application.

WHEREAS, on September 8, 2010, the District Board of Education ("District Board") of the Douglas County School District Re. 1 ("District") received a school application from the founding board of Ben Franklin Academy, a K-8 School, a Colorado nonprofit corporation (the "School"), for the establishment of Ben Franklin Academy as a District school; and

WHEREAS, the District reviewed the charter application in accordance with C.R.S. §§ 22-30.5-107(1) and (1.5) and requested and exchanged additional information and documents with the School in accordance with C.R.S. §§ 22-10.5-107(2); and

1.3 Reference approval date for application and District board approval resolution.

WHEREAS, having considered the Application, the requirements of the Charter Schools Act, and the information provided in the public meetings held, the District Board conditionally approved the application on November 16, 2010; and

WHEREAS, the School seeks certain waivers from District policies/regulations and state law; and

WHEREAS, the District has the authority to waive District Board-approved policies and/or regulations only to the extent permitted by law; and

WHEREAS, the authority of the Colorado State Board of Education ("State Board") to provide waivers from requirements of state law only extends to provisions contained in Title 22 of the Colorado Revised Statutes:

NOW THEREFORE in consideration of the foregoing Recitals and their mutual understandings, releases, covenant and payments herein described, the parties agree as follows:

Section Two: Establishment of School

2.1 Term. This Term of this Contract begins 7/1/2011 and shall continue through 6/30/2014.

Although this Contract is for operation of the School for a period of 3 years, any financial commitment on the part of the District contained in this Contract is subject to annual appropriation by the District and the parties agree that the District has no obligation to fund the financial obligations under this Contract other than for the current year of the Contract term; and that the District has not irrevocably pledged and held for payment sufficient cash reserves for funding the School or for providing services herein for any subsequent fiscal year during the remaining term of the Contract.

2.2 School legal status. The School is incorporated as a Colorado non-profit corporation. Unless the parties agree otherwise in writing, the School shall continue to operate as a Colorado non-profit corporation and shall assure that its operation is in accordance with its articles of incorporation and bylaws. The School shall notify the District promptly of any change in its corporate and/or tax exempt status.

The School is organized and maintained as a separate legal entity from the District for all purposes of this Contract. As provided by the Charter Schools Act, the School shall constitute a

public school in Colorado. Notwithstanding its existence as a separate legal entity, the educational programs conducted by the School are considered to be operated by the School as part of the District. As such, the School is subject to Colorado laws and District policies that apply to all public schools unless waived in accordance Section 5.5 of this Contract. Further, the School is a public entity within the meaning of §24-10-106, C.R.S., and is therefore entitled to the protections of the Colorado Governmental Immunity Act, and is a local public body within the meaning of §24-6-402(1)(a), C.R.S. and therefore subject to the Sunshine Act.

- 2.3 Pre-opening. The School shall meet all of the Pre-Opening Conditions described in Attachment 2 by the identified dates. Failure to timely fulfill any material term of the Pre-Opening Conditions shall be considered a material violation of conditions, standards or procedures provided for in the Contract and shall be grounds for District intervention or revocation of the Charter pursuant to Section 3.6 or Section 12.3 of the Contract. The District may waive or modify the restrictions contained therein or may grant the School an additional planning year upon good cause shown.

Section Three: District-School Relationship

3.1 District Rights and Responsibilities

- a. Right to review. The School shall operate under the auspices of, and shall be accountable to, the District and subject to, unless specifically waived or delegated pursuant to this Contract, all applicable federal and state laws and regulations, District Board policies and regulations. All records established and maintained in accordance with the provisions of this Contract, District Board policies and regulations, and federal and state law and regulations shall be open to inspection and review and made available in a timely manner to District officials who have legitimate educational interests in such records within the meaning of the Family Educational Rights and Privacy Act. Records include, but are not limited to, the following:
- i. School records including but not limited to student cumulative files, policies, special education and related services;
 - ii. Financial records;
 - iii. Educational program, including test administration procedures and student protocols;
 - iv. Personnel records, including evidence criminal background checks have been conducted;
 - v. School's operations, including health, safety and occupancy requirements; and
 - vi. Inspection of the facility.

Further, the District may make announced or unannounced visits to the school to fulfill its oversight responsibilities. Except in emergencies, and when directed by the Superintendent of Schools, visits should be pre-arranged in a professional manner to avoid needless disruption of the educational process.

- b. Complaints. The District agrees to notify the School regarding any complaints about the School that the District receives. The notification shall be made within ten (10) days of

its receipt by the District and shall include information about the substance of complaint taking into consideration any complainant's request for anonymity.

- c. School health or safety issues. The District shall immediately notify the school of any circumstances requiring school closure, lockdown, emergency drills or any other action that may affect school health or safety.
- d. Feedback about progress. Within sixty (60) days of receipt of the School's annual report completed pursuant to Section 3.2.D.i of the Contract, the District shall, at a minimum, provide information to the school about its status in relationship to the goals, objectives and accreditation requirements contained in Sections 7.3 and 7.4.
- e. Access to student records. Upon request, the District shall timely make available to the School cumulative files and/or student information, including but not limited to information regarding special education and related services for students of the School. The School shall use such information exclusively for fulfillment of its educational responsibilities or for compliance with the law and shall not use student information acquired from the District for any other purpose.

3.2 School responsibilities and rights.

- a. Records. The School agrees to comply with all federal, state, and District record keeping requirements including those pertaining to students, governance, and finance. This includes maintaining up-to-date information about enrolled students in the District's student information system. In addition, the school shall ensure that records for students enrolling in other schools are transferred in a timely manner. Financial records shall be posted and reconciled at least monthly. All records shall be maintained at the School and shall be open to inspection, consistent with law, during reasonable business hours. The School further agrees to assist the District in accessing or reviewing any records as part of its oversight responsibility or to address its compliance requirements.
- b. Notification provided to the District. The School shall timely notify the District (and other appropriate authorities) in the following situations:
 - i. The discipline of employees at the School arising from misconduct or behavior that may have resulted in harm to students or others, or that constituted violations of law.
 - ii. Any complaints filed against the School by any governmental agency.

The School shall immediately notify the District of any of the following:

- i. Conditions that may cause it to vary from the terms of this Contract, applicable District requirements, federal, and/or state law;
- ii. Any circumstance requiring the closure of the School, including, but not limited to, a natural disaster, such as an earthquake, storm, flood or other weather related event, other extraordinary emergency, or destruction of or damage to the school facility;
- iii. The arrest of any members of the Charter Board or School employees for a crime punishable as a felony or any crime related to the misappropriation of

- funds or theft;
 - iv. Misappropriation of funds;
 - v. A default on any obligation, which shall include debts for which payments are past due by sixty (60) days or more; or
 - vi. Any change in its corporate status with the Colorado Secretary of State's Office or status as a §501(c) (3) corporation, if applicable.
- c. Compliance. The School shall comply with all applicable federal and state laws, local ordinances, and District policies applicable to schools, except to the extent that the School has obtained waivers from state law and District policies in accordance with Section 5.5 below. A list of some but not all, of the federal and state laws with which the School must comply are listed in Attachment 3.
- d. Reports. The School shall timely provide to the District any reports necessary and reasonably required for the District to meet its oversight and reporting obligations. Required reports include, but are not limited to those listed below along with projected due dates for the current school year. Timely notification shall be provided when due dates are changed. The District will annually update the list of required reports and due dates and provide this information to the School. Failure to provide reports within ten (10) days after the date due is a material violation of the Contract, and the District may take actions outlined in Section 3.6 of this Contract.
 - i. Accreditation report – 5/31. The School shall conduct an annual review of the administrative operations of the School and shall report to the District, in writing, its findings no later than the first day of October following each school year the School is in operation. The report shall include at least the following information: a financial statement disclosing costs of administration, instruction, facilities, instructional materials, and other categories of expenditures, and revenues; (2) a description of the assessments used to measure student progress; (3) a summary of student assessment results, including evidence the School met, exceeded, or made reasonable progress toward meeting its objectives; (4) a description of the staffing of the School, summarizing the qualifications of staff members in accordance with the Elementary and Secondary Education Act (No Child Left Behind); (5) a description of the School's educational program and services; (6) a description of the District services provided to the School and their effectiveness and efficiency; and (7) Colorado Department of Education annual report requirements not otherwise listed above.
 - ii. Required financial reports (including budget)
 - a. Proposed Budget – 4/15
 - b. Projected enrollment – 12/6
 - c. Charter Board approved budget – 6/10
 - d. Quarterly financial reports – within 45 days of the close of the quarter
 - e. Annual audit – 9/15
 - iii. School calendar – 3/18

- iv. Health and safety information including report of previous year's fire drills and updated emergency plans, emergency contact information, etc. – monthly
- v. Governance information
 - a. Charter Board membership (i.e., names/ contact info, terms and signed Board Member Certification Forms)- 8/13
 - b. Signed Board member conflict of interest disclosures – within 10 days after any changes
 - c. Current bylaws – within 10 days after any changes
 - d. Current articles of incorporation – within 10 days after any changes
- vi. Insurance certification – 8/1

3.3 Indemnification. To the extent permitted by law and not covered by insurance or not otherwise barred by the Colorado Governmental Immunity Act, the District and School each agree to indemnify and hold the other and its respective employees, directors, officers, agents and assigns harmless from all liability, claims and demands of third parties arising on account of personal injury, sickness, disease, death, property loss, or damage or any other losses of any kind whatsoever that are proximately caused by the negligent, grossly negligent or intentional acts of the indemnitor or its respective employees, directors, officers, agents and assigns. The forgoing provision shall not be deemed a relinquishment or waiver of any applicable bar or limitation on liability provided by the Colorado Governmental Immunity Act or other law. The indemnitee shall reasonably seek to recover any amounts due under this Section from any applicable insurance policy paid for by the indemnitor before withholding funds otherwise due to the indemnitor.

3.4 Procedures for Articles of Incorporation and Bylaws amendments. The School shall follow any requirements of the Colorado Revised Nonprofit Corporations Act in amending its articles of incorporation and bylaws and shall provide the District with 60 days to comment on any such changes. In the event of an emergency, the School may adopt such an amendment effective immediately, subject to the School's later action on any comments submitted by the District. The bylaws or policies of the School shall include a requirement that each Charter Board member annually sign a conflict of interest disclosure, which shall at a minimum meet the requirements in Attachment 4.

3.5 District-school dispute resolution procedures. All disputes arising out of the implementation of this Contract, and not subject to immediate appeal to the State Board of Education, shall be subject to the dispute resolution process set forth in this Section, unless specifically otherwise provided.

- a. The School and the District agree that the existence and details of a dispute notwithstanding, both Parties shall continue without delay their performance hereunder, except for any performance which may be directly affected by such dispute.
- b. Either party shall notify the other party that a dispute exists between them within 30 (thirty) days from the date the dispute arises. Such notification shall be in writing and shall identify the Article and Section of this Contract or any other agreement between the Parties that is in dispute and the grounds for the position that such article and Section is in dispute. The matter shall be immediately submitted to the President of the

Board of the School and the President of the Board of the District, or their respective designees, for further consideration and discussions to attempt to resolve the dispute.

- c. In the event these representatives are unable to resolve the dispute informally pursuant to this procedure within 30 days after the date of notification by one to the other of the existence of such dispute, then either party may elect to submit the matter to the Boards of the School and the District for their consideration. The submission to the Boards shall be made in writing to the other party and to the Board Presidents for delivery to the Boards, no later than 40 days after the initial date of notification by one party to the other of the existence of the dispute. The Presidents of both Boards are required to place the item on the agenda at the earliest meetings for discussion by the respective Boards. The Board Presidents are required to inform each other in writing, the resolution proposed by their respective Board's within ten (10) days after the board meeting at which the item is discussed. The Presidents of the Boards may elect to meet to identify possible solutions.
- d. In the event that the matter is not resolved by the Boards, then the matter shall be submitted to mediation by notice in writing to the other party within thirty (30) days following the Boards' meetings. The thirty (30) days shall be determined by the date of the last Board meeting at which the matter is discussed.
- e. Any and all disputes which cannot be resolved informally shall be settled by mediation to the extent not inconsistent with the requirements of state law. The parties expressly agree that the mediator(s) shall be required to render a written opinion concerning the matters in controversy, together with their findings.
- f. Each party shall pay one-half of the reasonable fees and expenses of the neutral mediator. All other fees and expenses of each party, including without limitation, the fees and expenses of its counsel, witnesses and others acting for it, mediators not jointly appointed, shall be paid by the party incurring such costs.
- g. The mediators shall have no authority to add to, delete from, or otherwise modify any provision of this Contract or to issue a finding having such effect.
- h. Either party may appeal to the State Board within 30 days of the written release of the mediation opinion.

3.6 Other remedies. If the School is subject to nonrenewal or revocation under §22-30.5-110 (3), C.R.S., state or federal law or regulations, or materially breaches the Contract, the District may, but is not required to, impose other remedies prior to initiating revocation procedures in accordance with Section 12.3. Remedies include, but are not limited to, those listed below. These remedies may be applied individually, in succession, or simultaneously.

Prior to applying a remedy other than 3.6.B below, the District shall send a notice of breach and provide the School with an opportunity to cure. The notice shall state the deficiency and the basis (evidence) for it, an opportunity for the School to contest the deficiency, the timeframe for remedying the deficiency, and the expected results.

- a. Withholding up to 10 percent of the funds due to the School. This remedy may be applied in situations where the School could reasonably take actions to remedy the breach prior to the withholding of funds. These situations include but are not limited to failure to submit reports listed in Section 3.2.D by the established deadlines, failure to submit other required information or records by the date requested, and failure to submit a budget to the District that meets the requirements of Section 8.3. Any action taken pursuant to this subsection is subject to review as provided in §22-30.5 (112) (g).
- b. Taking immediate control of the School or some portion thereof. Notwithstanding any other provision of this Contract, in the case of any breach which the District reasonably determines poses a serious and imminent threat to the School or District students, the community, or the property rights of the District or the School, the District may, but shall not be required to, exercise any authority or rights over the School in accordance with the procedures described C.R.S. 22-30.5-701 et seq.
- c. Submission of a plan to the District to remedy the deficiency. The School shall develop the plan and submit it to the District for review and comment. The plan may be revised at the discretion of the School and then submitted to the Charter Board for approval. The approved plan shall include a statement that directs the School's staff to implement the plan and provide the Charter Board with periodic reports of progress. The District may require the School to review and revise the plan if it is not effective in remedying the deficiency. This remedy may be applied if the School fails to make progress toward achieving its goals and objectives or District accreditation requirements, to implement its educational program, or fails to complete two or more required reports by the established deadlines.

3.7 District violations of school law or this contract. If the School believes that the District has violated any provision of this Contract or law, the School may initiate dispute resolution procedures in accordance with Section 3.5, file an appeal with the State Board, or seek other remedies provided by law.

Section Four: School Governance

- 4.1 Governance. The School's articles of incorporation and bylaws shall not conflict with the School's obligation to operate in a manner consistent with this Contract. The Charter Board's policies shall provide for governance of the operation of the School in a manner consistent with this Contract. The articles of incorporation and bylaws are attached to this Contract as Attachment 5. The Charter Board shall operate in accordance with these documents. Any material modification of the articles of incorporation or the bylaws or changes in the composition of the School's Charter Board shall be made in accordance with the procedures described in Section 3.4 of the Contract.
- 4.2 Corporate purpose. The purpose of the School as set forth in its articles of incorporation shall be limited to the operation of a school pursuant to the Colorado Charter Schools Act, §22-30.5-101, et seq., C.R.S.
- 4.3 Transparency. The School shall make Charter Board-adopted policies, meeting agendas and minutes and related documents readily available for public inspection and shall conduct

meetings consistent with principles of transparency and avoidance of actual or apparent conflicts of interest in the governance of the School.

- 4.4 Complaints. The School shall establish a process for resolving public complaints, including complaints regarding curriculum, which shall include an opportunity for complainants to be heard. The final administrative appeal shall be heard by the Charter Board, not the District's Board of Education.
- 4.5 Contracting for core educational services. Unless otherwise agreed in writing by the District, the School shall not have authority to enter into a contract or subcontract for the management or administration of its core instructional program or services, including special education and related services. This shall not prevent the School from engaging independent contractors to teach selected, specific courses. Nor does this limit the school's authority to contract with the District.

Section Five: Operation of School and Waivers

- 5.1 Operational powers. The School shall be fiscally responsible for its own operations, and shall have authority independently to exercise the following powers (together with such powers as provided for elsewhere in this Contract): contracting for goods and services; preparation of budgets; selection, supervision, evaluation, and determination of compensation for personnel; promotion and termination of personnel; leasing facilities for school purposes (a copy of which shall be provided to the District at least 10 days prior to execution for review); accepting and expending gifts, donations, or grants of any kind in accordance with such conditions prescribed by the donor as are consistent with law and this Contract; and adoption of policies and bylaws consistent with the terms of this Contract.
- 5.2 Transportation. Any transportation of students to the School (other than special education students who require transportation as a related service) shall be the sole responsibility of the School.
- 5.3 Food services. If requested to do so by the School, the District shall provide free and reduced price meals to needy students in a manner determined by the District and in accordance with District Board policy and applicable federal and state law.
- 5.4 Insurance. The School shall purchase insurance protecting the School and its Charter Board, employees, and volunteers, and District where appropriate, consisting of comprehensive general liability insurance and errors and omissions liability insurance (school entity liability insurance) and auto liability insurance. The School shall also purchase statutory workers' compensation insurance coverage. Minimum coverages for the current school year are listed below:

Comprehensive general liability - \$3,000,000
Officers, directors and employees errors and omissions - \$1,000,000
Property insurance - As required by landlord
Crime Coverage: \$50,000
Motor vehicle liability (if appropriate) - \$1,000,000
Bonding (if appropriate)

Minimum amounts: \$25,000

Maximum amounts: \$100,000

Workers' compensation - (as required by state law and should purchase employers liability up to \$500,000)

Fiduciary Liability: \$1,000,000

Accidental Death and Dismemberment for Volunteers: \$10,000

The District shall provide timely notice if coverage limits are changed. Insurance terms and conditions must be reasonably acceptable to the District and underwritten by insurers that are legally authorized in the State of Colorado and that are rated by A.M. Best Company not lower than "A-VII". Non-rated insurers must be approved by the District. The Colorado School Districts Self Insurance Pool is preapproved. The School shall provide certificates of insurance to the District's Risk Manager by 8/1 annually. All of the School's insurance policies purchased by the School shall state that coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits, except after 45 days prior written notice by certified mail, return receipt requested, has been given to the District's Risk Manager. The School shall notify the District's Risk Manager within 10 days if for any reason there is a lapse in insurance coverage. The School is solely responsible for any deductibles payable under the policies purchased by the School. Both parties shall secure policies that are primary and noncontributory to insurance obtained by the other party and/or any obligation of indemnification under this contract.

5.5 Waivers

a. State Laws and Regulations

- i. Automatic waivers. The District agrees to seek waiver from the State Board of Education of state statutes and regulations that are automatically approved, upon request pursuant to 1 Colo. Code of Regulations 301-35. The School agrees to provide acceptable replacement policies for these automatic waivers. The waivers from state law or regulation, to be requested jointly, are set forth in Attachment 6.
- ii. Additional waiver requests. Waivers are neither necessary nor appropriate when a statute or rule by express terms does not apply to a school, nor when a District power or duty has been fully delegated, as more specifically stated in this Contract, to the School. The School is expected to only seek waivers if a statute or rule applies to the School and is inconsistent with the School's operational or educational needs.
- iii. Procedures for additional waiver requests. The District Board of Education agrees to jointly request waiver of the state laws and regulations, in addition to those automatically granted, that are listed in Attachment 7. To the extent the State Board does not grant the requested waivers or imposes conditions upon the School with respect to such waivers, it is agreed that representatives of the parties shall meet to negotiate the effect of such State Board action.
- iv. Subsequent waiver requests. The School may request additional waivers after the original request. Upon receipt of such request, the District shall have 30 calendar days to review the request and, thereafter, shall present the matter

before the District Board at its next regular meeting. The District Board shall, unless otherwise agreed by the parties, have 30 calendar days to consider the matter prior to rendering a decision at a regular meeting. The District agrees to jointly request such a waiver from the State Board, if the District's Board first approves the request. Approval of requests to waive State law or regulations shall not be unreasonably withheld. To the extent the State Board does not grant the requested waivers or imposes conditions upon the School with respect to such waivers, it is agreed that representatives of the parties shall meet to negotiate the effect of such State Board action.

b. District Policies

- i. Automatic waivers. The District shall grant automatic waivers that are necessary or appropriate when a policy by its express terms does not apply to a school or the District, through the Contract, has delegated this authority to the School.
- ii. Additional waivers. The School shall be granted certain waivers from District policies set forth in Attachment 8 upon approval by the District Board of acceptable replacements.
- iii. Subsequent waiver requests. The School may request additional waivers after the original request. Upon receipt of such request, the District shall have 30 calendar days to review the request and, thereafter, shall present the matter before the District Board at its next regular meeting. The District Board shall, unless otherwise agreed by the parties, have 30 calendar days to consider the matter prior to rendering a decision at a regular meeting. Waivers of District policies may be granted only to the extent permitted by state law. Waiver of District policies shall not be unreasonably withheld.
- iv. Revocation of waivers. For reasonable cause and after providing notice to the School, the District Board may revoke waivers previously granted.

Section Six: School Enrollment and Demographics

- 6.1 School grade levels. The School may serve students in grade K through grade 8, except that the School shall only serve students in grades K-6 in the first year of this Contract, and may add one grade per year for years 2 through 3 of this initial Contract. The anticipated number of students in each grade level is attached herein (Attachment 9).
- 6.2 Student demographics. As required by the Colorado Charter Schools Act, C.R.S. §22-30.5-104(3), the School shall make enrollment decisions in a nondiscriminatory manner and shall have and implement a recruitment and enrollment plan that ensures that it is open to any child who resides within the District, and has a diverse student population, which includes, but is not limited to, enrolling a percentage of students that are eligible for free/reduced lunch which is consistent with District averages, taking into account the demographics of other public schools within reasonable proximity to the School. The School shall make reasonable progress toward this goal.

- 6.3 Maximum and minimum enrollment. The School and the District agree that during the term of this Contract, the School's total funded enrollment shall be as follows: (a) year one, no more than 576 full-time equivalent students ("Student FTEs"); (b) year two, no more than 6 student FTEs; and (c) year three and thereafter, no more than 864 student FTEs. This limitation on the number of enrolled students is acknowledged by the School and the District as necessary to facilitate the academic success of the students enrolled in the School, to facilitate the School's ability to achieve its mission and objectives, and to ensure that the School's enrollment does not exceed the capacity of the School's facility and site. The minimum enrollment is 450 student FTEs, which is determined to be the lowest enrollment necessary for financial viability.
- 6.4 Eligibility for enrollment. The School shall limit enrollment of students accepted through the process outlined below, including enrollment procedures for students with disabilities, to those who meet the school's age and grade requirements, are not otherwise ineligible to enroll based on criteria in Article 33 of Title 22 or who meet the criteria in C.R.S. §22-33-106 (3) (F) in another District school.
- 6.5 Enrollment preferences, selection method, timeline, and procedures. Enrollment preferences, selection method, timeline, and procedures are described in Attachment 13.
- 6.6 Admission process and procedures for enrollment of students with disabilities or a Section 504 plan. To ensure that the needs of students with disabilities are met, the following procedures must be followed:
- a. Following the application deadline and upon completing the lottery if appropriate, the School shall require that the student/District provide the most recent IEP or Section 504 Plan, if any.
 - b. If the applicant has an IEP or Section 504 Plan, the IEP or Section 504 Plan shall be provided to the School's mild/moderate teacher immediately upon receipt of the IEP.
 - c. When an applicant has an IEP or Section 504 Plan, prior to the decision to admit or deny admission, a screening team consisting of the School Principal or designee, the School mild/moderate teacher, and a District representative shall review the IEP or Section 504 Plan, and, if deemed appropriate, confer with staff at the student's previous school, and shall make a determination whether the services and space available at the School are sufficient to deliver the program required by the IEP or to provide the accommodations required in the Section 504 Plan. If the screening team cannot reach consensus, the District representative shall convene a complete IEP team to make the final determination.
 - d. When a student with disabilities who has been placed in a center-based program by an IEP Team or who has intensive service needs as identified by an IEP Team applies for admission into a school or a program that does not have the staff or services available to meet the needs as identified on the IEP, the principal of the choice school shall convene an IEP Team meeting. The student's application for admission is contingent upon the determination by the IEP Team that the student can receive a free appropriate public education in the least restrictive environment at the school in its existing programs and

at its current level of staffing. If the determination is that FAPE is not available, the student's application for admission shall be denied and the student's current placement shall remain as determined by the prior IEP Team meeting, unless changed at the school IEP Team meeting. Representatives from the student's prior school shall be invited to participate in the IEP Team meeting at the school. Additionally, an application for attendance at a school may be denied for a student seeking placement in a school in the same manner and for the same reasons as such application may be denied for a student without disabilities.

- e. Admission of applicants with an IEP or Section 504 Plan shall be in compliance with District requirements and procedures concerning the education of students with disabilities. Every student who is admitted with an IEP or Section 504 Plan from his/her previous school shall be placed directly in a program that meets the requirements of such IEP or Section 504 Plan, unless and until a review staffing by the IEP team or Plan review meeting is held and the IEP or Section 504 Plan is changed.

6.7 Participation in other District programs. No student may be jointly enrolled in the School and another District school or program without the written permission of the District and the School. Such written permission shall include the manner in which the costs of instruction shall be divided between the School and the District. Payment by the School to the District, if any, pursuant to any such agreement shall be deemed payment for a purchased service under the School Act. No student shall be entitled to instructional time that would be more than the equivalent of a 1.0 FTE, even if the student meets the requirements for full time funding at one or both schools. If no written agreement is reached, the District and the School may each count the pupil as a .5 FTE for funding purposes, if the pupil's participation meets the eligibility for such funding based on state requirements.

6.8 Non-resident admissions. Subject to its enrollment guidelines, the School shall be open to any child who resides within the District and to any child who resides outside the School District, subject to compliance with applicable Colorado public schools of choice statutes, District Board policy and this Contract. Once accepted for enrollment, a non-District resident student may reenroll for subsequent school years until completing his or her schooling at the School.

6.9 Student movement after October 1. After October 1, any movement of students between the School and any District school, including the school serving the student's resident address that is not operated pursuant to a school Contract is subject to an agreement between the School and the Superintendent or his designee. The School agrees to use the standard District administrative transfer process. Requests for transfer to a District school shall not be unreasonably denied. Most important is that the school and District agree whether or not students will be enrolled after October 1, and, if they are to be enrolled, the procedures to be followed.

6.10 Expulsion and denial of admission. The authority to hold expulsion hearings shall remain with the District Board of Education. However, the Charter Board, or its designee, shall make findings of fact and recommendations to the District superintendent and a decision to expel a student from the District may be appealed to the District Board. Any decision to expel a School student by the District Board shall specify which District schools the student is expelled from attending and which schools, if any, the student may attend as an alternative. Any general education

services required by law to be provided to suspended or expelled students shall be the sole responsibility of the District, in cooperation with the School. Any special education and related services required by law to be provided to suspended or expelled students shall be the sole responsibility of the District.

- 6.11 Continuing enrollment. Students/parents who choose to enroll into the School shall remain enrolled in the School through the highest grade served by the school, absent expulsion, graduation, court ordered placement, or IEP placement. Students wishing to transfer from the School to another school in the District may do so only through the District's within-District transfer procedures.

Section Seven: Educational Program

- 7.1 Vision. N/A

- 7.2 Mission. The School's mission is to develop young adults with character like America's founding Renaissance man, Benjamin Franklin: well-read, scientifically curious, and civically engaged.

- 7.3 School Goals. N/A

- 7.4 School Accreditation.

- a. District Accreditation Indicators: Accreditation indicators representing student outcomes are the same as for other like District schools. In addition, indicators for governance, finance, and operations have been established to reflect the unique characteristics of the School. The Accreditation Process is provided in Attachment 11. The School acknowledges that these indicators and process may change over time and that the District agrees to provide the School with opportunity for input into any proposed changes before they are finalized.

- 7.5 Educational program characteristics.

The School will focus on individual students by implementing flexible ability groups and by teaching the students and letting test scores follow. The students will excel academically through a challenging, sequenced curriculum that emphasizes math, science, and literacy. The School also recognizes that an education is incomplete without fostering the arts, sports, nature, and character.

- 7.6 GED and online programs. The School's educational program as contained in the application and reviewed by the District does not include a GED or on-line program pursuant to §22-33-104.6, C.R.S., and the School is accordingly prohibited from offering such GED or on-line programs.

7.7 Curriculum, instructional program, and pupil performance standards. The School shall have the authority and responsibility for designing and implementing its educational program, subject to the conditions of this Contract. The educational program, pupil performance standards and curriculum designed and implemented by the School shall meet or exceed any content standards adopted by the District, shall be designed to enable each pupil to achieve such standards, and shall be consistent with the School's vision and mission.

7.8 Graduation requirements. The school's graduation requirements are listed in Attachment 15.

7.9 English language learners. The School shall provide resources and support to English language learners to enable them to acquire sufficient English language proficiency to participate in the mainstream English language instructional program, consistent with the plan provided in Attachment 16. The School shall follow the District's procedures for identifying, assessing and exiting English language learners.

7.10 Education of students with disabilities.

- a. The District shall provide all special education support services to students at the School, except that the School reserves the right to hire its own special education teacher(s) subject to review of licensing, and with the approval of the Executive Director of Student Services. The District shall assign other special education support staff as necessary to meet student needs. The School shall staff its special education personnel applying the same staffing formula used within other District schools. Therefore, special education services at the School shall be commensurate with those provided at other District schools.
- b. The cost for special education services provided by the District pursuant to Section 7.10.A above is described in Attachment 12. District services for special education shall include being responsible for providing and paying the cost of defense of any and all charges, complaints or investigations concerning special education by the Office for Civil Rights (OCR), the Department's Federal Complaints Officer, or IDEA due process proceedings. The District and the School agree that enrollment at the School is a choice and as such students with disabilities are generally not eligible for transportation services. Should transportation be required for a student with disabilities, it shall be the responsibility of the District.
- c. The School agrees to comply with all District Board policies and regulations and the requirements of federal and state laws and regulations concerning the education of children with disabilities, and shall provide for the attendance of any School employees who should be present at any meetings at which IEPs are developed or modified. If the School and the District disagree as to the correct interpretation or application of a statute or regulation concerning the education of students with disabilities, the District's position shall control.
- d. The District and the School shall jointly direct the development and/or modification of any IEP for special education students of the School. The District's Executive Director of Student Services, or designee, shall maintain the same administrative responsibilities and authority in the School as in all other District special education programs and

services. The School shall use District special education forms and procedures and shall document compliance with the requirements of federal and state law, including procedural due process. The District shall respect the School's curriculum, instructional program, and mission in the development of IEPs for students enrolled in the School.

- e. The School's special education teachers are required to participate in monthly staff meetings sponsored by the District and newly hired special education teachers shall attend District orientation sessions during the fall semester following their employment and be supported by a mentor selected by the Executive Director of Student Services throughout the first year of employment.
- f. The District or the School may identify from time to time changes to the educational program of the School that (a) are reasonably necessary to comply with applicable law for educating students with disabilities, or (b) provide cost savings or other benefits in connection with educating students with disabilities. After good faith discussion of these changes with the School, the District shall have the right to require such changes necessary to comply with law, and shall have the right to request other changes on behalf of students with disabilities.
- g. Special education programs and services shall be available to each student as part of the regular school day in accordance with the least restrictive environment mandate of federal and state law.

Section Eight: Financial Matters

8.1 Revenues.

- a. District per pupil revenue funding. In each fiscal year during the term of this Contract, the District shall provide 100% of PPR to the School minus the following:

The actual amount of the School's per pupil share of the central administrative overhead costs, as provided by law or as agreed to, in writing, by both Parties in any subsequent written agreement, less deductions for purchased services, less other deductions as provided herein and adjusted as provided herein. District per pupil revenues shall have the meaning defined in § 22-30.5-1 12(2)(a.5), C.R.S. Any subsequent CDE audits of District pupil counts and per pupil revenue that impact the funding received by the School, shall be reflected as an adjustment to subsequent payment from the District to the School.

The District, upon request of the School, shall allow the School to contest any adverse count audit in the name of the District through the administrative appeals process. The District may make financial adjustments effective as of the date of any final audit report, notwithstanding an administrative appeal. In addition, the Parties may modify this paragraph (8.1) if agreed to in writing.

- b. Mil Levy funds. The District shall pay to the School its proportionate share of the Mil Levy Override Funds for which it is eligible in accordance with the District Board's Resolution dated March 2, 2010. The Parties acknowledge that the School's eligibility for Mil Levy Override Funds may be restricted in their use and distribution in the

manner approved by the voters. The School agrees to use such funds in accordance with District guidelines. In any dispute over eligibility for funding and appropriate use of funds, the District's position shall prevail. Funds shall be made available to the School on the same schedule that they are made available to other District schools.

- c. Federal categorical aid. Each year the District shall provide services to the School required under applicable federal Elementary and Secondary Education Act funding (e.g. Title I, Title II, Title III, Title IV and Title V) in accordance with §22-30.5-112 C.R.S.. Schools may apply for direct federal funding through the District as required by law. Upon approval of their plans for such funds either by the District or the Colorado Department of Education, funds shall be distributed on a documented monthly expenditure reimbursement basis.
- d. State categorical aid. Each year the District shall provide services to the School required under any applicable state categorical funding statutes. Schools may apply for direct state funding through the District as required by law. Upon approval of their plans for such funds either by the District or the Colorado Department of Education, funds shall be distributed on a documented monthly expenditure reimbursement basis.

8.2 Disbursement of Per Pupil Revenue.

- a. Disbursement of District per pupil revenue funding. Commencing on July 1 of each fiscal year of the contract term, District per pupil revenue funding as described in Section 8.1.A shall be disbursed to the School in monthly installments, subject, however, to annual appropriation and the District's receipt of the funding. July through November funding shall be based on the School's enrollment projections submitted in accordance with Section 8.4. Funding for December and subsequent months of each fiscal year shall be adjusted in accordance with Section 8.2.B. Funds shall be disbursed within five days of being received by the District.
- b. Adjustment to funding. The District's disbursement of funds shall be adjusted as follows: December of each year, funding may be revised based on the number of FTE pupils actually enrolled at the School as determined at the October 1 count and included in the official membership count, and to reflect any change in PPR, positive or negative, so that the overall funding for the year is equal to the PPR provided for in this District and not otherwise deducted. In addition, to the extent that the District experiences any reduction or increase in state equalization support by a legislative rescission or other action, proportionate reductions or increases shall be made to the School's funding. Any adjustments to funding after the December payment so that funding is equal to the PPR provided for in this Contract shall be made by direct payment to the School or the District.

- 8.3 Budget. On or before June 1st of each year, the School shall submit to the District its proposed balanced budget for the following school year for District review for statutory compliance and compliance with the terms and conditions of this Contract. The budget shall be prepared in accordance with the state-mandated chart of accounts. The budget as approved by the Charter Board and any subsequent approved revisions shall be submitted to the District along with the

Charter Board resolution approving the budget or budget revision. A material violation of this may result in the District initiating remedies described in Section 3.6.

- 8.4 Enrollment projections. Beginning with its second year of operation, the School shall provide the District with its latest and best estimates of its anticipated enrollment for the next school year by December 1, along with any discussion or plans under consideration for any increase or decrease of enrollment greater than 10 percent of the official membership for the current school year. It is agreed upon by the parties that the purpose of this Section is to provide information to allow the District to prepare its future budgets, and that any information provided under this Section shall not be used by the District for the purpose of restricting the School's enrollment or otherwise inhibiting the growth of the School.
- 8.5 TABOR Reserve. The School's ending fund balance shall comply with the emergency reserve requirements of Article X, Section 20 of the Colorado Constitution ('TABOR Reserve'). The District shall credit the School's ending fund balance in each fiscal year the per pupil portion of the District's TABOR Reserve represented by the School's funded enrollment based on the prior year's October membership. The School shall be charged, as an allocated cost, its pro-rata share of any required TABOR Reserve increases.
- 8.6 Contracting. The School shall not extend the faith and credit of the District to any third person or entity. The School acknowledges and agrees that it has no authority to enter into a Contract that would bind the District, and the School's authority to Contract is limited by the same provisions of law that apply to the District. Unless otherwise agreed in writing by the District, each Contract or legal relationship entered into by the School shall include the following provisions:
- a. The contractor acknowledges that the School is not an agent of the District, and accordingly contractor expressly releases the District from any and all liability under this agreement.
 - b. Any financial obligations of the School arising out of this agreement are subject to annual appropriation by the Charter Board and the District.
- 8.7 Annual audit and trial balance. The School shall undergo an independent financial audit conducted in accordance with governmental accounting standards and GASB #34 performed by a certified public accountant each fiscal year. The results of the audit shall be provided to the District in draft form by September 1st, with a final audit by October 12th of each year. The School shall pay for the audit. In addition, the School shall transmit the final trial balance to the District using the CDE chart of accounts with the submission of the annual independent financial audit. If such audit is not received by October 12th of each year, it shall be considered a material breach of Contract and the School shall have 10 business days, or such other time as the parties may agree, to cure such breach.
- 8.8 Quarterly reporting. The School shall prepare quarterly financial reports for the District in compliance with 22-45-102(l)(b), C.R.S. Such reports shall be submitted to the District no later than 45 days following the end of each quarter except that all fourth quarter and year-end reports shall be submitted with the annual independent financial audit.

8.9 Non-commingling. Assets, funds, liabilities and financial records of the school shall be kept separate from assets, funds, liabilities, and financial records of any other person, entity, or organization.

8.10 Encumbrances and borrowing. During the term of this Contract, the School shall not encumber any of its assets without the written permission of the District.

8.11 Loans. No loans may be made by the School to any person or entity for any purpose, except that the Charter Board may permit, in cases of hardship, advances of not more than one month of employee pay.

Section Nine: Personnel

9.1 Employee status. All employees hired by the School shall be employees of the School and not the District. All employee discipline decisions shall be made by the School. The District shall have no obligation to employ School employees who are released or leave the School. Other terms of the employment relationship are described in the Employee Handbook submitted as part of the School's charter application. The Handbook may be amended or revised at the discretion of the School.

Section Ten: Service Contracts with the District

10.1 Direct costs. The School and the District agree to negotiate payment to the District of the School's share of the direct costs incurred by the District for schools pursuant to §22-30.5-112(2)(a.9)(b.5), C.R.S. Such negotiations shall be concluded by June 15th of the year preceding that to which the costs apply.

10.2 District services. Except as is set forth in Attachment 17, which provides for the purchase of special education services, and any subsequent written agreement between the School and the District, or as may be required by law, the School shall not be entitled to the use of or access to District services, supplies, or facilities. Such agreements by the District to provide services or support to the School shall be negotiated annually and subject to all terms and conditions of this Contract, except as may be otherwise be agreed in writing. Such agreements shall be finalized 3/15 of the fiscal year preceding that to which the purchased services apply, unless otherwise agreed to by both parties.

Section Eleven: Facilities

11.1 Location. During the term of this Contract, the School and any company on behalf of the School shall not establish any educational programs at any location other than the initial location of the school. The School may move its location only with the written approval of the District. Any requested change in location shall be consistent with the application and the School's mission. The School shall be responsible for the construction/renovation and maintenance of any facilities owned or leased by it.

11.2 Use of District facilities. The School may not use District facilities for activities and events without prior written consent from the District.

- 11.3 Impracticability of use. If use by the School of a facility is rendered impracticable by any cause whatsoever, or if the funds necessary to construct/renovate or upgrade a facility cannot be secured, the District shall not be obligated to provide an alternative facility for use by the School to operate the School.
- 11.4 Long-range facility needs. When the District considers the submittal of ballot issues to its voters regarding future tax increases for either bonded indebtedness or capital construction, it shall invite the School to participate in discussions regarding such possible ballot issues to also meet the long-range capital facility needs of the School.

Section Twelve: Charter Renewal, Revocation and School-Initiated Closure

- 12.1 Renewal timeline and process. The School shall submit its renewal application by September 1 of the year before the School's Contract expires. The District Board of Education shall act on the renewal application by resolution no later than December 1 of the year before the School's Contract expires following a public hearing where the School shall have the opportunity to address the District Board about its renewal request. If the District Board decides to not renew the Contract, it shall detail the reasons in its resolution.
- 12.2 Renewal application contents. In addition to contents required by law, the renewal application may include comments and additional information provided by the School about its progress toward meeting the District's accreditation indicators.
- 12.3 Criteria for renewal or non-renewal and revocation. The District may terminate, revoke or deny renewal of the Contract for any of the grounds provided by state law, §22-30.5-110 (3), C.R.S., as they exist now or may be amended or material breach of this Contract.
- 12.4 Termination and appeal procedures. The District shall provide the School written notice of the grounds for termination, which may be considered by the District Board after receiving the written recommendation of the superintendent. Termination shall not take effect until the School has exhausted its opportunity to appeal such decision to the State Board of Education. The District may impose other appropriate remedies (see Section 3.6) for breach of this Contract, including, but not limited to, revocation of waiver(s) and withholding of funds.
- 12.5 School-initiated closure. Should the School choose to terminate this Contract before the end of the Contract term, it may do so in consultation with the District at the close of any school year and upon written notice to the District given at least sixty (60) days before the end of the school year.
- 12.6 Dissolution. In the event the School should cease operations for whatever reason, including the non-renewal or revocation of this Contract, the School agrees to continue to operate its educational program until the end of the school year or another mutually agreed upon date. The District shall supervise and have authority to conduct the winding up of the business and affairs for the School; provided, however, that in doing so, the District does not assume any liability incurred by the School beyond the funds allocated to it by the District under this Contract. Should the School cease operations for whatever reason, the District maintains the right to continue the School's operations as a District facility until the end of the school year. The District's authority hereunder shall include, but not be limited to, 1) the return and/or

disposition of any assets acquired by purchase or donation by the School during the time of its existence, subject to the limitations of Section 12.8 below and 2) reassignment of students to different schools. School personnel and its Charter Board shall cooperate fully with the winding up of the affairs of the School including convening meetings with parents at the District's request and counseling with students to facilitate appropriate reassignment.

- 12.7 Return of property. In the event of termination or dissolution, all property owned by the School that was purchased in whole or in part with funding provided by the District, including, but not limited to, real property, shall be returned to and shall remain the property of the District. Notwithstanding the above, the District shall not have the right to retain property leased by the School, unless the District chooses to comply with the terms of that lease. All non-consumable grants, gifts and donations or assets purchased from these revenue sources shall be considered the property of the School unless otherwise identified by the donor in writing. Assets purchased exclusively with tuition paid by parents for a preschool program operated by or in conjunction with the School shall not be subject to this paragraph. Assets not purchased with public funding provided by the District may be donated to another mutually agreeable not for-profit organization.

Section Thirteen: General Provisions

- 13.1 Order of precedence. In the event of any conflict among the organic documents and practices defining this relationship, it is agreed that this Contract shall take precedence over policies of either party and the Application; applicable policies of the District Board that have not been waived shall take precedence over policies and practices of the School and the Application; and policies of the School and mutually-acceptable practices developed during the term of the charter contract shall take precedence over the Application.
- 13.2 Amendments. No amendment to this Contract shall be valid unless ratified in writing by the District Board and the Charter Board and executed by authorized representatives of the parties.
- 13.3 Merger. This Contract contains all terms, conditions, and understandings of the parties relating to its subject matter. All prior representations, understandings, and discussions are merged herein and supersede by this Contract.
- 13.4 Non assignment. Neither party to this Contract shall assign or attempt to assign any rights, benefits, or obligations accruing to the party under this Contract unless the other party agrees in writing to any such assignment. Such consent shall not be unreasonably withheld, conditioned or delayed.
- 13.5 Governing law and enforceability. This Contract shall be governed and construed according to the Constitution and Laws of the State of Colorado. If any provision of this Contract or any application of this Contract to the School is found contrary to law, such provision or application shall have effect only to the extent permitted by law. Either party may revoke this Contract if a material provision is declared unlawful or unenforceable by any court of competent jurisdiction or the parties do not successfully negotiate a replacement provision. The parties agree, upon the request of either, to meet and discuss in good faith any material changes in law that may significantly impact their relationship.

13.6 No third-party beneficiary. The enforcement of the terms and conditions of this Contract and all rights of action relating to such enforcement shall be strictly reserved to the District. Nothing contained in this Contract shall give or allow any claim or right of action whatsoever by any other or third person. It is the express intent of the parties to this Contract that any person receiving services or benefits hereunder shall be deemed an incidental beneficiary only.

13.7 No waiver. The parties agree that no assent, express or implied, to any breach by either of them of any one or more of the provisions of this Contract shall constitute a waiver of any other breach.

13.8 Notice. Any notice required, or permitted, under this Contract, shall be in writing and shall be effective upon personal delivery (subject to verification of service or acknowledgement of receipt) or three days after mailing when sent by certified mail, postage prepaid to the Principal for notice to the School, or to the designated District representative for notice to the District, at the addresses set forth below. Either party may change the address for notice by giving written notice to the other party.

District Address: Pat McGraw, Exec. Dir. Development & Innovation
Douglas County School District
312 Cantril Street
Castle Rock, CO 80104

School Address: (to be provided to the District within 10 days of such location being identified)

13.9 Severability. If any provision of this Contract is determined to be unenforceable or invalid for any reason, the remainder of the Contract shall remain in full force and effect, unless otherwise terminated by one or both of the parties in accordance with the terms contained herein.

13.10 Interpretation. In the event of any disagreement or conflict concerning the interpretation or enforcement of this Contract, the Application, and District Board policies, procedures, regulations, or other requirements, unless waived, compliance by the School shall be required and measured in the same manner as may be applied and expected by the District of otherwise-comparable District schools.

IN WITNESS WHEREOF,

BEN FRANKLIN CHARTER SCHOOL

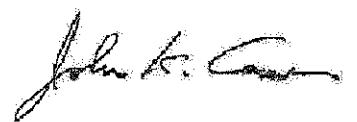
BY: _____

For the Ben Franklin Charter School


ATTEST: _____

DOUGLAS COUNTY SCHOOL DISTRICT, RE-1

By:



President
Board of Education

ATTEST:  _____