

MEMORANDUM OF UNDERSTANDING BETWEEN

Nevada County Superintendent of Schools (NCSOS)

and the

Nevada County Board of Education (NCBOE)

and

*Bitney College Preparatory High School*

This Agreement or Memorandum of Understanding (“MOU”) is executed by and between the Nevada County Superintendent of Schools (hereinafter referred to as the “NCSOS”) and the Nevada County Board of Education (hereinafter referred to as “NCBOE”) and Bitney College Prep (hereinafter referred to as the “Charter School”). The County Superintendent (hereinafter referred to as the “Superintendent”) and the Charter School are collectively referred to as the parties.

RECITALS:

- A. The NCSOS and the NCBOE are local educational agencies existing under the laws of the State of California.
- B. The State of California enacted the Charter Schools Act in 1992 authorizing the creation of charter schools with the intent that the schools improve student learning through a variety of means, including increased learning opportunities, innovative teaching methods, expanded choice for parents, and performance-based accountability.
- C. By approving the petition, NCBOE becomes the granting agency of the Charter School. This Agreement is intended to outline the parties’ agreements governing their respective fiscal and administrative responsibilities, their legal relationship and other matters of mutual interest not otherwise addressed or resolved in the terms of the Charter School’s charter. In the event the Charter and the MOU differ, the MOU shall prevail.
- D. Charter School will operate as part of a cooperative of other charter schools (or non profit public benefit corporation as applicable to charter) sponsored by the NCBOE. This cooperative fosters fiscal prudence through the use of economies of scale while allowing autonomy for each of the charters involved with the cooperative (hereinafter referred to as “Cooperative”). The charter school will annually declare to be direct or locally funded by May 31 and if the funds come directly to the schools the charter will deposit funds with the County Treasurer for the duration of this MOU.

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

AGREEMENTS:

I. TERM AND RENEWAL

- A. This agreement shall commence July 1, 2010 and shall cover five academic years or until the expiration of the Charter School's charter. The Agreement is subject to termination during the term or any renewal as set forth in this Agreement.
- B. Any modification of this Agreement must be in writing and executed by duly authorized representatives of the parties specifically indicating the intent of the parties to modify this MOU. Unless otherwise agreed, all modification and amendment of the Agreement shall take effect in the school year following the school year of such amendment.
  - 1. The duly authorized representative of the Charter School is the Director/Principal.
  - 2. The duly authorized representative of the NCBOE is the "Superintendent" or designee.
  - 3. For purposes of amendment of the MOU, the NCBOE is required to take action.
  - 4. The parties agree to review this Agreement annually. By February 1, of the then current year, any party may present proposed revisions to the MOU. If there is no agreement by March 30 of the current year then the existing MOU will continue in effect until mutually modified or amended. Notwithstanding the foregoing, the MOU shall expire upon expiration of the Charter or revocation of the Charter, in compliance with the provisions of the Charter School Act.
  - 5. Notwithstanding anything in this Agreement to the contrary, the NCBOE reserves the right of approving amendments and/or revoking the Charter as specified in the Charter Schools Act.
  - 6. The Charter School may terminate this agreement by providing notice to the NCSOS by March 1 of the school year preceding the school year in which the Charter School wishes to terminate this agreement.
- C. Any proposed changes to the approved petition (all elements as stated in ED 47605) are deemed to be a material amendment to the petition and may not be made without prior written approval from NCBOE.

D. The Charter School will provide 30 days written notification to NCSOS of proposed changes in the following areas:

1. Proposed changes in enrollment that increase or decrease by more than 25 percent of the previous year's CBEDs enrollment.
2. The opening of new facilities or change of location for existing facilities, including school sites, resource centers, meeting space or other satellite facility.

## II. DESIGNATION OF SCHOOL

- A. The Charter School formed pursuant to the Charter shall be known as Bitney College Prep HS and shall be referred to as the Charter School. The charter council of the Charter School shall be responsible for all functions of the Charter School subject to the terms and conditions set forth in this Agreement, the Charter, and the Bylaws of the Charter School.
- B. Grade Levels: The Charter School shall serve grades as specified in the charter petition and shall follow all applicable laws regarding maximum age limitations for charter schools.
- C. The parties recognize and agree that the Charter School shall admit all students regardless of race, religion, sex, sexual orientation, disability or ethnic origin and that such provisions of non-discrimination shall apply to employment.

## III. LEGAL RELATIONSHIP

- A. The Charter School shall be organized as a locally funded or direct funded charter school under the NCSOS. The Parties recognize that the charter school is a separate legal entity under the control and direction of its own corporate Board of Directors as outlined in the Charter (referred to as the Charter Council), the Charter Schools Act and this Agreement and is independent of NCSOS. If the charter school is operated by a California non-profit public benefit corporation in compliance with Education Code Section 47604, the school will operate autonomously from the NCBOE, as outlined in the charter. Pursuant to California Education Code Section 47604(c), a school district or county office of education approving a charter school to be operated as a nonprofit public benefit corporation is not liable for the debts or obligations of the charter school, or for claims arising from the performance of acts, errors, or omissions by the charter school, if the authority has complied with all of its oversight responsibilities required by law, including, but not limited to, those required by section 47604.32 and Subdivision (m) of section 47605.
- B. The parties recognize that the Charter School is a legal entity under the control and direction of the charter council as outlined in the Charter, the Charter Schools Act and this Agreement. Therefore, neither NCSOS nor

NCBOE shall be liable for the debts and obligations of the Charter School.

- C. The parties agree and understand that all employees of the Charter School shall be employees of the Charter School. The Charter School shall be the employer for purposes of the Educational Employment Relations Act as provided in Education Code Section 47605.6(b)(5)(M).
- D. With respect to its operations under this Agreement, the Charter School shall, to the fullest extent permitted by law, hold harmless, indemnify, and defend the Board of Education and Superintendent, their respective officers, directors, agents, affiliates and employees from and against any and all claims, demands, actions, suits, losses, liability expenses and costs including, without limitation, attorneys' fees and costs arising out of injury to any persons, including death or damage to any property caused by, connected with, or attributable to the willful misconduct, negligent acts, errors or omissions of the Charter School or its officers, employees, agents and consultants under this Agreement, excepting only those claims, demands, actions, suits, losses, liability expenses and costs caused by the sole negligence or willful misconduct of the Board of Education and the Superintendent, or their respective officers, directors, agents, affiliates and employees.
- E. With respect to the operations under this agreement, NCSOS shall, to the fullest extent permitted by law, hold harmless, indemnify and defend the Charter School, its respected officers, directors, agents, affiliates, and employees from and against any and all claims, demands, actions, suits, losses, liability expenses and costs including, without limitation, attorney's fees and costs arising out of injury to any persons, including death or damage to any property caused by, connected with, or attributable to the willful misconduct, negligent acts, errors or omissions of NCSOS, or its officers, employees, agents and consultants under this agreement, excepting only those claims, demands, actions, suits, losses, liability expenses and costs caused by the sole negligence or willful misconduct of the Charter School or their respective officers, directors, agents, affiliates and employees.

#### IV. INSURANCE AND RISK MANAGEMENT

The Charter School will ensure that appropriate insurance coverage is in place prior to commencing instruction to students.

- A. Student Insurance: Charter School may choose to provide student accident insurance at their expense or at the expense of the students choosing to enroll.
- B. Workers' Compensation. The cost of the premium shall be the responsibility of the Charter School. The amount of coverage shall be as required by law.

- C. General Liability and Property: The cost of the premium shall be the responsibility of the Charter School. The amount of General Liability coverage shall be at least \$3 Million in total general liability insurance. The deductible shall not exceed \$2,000. Property Insurance shall be for replacement value of all assets.

## V. CHARTER SCHOOL MANAGEMENT

- A. Charter Council. The activities and affairs of the Charter School shall be conducted and all powers shall be exercised by or under the direction of the Charter School's Charter Council. The Charter Council may delegate the activities of the Charter School to any person or persons or committee, provided that the activities and affairs of the Charter School shall be managed and all powers shall be exercised under the ultimate direction of the Charter Council.
- B. Officers. The Charter School may have such officers as the Charter Council may determine necessary as identified in the charter petition.
- C. Brown Act: The Charter Council shall comply with the Brown Act.
- D. Conflict of Interest: All charter council members shall complete and submit the Form 700 paperwork according to statutory deadlines.
- E. Public Records: In addition, the Charter School understands and agrees that all of its records that relate in any way to the operation of the Charter School are public records subject to the requirement of the Public Records Act (Government Code Section 6250 et. seq.) as well as Education Code Section 47604.3.
- F. The Charter School shall use its best efforts to provide authorized entities and persons access to facilities during normal business hours for the purpose of reviewing student records, including, but not limited to student transcripts and attendance records located within the facility. Authorized entities and persons include the following: the Charter School, the NCSOS, the California Department of Education, auditors, and law enforcement.
- G. The Charter School shall provide copies of all policies and procedures applicable to the Charter School to the NCSOS promptly upon adoption by the Charter Council, in so far as they may differ from those contained within the Charter, which was already approved by the NCSOS and Board of Education.

## VI. HUMAN RESOURCES MANAGEMENT

- A. All employees of the Charter School shall be considered employees of the Charter. The Charter School shall have responsibility for employment, management, dismissal and discipline of its employees. The Charter School shall adopt and periodically review/update comprehensive personnel policies.

- B. The Charter School will conform to the laws regarding background checks and fingerprinting as applicable.
- C. The Charter School shall participate in STRS and PERS.
- D. All contracts for employment and salary schedules for Charter School employees must receive approval from the Charter Council.
- E. The Charter School will comply with the NCLB highly qualified teacher requirements.
- F. Health and Welfare Benefits for employees: Health and welfare plans offered to Charter School employees shall be approved by the Charter Council. The Charter Council shall determine the benefit cost contribution cap contributed by the Charter School for all employees. The Charter school shall select one of possibly two carriers used by the other members of the cooperative.

#### VII. OVERSIGHT

- A. As provided in the Education Code, the Charter School shall pay the Superintendent for its actual costs of supervisory oversight not to exceed 1% of all Charter School General Purpose and Categorical Block Grant revenues according to the adopted budget and adjustments made at first and second interim, as defined by Education Code Section 47613 (a) and (f), on an annual basis. The NCSOS shall invoice the Charter School the annual fee in twelve (12) equal payments.
- B. Oversight and monitoring of the Charter School shall be in conformance with the terms of the Charter. NCSOS shall review the oversight tool each year with the Charter School. An annual review will be conducted at a mutually agreed upon time.

#### VIII. FISCAL CONTROLS

The Charter School shall adopt and apply generally accepted accounting principles and shall adopt policies to ensure the Charter School's funds are used to most effectively support the Charter School's mission and to ensure that funds are budgeted, accounted for, expended, and maintained in an appropriate fashion. Such policies will include, but not be limited to, principles that ensure that: (1) expenditures are authorized by an accord with amounts specified in the Charter Council's adopted budget; (2) the Charter School's funds are managed and held in a manner that provides a high degree of protection of the Charter School's assets; and (3) all transactions are recorded and documented in an appropriate manner that allow reporting to the State as required by the County Office of Education or State Department of Education.

Budget Monitoring: To the extent required by charter school law, except where specifically noted in the Petition, Annual Business Service Agreement, or this

MOU, the Charter School shall develop and monitor its budget in accordance with the annual budget development and monitoring calendar to be developed by the Charter School, in coordination with NCSOS. The charter school shall provide necessary documentation so that NCSOS can complete fiscal solvency review as they do school districts within the County. Corrective action plans shall be completed to remedy any problems identified during the review.

Segregation of Duties. The Charter School will develop and maintain simple check requests and purchase order forms to document the authorization of all non-payroll expenditures. All proposed expenditures must be approved by the Director/Principal, or designee, who will review the proposed expenditure to determine whether it is consistent with the Charter School adopted budget. All transactions will subsequently be submitted by the Charter School to the Charter Council for review and approval at a regularly scheduled meeting.

Property Inventory. The Charter School shall establish and maintain an inventory of all non-consumable goods and equipment with the original cost of over \$1,500. This inventory shall include the original purchase price and date, a brief description, vendor name, serial numbers, and other information appropriate for documenting the Charter School's assets. Property will be inventoried by the Charter School on an annual basis and lists of any missing property shall be presented to the Charter Council.

Reserves. The Charter School shall maintain a minimum state-mandated fund balance reserve of at least 3% of total budgeted expenditures. These funds must be unrestricted funds.

Other Fiscal Control Policies. The Charter School shall develop and maintain other fiscal control policies as recommended by independent certified public accountants or the Superintendent.

Cash Management: The Charter School, shall maintain adequate cash balances on a monthly basis to cover all financial obligations.

## IX. FUNDING

- A. To the extent that the Charter School is required to submit records or information to NCSOS in order to confirm funding, those records must be prepared by the Charter School in conformance with County procedures.
- B. In addition to the block grant funding specified below, the parties recognize the authority of the Charter School to pursue additional sources of funding.
  - 1. The Charter School shall cooperate fully with the Superintendent in application made by the Superintendent on behalf of the students of the Charter School.

2. The Charter School agrees to comply with all regulations related to expenditures and receipt of such funds.
  3. It is recognized that the Charter School may apply for private/grant funding. Any application that includes the NCBOE or the Superintendent shall be approved in advance by the appropriate party.
- C. The parties agree that the block grant funding entitlement per student attending the Charter School shall be calculated in accordance with Education Code Section 47634.
  - D. The Charter School agrees that all revenue shall only be used for the provision of educational services for students enrolled in and attending the Charter School and shall not be used for purposes other than those set forth in the approved charter and any authorized amendments.
  - E. In the event that the NCSOS and NCBOE seeks and receives a voter approved bond, parcel taxes, etc., the Charter School shall have no entitlement to any portion of the funds unless otherwise negotiated in advance or unless otherwise required by law. The Charter School agrees that it has no entitlement to funds currently being received, if any, by the NCSOS under former parcel tax or bond elections.
  - F. The Charter School agrees that it shall establish a fiscal plan for repayment of any loans received by the Charter School in advance of receipt of such loans. It is agreed that all loans sought by the Charter School shall be authorized in advance by the Charter Council of the Charter School and shall be the sole responsibility of the Charter School and the NCSOS shall have no obligation for repayment. The Charter School shall also provide advance written notice of deposit of any sums that are loans. The Charter School shall notify NCSOS of any debt obligation and how it intends to meet the repayment terms prior to entering into any debt agreements.

#### X. LEGAL SERVICES/OTHER SERVICES

- A. The Charter School will be responsible for procuring its own legal counsel and the costs of such service.
- B. The Charter School reserves the right to subcontract any and all services specified in this Agreement to the Superintendent and/or to public or private subcontractors as permitted by law.

#### XI. FACILITIES

- A. The Charter School will comply with existing local health and safety codes with respect to its facilities.
- B. The Charter School recognizes that it must provide facilities that conform with the Americans with Disabilities Act and any other federal or State requirement that may be applicable to charter schools.

- C. When the Charter School moves to a new facility, the Charter School shall obtain a Certificate of Occupancy showing that the facility has been cleared for student occupancy by all appropriate local authorities. This shall occur prior to the start of classes for all locations where students gather. A pre-opening site visit will be conducted by the authorizer.

XII. EVALUATION OF EDUCATIONAL PROGRAMS/CONFORMANCE TO CHARTER

- A. The Charter School agrees to administer current statewide performance assessments. Results from such statewide assessments shall be provided to the Superintendent.
- B. The Charter School will comply with all state testing requirements.
- C. The Charter School shall follow the direction of the California Department of Education regarding the applicability of the Immediate Intervention/Underperforming Schools Program.
- D. On or before April 30 of each year, the Charter School will post its SARC on the School website (Article XVI, Section 8.5e California Constitution).

XIII. FERPA (FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT)

The Charter School hereby designates the Superintendent, or designee as having a legitimate educational interest in educational records such that they are entitled to access to education records under 20 U.S.C.A. 1232g, the Family Educational Rights and Privacy Act and California Education Code 49076(b)(6). The Charter School and Superintendent and its officers and employees shall comply with the Family Educational Rights and Privacy Act at all times. The Charter School shall require that students sign an acknowledgement of this right on student enrollment forms.

XIV. SPECIAL EDUCATION SERVICES/504

The following provisions govern the application of special education to Charter School students:

- A. It is understood that all children will have access to the Charter School and no student shall be denied admission due to disability. The Charter School shall be solely responsible for compliance with Section 504.
- B. The Charter School agrees to implement a Student Study Team Process, a regular education function, to monitor and guide referrals for Section 504 and special education services using Nevada County SELPA 504 guidelines.
- C. The Superintendent and the Charter School agree to implement and comply with the IDEA.

- D. The Charter School shall sign a “Declaration of Compliance” each August and forward to Superintendent for filing.
- E. The Charter School shall be a Public Charter School within the NCSOS according to the definition as outlined in the SELPA document. The Charter School may request to become an LEA within the SELPA following established procedures.

XV. CHARTER EXIT/CLOSURE:

The NCSOS is vitally interested in ensuring the Charter School continues to serve its students. If, upon termination of this agreement, the Charter School intends to continue operations through another sponsor, the following elements will be addressed as follows:

1. The Charter School will provide written notification in accordance with section I.B(3) above;
2. The NCSOS will not release the Charter School with existing debt without a mutually agreed upon method and time frame for repayment;
3. The NCSOS will not release the Charter School with a negative fund balance without a mutually agreed upon method and time frame for the repayment of the negative amount;
4. The Charter School will be allowed to retain all of its physical assets, instructional materials, and positive fund balance, less accrual amounts not collected or expended. The NCSOS will provide the Charter School a detailed accounting of all accrual amounts still awaiting collection or expenditure.
5. No later than December 15<sup>th</sup>, in the fiscal year following termination, the NCSOS will provide to the Charter School a reconciliation of revenues and expenditures for the previous year.
6. The NCSOS will provide to the Charter School a detailed general ledger, at the transaction level for the previous year.

XVI. SEVERABILITY:

If any provision or any part of this agreement is for any reason held to be invalid and or unenforceable or contrary to public policy, law or statute and/or ordinance, the remainder of this agreement shall not be affected thereby and shall remain valid and fully enforceable.

XVII. NOTIFICATION:

All notices, requests, and other communications under this Agreement shall be in writing and mailed to the proper addresses as follows:

To the District at: NCSoS  
Attn: Superintendent  
112 Nevada City Highway  
Nevada City, CA 95959-3118

To the Charter School at: *Bitney College Prep High School*  
*135 Joerschke Drive*  
*Grass Valley, Ca 95945*

XVIII. NO PARTNERSHIP/ENTIRE AGREEMENT

Nothing in this Agreement is intended or shall be deemed to constitute a partnership or joint venture between any of the parties. This Agreement contains the entire agreement of the parties with respect to the matters covered hereby, and supersedes any oral or written understandings or agreements between the parties with respect to the subject matter of this agreement. No person or party is authorized to make any representations or warranties except as set forth herein, and no agreement, statement, representation or promise by any party hereto which is not contained herein shall be valid or binding. The undersigned acknowledges that she/he has not relied upon any warranties, representations, statements or promises by any of the parties herein or any of their agents or consultants except as may be expressly set forth in this Agreement. The parties further recognize that this agreement shall only be modified in writing by the mutual agreement of the parties.

Dated: \_\_\_\_\_  
*Bitney College Prep*

Dated: \_\_\_\_\_  
Nevada County Superintendent of Schools

Dated: \_\_\_\_\_  
Nevada County Board of Education