

FIRST AMENDMENT
TO
CHARTER AGREEMENT BETWEEN THE
LOUDOUN COUNTY SCHOOL BOARD AND
THE MIDDLEBURG COMMUNITY CHARTER SCHOOL

THIS FIRST AMENDMENT ("First Amendment") to the Middleburg Community Charter School contract is entered into on the 23rd day of June 2015 by and between the LOUDOUN COUNTY SCHOOL BOARD ("School Board" and also referred to as "Loudoun County Public Schools" and "LCPS"), a political subdivision of the Commonwealth of Virginia and body politic, having its principal place of business at 21000 Education Court, Ashburn, Virginia, 20148 and the MIDDLEBURG COMMUNITY CHARTER SCHOOL, a nonstock corporation, State Corporation Commission No. 773418-9, filed January 16, 2014, currently having its principal place of business at, 101 Madison Street, Middleburg, Virginia 20118 ("Charter School").

RECITALS:

WHEREAS, The School Board is the governing body of the Loudoun County School Division and is vested with the constitutional authority to supervise the schools in Loudoun County under Article VIII, Section 7, of the Constitution of the Commonwealth of Virginia; and

WHEREAS, the Virginia General Assembly has enacted Article 1.2 (Establishment of Charter Schools) of Chapter 13 of Title 22.1 of the Code of the Commonwealth of Virginia authorizing local school boards to initiate and establish charter schools; and

WHEREAS, the Charter School submitted an application to the Loudoun County School Board with a request that the application be initiated by the said School Board; and

WHEREAS, the School Board on the 10th day of September 2013 voted to initiate the application subject to final review and approval of a charter school contract by the School Board; and

WHEREAS, on the 4th day of March, 2014, pursuant to the criteria set forth in the Code of Virginia Article 2.1 of Chapter 13 of Title 22.1, the regulations of the State Board of Education and the policies, regulations, policies and procedures of the School Board, the School Board, after receiving public comment with the requisite prior statutory notice, granted this charter for the establishment of the Middleburg Community Charter School in accordance with the terms of a contract, dated May 19, 2014; and

WHEREAS, the parties have negotiated and agreed upon this First Amendment to the said contract as follows.

A G R E E M E N T:

NOW, THEREFORE, the parties hereto, intending to be bound by the terms and conditions set forth herein, and in consideration of the promises and mutual covenants and understandings of each of the parties, the parties covenant and agree as follows:

1. The above recitals are incorporated herein.
2. The terms and conditions of the said contract, dated May 19, 2014, unless otherwise changed, modified or deleted by this First Amendment shall continue and remain in full force and effect.
3. This First Amendment shall not be construed as a waiver of any rights, deficiencies, violations or breaches.
4. Change these paragraphs as noted:

2.3 Probation. In addition to the statutory and contractual authority conferred upon the School Board to revoke this agreement and charter, the School Board reserves the right to place the Charter School on probation during the term of this agreement or any subsequent term for any reason that would justify revocation or would appear to be a deficiency, violation or breach of this agreement. A deficiency, violation or breach all referred to any breach, whether material or not, of this agreement. If a deficiency is curable within a reasonable time, the School Board will offer the opportunity of probation to cure the deficiency prior to taking action to revoke the Charter School contract. If probation is exercised by the School Board, a written notice of the deficiencies, violations and breaches will be provided to the Charter School along with an opportunity of thirty (30) calendar days to submit a written remedial plan to the School Board on how the Charter School will cure the deficiency, if not time sensitive. The School Board's approval is required for the remedial plan prior to its implementation. The School Board is not required to place the Charter School on probation prior to exercising its right to suspend payments under provision 2.5 below. The School Board is also not required to place the Charter School on probation prior to revoking the charter agreement under provision 2.4 below.

2.4 Revocation. The School Board may, in its sole discretion, without the prior placement on probation as provided above, revoke this agreement and charter prior to the expiration of its then-current term, including subsequent terms, and make immediate arrangements for the education of the children to include acquiring student records and any and all student record databases and gradebooks if:

1. The Charter School violates the conditions, standards, or procedures established in this Charter contract;

2. The Charter School fails to meet or make reasonable progress toward achievement of the content standards or student performance standards in the same fashion as other LCPS elementary schools to include statewide assessments and testing.
3. The Charter School violates or breaches a material term of the charter contract;
4. The Charter School fails to meet generally accepted standards of fiscal management; or,
5. The Charter School violates any provision of law from which it has not been exempted.

2.5 Suspension of Payments. The School Board, after providing reasonable notice of a deficiency, violation or breach of this agreement including a violation of law including, but not limited to Section 22.1-136 of the Code of Virginia (school fitness for occupancy), to the Charter School, may suspend, all or a portion of, any payments owed to the Charter School until the deficiency, violation or breach is cured to the satisfaction of the School Board. "Reasonable notice" means notice that is reasonable in the circumstances as determined by the School Board in its sole discretion.

5. Music Instruction. Replace existing contract paragraph 27.0 with the following:

27.0 Personnel Matters. The employees of the Charter School who are classroom teachers shall be LCPS employees assigned to the Charter School except the following shall not be LCPS employees:

The Charter School shall identify those positions which will not be LCPS employees as soon as it is determined but no later than April 1st of each year (except for the current year in which case notification shall be as soon as possible).

Music instruction may be provided by a local vendor who shall meet any state licensure and background check requirements; or, music instruction may be provided by a LCPS employee at Charter School expense subject to school board approval. If the Charter School chooses to create an LCPS position, it must notify the school board by April 1st preceding the school year to provide the school board sufficient time to consider the request for a position.

6. English Language Learners (ELL). Replace existing contract paragraphs 31.0 through 31.8 with the following:

31.0 Special Education (SPED) and English Language Learner (ELL) Services. The Charter School is a public school under the supervision of the School Board which is the local educational agency under federal and state law.

31.1 General. The School will ensure compliance with all federal, state, and local statutes and regulations involved in educating students suspected of having an educational disability (see 34 CFR §300.111(c) (1) referencing §300.8), even though they are advancing from grade to grade, and students identified with disabilities who are in need of an Individualized Education Plan (IEP) or accommodations under Section 504. Each member of the School's IEP team (including all administrators, special educators and related service providers) shall attend any and all Special Education, database use, Student Information System (SIS) use and other training as required by the Superintendent.

31.2 Services. LCPS will be responsible for special education services for students in accordance with the Individuals with Disabilities Education Act and the Individuals with Disabilities Education Improvement Act (20 U.S.C. § 1401 et seq.), the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.), and Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.). This includes full compliance with the special education IEP team process for students suspected of having an educational disability pursuant to 34 CFR §300.111(c)(1) or those already identified with an educational disability and who qualify for specialized instruction. The Charter School shall cooperate in facilitating these efforts.

31.3 IEPs. Federal and State regulations require the regular monitoring of IEP progress on a quarterly basis. This should be aligned with the Charter School's report card and grading system. If the School suspects that a child's needs exceed the ability of the Charter School to implement a student's IEP at the Charter School, the Charter School will expeditiously contact the assigned LCPS Department of Special Education personnel for a consultation. If LCPS staff together with the School IEP team determine that the School cannot implement the IEP, an IEP team meeting will convene to determine if the IEP is appropriate, revise as necessary, and determine placement. The Charter School's failure to comply with this provision, after notice and an opportunity to cure is grounds for revocation of the charter and may also, without the need for placing the Charter School on probation, result in a suspension of payments to the Charter School and/or revocation.

Within two (2) days of the enrollment of each student, the Charter School shall supply the name of the student to the Director of Special Education to determine if the student has been found eligible for services in accordance with the Individuals with Disabilities Education Act or Section 504 of the Rehabilitation Act and to arrange services. A LCPS Special Education representative or designee will be entitled to attend and participate in all IEP team meetings and any other activities related to the provision of special education and services to students.

31.4 Due Process Requests. The Charter School will work closely with LCPS to ensure that all students suspected of having an education disability pursuant to 34CFR §300.111(c)(1) or students with Individualized Education Programs (IEPs), and students with plans under Section 504, are provided with notice and overview of their due process rights. If legal counsel is required, as determined by LCPS, then LCPS-designated legal counsel will be used and the Charter School will cooperate as needed.

31.5 Medicaid Billing. The Charter School will cooperate in submitting billing documentation to the LCPS Third Party Billing Office for all special education students who are Medicaid eligible in accordance with LCPS billing procedures. LCPS will retain the reimbursement. The Charter School will be required to maintain all Medicaid paperwork in the student's cumulative folder for six (6) years. LCPS will ensure that Medicaid providers are credentialed in accordance with state regulations.

31.6 Special Education Compliance. The Charter School shall not discriminate against students with disabilities.

31.7 ELL Services. LCPS will be responsible for and provide needed ELL services.

31.8 Consultation. LCPS and the Charter School will cooperate and work together to insure that staff assigned by LCPS to perform SPED and ELL services to do so in manner that is high quality while being supportive of the Charter School's curriculum and model to the extent possible.

7. Facility Rental. New paragraph 52.2 shall be added to the contract as follows:

52.2 Facility Rental. The parties agree that the revenue received from third parties for the rental of the facility (if not needed by the county parks and recreation department) shall be retained by the Charter School and that the Charter School is responsible for the facility during all such rentals in accordance with school board policies and this contract.

8. Field Trips. New paragraph 52.3 shall be added to the contract as follows:

52.3 Field Trips. The parties agree to work collaboratively to modify the existing field trip forms to address all of the local walking field trips within Middleburg in a single form rather than requiring multiple forms for each field trip.

9. Transportation Plan. Replace existing contract paragraphs 32.0 through 32.5 with the following:

32.0 Transportation shall be provided to Charter School students via regional hub locations. Each school year, the transportation department will develop the routing plan in consultation with the Charter School. Any and all hub locations must be located in the public right of way unless written permission is obtained by the Charter School and with the private or public land owner. LCPS must be identified as a beneficiary of the permission to enter the property. Each hub location must be proposed by the Charter School and approved by the transportation department upon a thorough evaluation of bell times, routing, transportation logistics, other factors and safety. Hub locations or changes thereof for subsequent school years must be submitted to the transportation department prior to June 1 of the previous school year. While the school board's transportation department may confer with the

Charter School about bus routes, the routing plan and other issues, the transportation department shall make all busing decisions. Charter School bell schedules shall be adjusted at the request of the transportation department.

32.1 LCPS will not provide door to door pick up of students attending the Charter School unless agreed upon otherwise. LCPS is not responsible for transportation of any student from their place of residence to any hub location or to the Charter School. For students choosing not to accept transportation via one of the hub locations, transportation remains a parental/guardian responsibility or may be provided separately by the Charter School at its expense.

32.2 ~~[Delete] For students residing outside of the core zone, transportation may be provided by the Charter School at its expense.~~

32.3 This plan applies to all students enrolled in the Charter School and the Charter School shall provide written notice of this Plan to parents and legal guardians by June 1 or when LCPS transportation approves the plan if later than June 1.

32.4 Funding Retention. Actual costs for student transportation will be retained by LCPS from the per pupil assessment installments remitted to the Charter School. Estimated costs will be determined by the transportation department based upon routing data, its costs and bus driver contract obligations and deducted from the per pupil assessment per the funding mechanism in provision 29.2 of this agreement. Actual and estimated costs include but are not limited to: fuel and maintenance cost per mile to be established by the school board (mileage to include loaded and unloaded or "deadhead" miles as appropriate), bus driver salary and benefits if the driver(s) is assigned exclusively to the Charter School route, bus driver hourly charges if the driver(s) is assigned to LCPS routes not associated with the Charter School. Special runs such as field trips would be subject to additional charges.

32.5 Inclement Weather. The Charter School will follow LCPS inclement weather closures, delays and other established or necessary procedures or actions.

10. Replace existing contract paragraph 29.2 with the following:

29.2 Funds. Subject to the terms of this agreement and the law, LCPS will remit funds subject to certain deductions calculated on an annualized basis as follows:

The annual budgeted average per pupil funding (PPF) for LCPS shall be determined by LCPS based upon the actual appropriated funding from the Board of Supervisors and reconciled (if needed) by the School Board.

The number of Charter School students to whom the annualized per pupil cost amount shall be applied shall be based on Average Daily Membership (ADM). ADM is determined twice per year—once in September and once in March in accordance State law and regulations.

LCPS will make three (3) annualized calculations per year to adjust actual Charter School funding to the ADM throughout the year: a July projected calculation of the September ADM count, an annualized calculation based on the actual September ADM count and a final annualized calculation based on the actual March ADM count in the following fashion:

- A. As early in July as reasonably possible and subject to appropriated funds, LCPS will reasonably estimate the projected September ADM count and multiply that pupil count times the PPF budgeted average per pupil funding (PPF) for LCPS.
- B. Thereafter, LCPS will calculate the Special Education and English Language Learners Services (ELL) components of that PPF and multiply those components by the projected September ADM.
- C. Next, the parties agree that the previous fiscal year U.S. Department of Education federal indirect cost rate as calculated by the Virginia Department of Education (VDOE) shall be applied to the resultant figures in Line A and of the Special Education and ELL services components in Line B above represent the indirect or general overhead portion (also known as non-school-based cost) of the budgeted average per pupil cost for the school year of the Charter School. The most currently available rate for the previous fiscal year shall be used until updated by VDOE. Any adjustments to the rate shall be made in next installment payment to the Charter School.
- D. The resultant figure from in Line A shall be reduced by the federal indirect cost rate (from Line C).
- E. The Special Education and ELL services funding in Line B shall be reduced by federal indirect cost rate (from Line C), respectively.
- F. Then, the resultant figure from Line D shall be further reduced by the resultant figures for Special Education and ELL Services from Line E.
- G. Next, the actual gross salary and the cost of all employer-paid fringe benefits, including, but not limited to, the employer contribution to the Virginia Retirement System and health care plans, for LCPS employees assigned to the Charter School will be reasonably estimated for the school year. In addition, the transportation costs as required and stated in this contract shall be reasonably estimated for the school year by the department of transportation.
- H. The resultant annualized figure from Line F shall be further reduced by the annualized collective resultant figures from Line G to arrive at the funding which will be remitted to the Charter School in equal quarterly

installments, paid to the Charter School at the first of each quarter, until the next re-calculation based upon the actual September ADM count.

- I. Once the actual September ADM count is received, the above process will be followed to recalculate the funding remitted quarterly to the Charter School. The new annualized calculation shall be to adjust the payment up or down to the current calculation in the future payments to be made. The process is repeated again after the March ADM count is received. If the March annualized recalculation would result in an overpayment to the Charter School for the current school year, then the Charter School shall be liable for the overpayment within 30 days of invoice and the overpayment, if it continues, will continue to be deducted into the following school year from funds owed, if the Charter School continues to operate. If the Charter School ceases to operate, then the overpayment shall continue to be a liability of the Charter School to the School Board.
- J. Similarly, reconciliation of transportation and salary and employer-paid fringe benefits actual costs versus estimated costs may be periodically conducted on or after September 30 each year. Any costs owed by the Charter School following the last installment payment by LCPS for the school year shall be remitted directly to LCPS within 30 days of invoice. If the Charter School ceases to operate, any overpayment or unpaid cost amount shall continue to be a liability of the Charter School to the School Board. This does not in any way waive the School Board's option to declare a breach of contract and revoke the contract for default of payment.

11. Commencement of Employment and Reassignment. The pertinent contract paragraphs identified below shall be replaced as follows:

27.1 Charter School employees who are not LCPS employees must still comply with legal requirements, including, but not limited to, background checks and proper licensure through the State Board of Education and Virginia Department of Education. For LCPS employees assigned to the Charter School, the Charter School will fully cooperate with LCPS and will follow the School Board personnel policies that address such issues as, but not limited to, hiring and termination of personnel, terms of employment and compensation, grievance procedures, evaluations and set clear expectations for employee performance and conduct consistent with School Board policies unless waived by the School Board. The Charter School shall not promise employment to any prospective employee and shall not permit the person to begin employment until all licensure, immigration, work authorization status, background checks and any other personnel matters have been officially approved by LCPS department of personnel services.

27.18 Reassignment. Only LCPS employees assigned to the Charter School have the right to be re-assigned at the end of a school year for the following school year to another LCPS

traditional public school and the Charter School may choose not to invite back for the following school year-all in accordance with LCPS policies and procedures. The Charter School and the employees shall communicate in writing their intentions to LCPS by a deadline established in advance of the first destalling/transfer opportunities as determined exclusively by the superintendent or his designee.

12. Employment of Foreign Nationals. The pertinent contract paragraph below shall be replaced as follows:

27.1 All Charter School employees, regardless of whether or ~~who~~ are not LCPS employees, must still comply with legal requirements, including, but not limited to, background checks, I-9 forms and proper licensure through the State Board of Education and Virginia Department of Education. All background checks and I-9 forms are to be submitted to LCPS for review and approval. I-9 forms shall be satisfactorily completed within three days of employment. LCPS will determine if a background check and I-9 form is satisfactory for continued employment. For LCPS employees assigned to the Charter School, the Charter School will fully cooperate with LCPS and will follow the School Board personnel policies that address such issues as, but not limited to, hiring and termination of personnel, terms of employment and compensation, grievance procedures, evaluations and set clear expectations for employee performance and conduct consistent with School Board policies unless waived by the School Board.

SO AGREED:

THE LOUDOUN COUNTY SCHOOL BOARD:

By 
Chairman of the School Board

Date: 7/1/15

Sufficient as to form:


Stephen L. DeVita
Division Counsel

SO AGREED:

MIDDLEBURG COMMUNITY CHARTER
SCHOOL, a Virginia non-stock, non-profit
corporation, doing business as a public charter
school in Loudoun County, Virginia:

By *David Hurl*
President
Middleburg Community Charter School

Date: *June 25, 2015*