

*Hillsboro Charter Academy
Fifth Amendment*

FIFTH AMENDMENT
TO
CHARTER SCHOOL AGREEMENT BETWEEN THE
LOUDOUN COUNTY SCHOOL BOARD AND
THE HILLSBORO CHARTER ACADEMY

THIS FIFTH AMENDMENT ("Fifth Amendment") is to the Hillsboro Charter Academy School contract, dated 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 HILLSBORO CHARTER ACADEMY, a nonstock, non-profit corporation, State Corporation Commission No. 7853005, filed December 5, 2015, currently having its principal place of business at, 37110 Charles Town Pike, Purcellville, Virginia 20132 ("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, as revised, be initiated by the said School Board; and

WHEREAS, the School Board on the 12th day of August 2014 voted to initiate the application subject to final review and approval of a charter school contract by the School Board; and

WHEREAS, on the 23rd day of June, 2015, 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 Hillsboro Charter Academy school in accordance with the terms of a contract, dated June 23, 2015; and

WHEREAS, the parties have entered into a First Amendment, dated March 16, 2016; a Second Amendment, dated January 19, 2017; a Third Amendment, dated January 19, 2017; and a Fourth Amendment, dated June 21, 2017; and

WHEREAS, the parties have negotiated and agreed upon this Fifth Amendment to the said contract, as amended, related to the administrative overhead, non-school based cost rate as follows.

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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, as amended, unless otherwise changed, modified or deleted by this Fifth Amendment shall continue and remain in full force and effect.
3. Neither this nor any prior amendment or agreement shall be construed as an accord and satisfaction or as any waiver of any debts, defaults, deficiencies or violations of the contract and such debts, defaults, deficiencies or violations are hereby preserved.
4. Effective for the FY 2019 funding allocable to the Charter School beginning July 1, 2018, and for subsequent fiscal years, the parties agree that Paragraph 29.2 shall be deleted and replaced with the following new Paragraph 29.2:

“29.2 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.

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- B. Next, the parties agree that the administrative fee shall be calculated at five percent (5%) of the gross budgeted average per pupil cost for the school year for the Charter School.
- C. The resultant figure from in Line A shall be reduced by the administrative fee from Line B.
- D. Next, the Special Education component of PPF shall be calculated and reduced by the administrative fee of Line B.
- E. The resultant figure of Line C shall then be reduced by the resultant figure from Line D.
- F. 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.
- G. 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 E shall be further reduced by the annualized collective resultant figures from F and 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.

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- J. Actual salary and fringe benefit costs and transportation costs will be reconciled with the estimated costs used periodically on or after September 30 of each year. Any costs owed by the Charter School after the last installment payment by LCPS for the school year shall be remitted directly to LCPS within thirty (30) days of invoice.
- K. If the Charter School ceases to operate, any overpayment from the above and any unpaid cost amount from this paragraph 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 Agreement for default of payment."

SO AGREED:

THE LOUDOUN COUNTY SCHOOL BOARD:

By 
Chair of the School Board

Date: 9/6/2018

Sufficient as to form:


Stephen L. DeVita
Division Counsel

SO AGREED:

HILLSBORO CHARTER ACADEMY, a Virginia non-stock, non-profit corporation, doing business as a public charter school in Loudoun County, Virginia:

By 
President
Hillsboro Charter Academy

Date: 9-26-2018