

CV-2020-554
Andrews



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IN THE DISTRICT COURT FOR OKLAHOMA COUNTY
STATE OF OKLAHOMA

FILED IN DISTRICT COURT
OKLAHOMA COUNTY

STATE OF OKLAHOMA, *ex rel.*,)
OFFICE OF STATE)
AUDITOR AND INSPECTOR)
)
)
Petitioner,)
)
vs.)
)
EPIC YOUTH SERVICES, LLC)
)
)
Respondent.)

MAR - 5 2020

RICK WARREN
COURT CLERK

34 _____

Case No. CV-2020-554

**MOTION FOR AN ORDER COMPELLING
COMPLIANCE WITH AN ADMINISTRATIVE SUBPOENA**

Pursuant to the Oklahoma Administrative Procedures, Act, 75 O.S. Supp. 2011, § 315(C)(1) and 74 O.S. 2011, § 215, the State of Oklahoma, *ex rel.* the Oklahoma Office of State Auditor and Inspector ("State Auditor"), requests this Court enter an Order compelling Epic Youth Services, LLC, to comply with its February 25th, 2020 Administrative Investigative Subpoena #25. (Exhibit 1). Many of the items requested in Subpoena #25 were previously requested by the State Auditor in Subpoena #3, issued on September 25, 2019, and Subpoena #14, issued on November 6, 2019. (Exhibits 2 and 3, respectively). In accordance with § 315(C)(1), the State Auditor requests the Court to cite the

Respondent to appear, and hear the matter as expeditiously as possible. In support thereof, the State Auditor submits the following brief:

I. INTRODUCTION

EPIC Youth Services, LLC ("EYS") refused to comply with an administrative investigative subpoena lawfully issued by the State Auditor. The subpoena was issued as part of a special investigative audit of EPIC Charter School and "all related entities" requested by letter dated July 19, 2019, from Oklahoma Governor Kevin Stitt. (Exhibit 4). As the management company for EPIC Charter Schools ("School"), EYS is a related entity who has custody and control of records pertaining to EPIC Charter Schools' expenditures of public funds.

Specifically, EYS has custody and control of records associated with the Learning Fund ("Fund"). The Learning Fund consists of individual student accounts funded by state dollars paid to the Schools, who then transfers those public funds to EYS. Parents may submit requests for expenditures from the student's Learning Fund account to pay for the student's various educational and extracurricular activities. EYS received approximately forty-two million dollars in state funds for the Learning Fund accounts from 2011-2019. (Exhibit 5).

EYS maintains that it is a private entity, and as such, adamantly denies that any records in its custody or control are subject to disclosure. The State Auditor disagrees with EYS' conclusion. Nevertheless, the State Auditor conferred with EYS for almost five months, over the course of issuing three subpoenas, regarding a procedure by which the records associated with the expenditure of public dollars would be disclosed, while maintaining the privacy of any private, proprietary EYS information that may be intermingled. EYS was unwilling to disclose the records in the manner necessary for the State Auditor to accurately reconcile the revenue and expenditures associated with the Learning Fund accounts. Consequently, the State Auditor was forced to issue the subpoena, and EYS refused to comply. EYS' position is not in accordance with Oklahoma law. The State Auditor has no choice but to seek an order from this Court to compel EYS's compliance with the subpoena. While a "meet and confer" session is not required by the Administrative Procedures Act, but out of an abundance of caution, counsel for the State Auditor attempted to confer with counsel for EYS prior to the filing of this motion but was unable to make contact.

II. DISCUSSION

1. The State Auditor's Investigative Subpoena is Authorized by Statute.

EYS was served with an administrative investigative subpoena on February 25, 2020. The Subpoena requested access to and production of eleven specific types of records associated with the Learning Fund, and required compliance by 12:00 p.m. on February 26, 2020. The documents sought in the subpoena are the same documents the State Auditor has been attempting to obtain via agreement over the last five months. The State Auditor is authorized by 74 O.S. 2011, § 215 to issue the subpoena. Section 215 states as follows:

The State Auditor and Inspector shall have full power and authority *for the various purposes named* to examine books, papers, accounts, bills, vouchers and any other documents, or property of any or all of the aforesaid state institutions, all *state officers and custodians of any county or state funds*, also to examine under oath, county or state officers and custodians of county and state funds aforesaid. *The State Auditor and Inspector is empowered to issue subpoenas* and administer oath *in the performance of his duty, and any persons refusing access to said examiner to any such books or papers, or any officer, clerk, employee, or other persons aforesaid, who shall obstruct access and refuse to search for any required information, or who shall in any manner hinder the examination required by this article of the records, and books of the officers of public institutions or pertaining to the county and state officers aforesaid, shall be deemed guilty of a misdemeanor and shall be liable on conviction to a fine of not more than One Thousand Dollars (\$1,000.00) or imprisonment in the county jail for a period of not more than one (1) year or by both such fine and imprisonment in the discretion of the court.*

74 O.S. 2011, § 215. (Emphasis added). The legislature emphasized the importance of the State Auditor's need to obtain records necessary for an audit by including a criminal penalty for failure to comply with the subpoena.

The various purposes for which the Auditor has authority to issue a subpoena include a Gubernatorial request pursuant to § 212(C) and § 213(C)(1) of Title 74. Section 212(C) provides:

Whenever called upon to do so by the Governor, it shall be the duty of the State Auditor and Inspector to examine the books and accounts of any officer of the state or any of the officer's predecessors. The cost of the audit shall be borne by the entity to be audited.

Section 213(C)(1) requires the Auditor to "perform a special audit on elementary, independent, and technology center school districts upon receiving a written request to do so" from certain state officials including the Governor.

Sections 215 and 213(C)(1) describe the entities subject to the Auditor's subpoena power, including "state officers and *custodians* of any . . . state records," and "any officer of the state," and independent school districts. EYS is the custodian of state records sought by the Auditor – the records of the Learning Fund accounts funded by state dollars. The EPIC staff who manage the Learning Fund accounts are officers of the state whose books and records are in the custody of EYS. "An officer is one who is vested with some portion of the function of government to be exercised for the public benefit." A.G.Opin.

80-298, citing to *Sparks v. Board of Library Trustees of Carter County*, 1946 OK 157, 169 P.2d 201. EPIC Schools are independent school districts subject to a special audit requested by the Governor, and to production of records pursuant to a subpoena issued by the State Auditor.

Further, there is no language in § 215 or elsewhere in the State Auditor's Enabling Act which prevents the Auditor, in the performance of its statutory duties, from seeking documents in the possession of private, third party entities when those documents relate to the expenditure of public funds. See *State ex rel. Uguru v. Palaibis*, 2002-Ohio-2264, ¶ 8 (State auditor's subpoena power extends to the records of a private computer company which provides its products to an entity which receives public dollars).

2. The Subpoena Satisfies the Requirements for an Enforceable Administrative Subpoena.

The Oklahoma Supreme Court, relying on decisions of the U.S. Supreme Court, established standards for review of an administrative subpoena. The Court held that, to enforce a subpoena:

[T]he agency must have a legitimate purpose for the investigation, the inquiry must be relevant to that purpose, the agency must not possess the information sought, and the agency must have adhered to the administrative procedures.

State ex rel. Oklahoma Bar Ass'n v. Gasaway, 1993 OK 133, 863 P.2d 1189, 1199.(citing to *See v. Seattle*, 387 U.S. 541 (1967)). The Court further held that:

Administrative subpoenas are to be “sufficiently limited in scope, relevant in purpose, and specific in directive so that compliance will not be unreasonably burdensome.” *Id.* (citing to *United States v. Powell*, 379 U.S. 48 (1964)).

The subpoena the State Auditor seeks to enforce meets all these criteria. As described above, the Subpoena was issued in accordance with the purposes set forth in statute, and is relevant to fulfilling those purposes. The Auditor did not possess the records they sought from EYS, and issued the subpoena in accordance with the authority granted to it by statute. The subpoena is limited in scope as it seeks only the items listed in the subpoena as they relate to the public dollars in the individual student Learning Fund accounts. The State Auditor is not seeking private proprietary information of EYS. Nonetheless, to the extent that any private proprietary information or other information protected from disclosure by law is intermingled with the public records, those records may be protected from disclosure to the public via a protective order from this Court.

3. The Records Sought by the State Auditor are Public Records Subject to the Open Records Act.

The State Auditor initially sought production of the records pursuant to an open records request. EYS refused the request, claiming that the public dollars allocated by the state to EPIC schools transformed into private funds upon transfer from the Schools to EYS. Consequently, the records associated with the expenditure

of those funds now deemed private by EYS were no longer subject to disclosure under the Open Records Act.

Contrary to EYS' assertion, the Attorney General, interpreting the Open Records Act, opined that private entities "supported in part" by public funds are subject to disclosure of records associated with "the transaction of public business, the expenditure of public funds, or the administering of public property." 51 O.S. Supp.2017, § 24A.3(1); A.G. Opin. 2017-18. The Attorney General concluded that the Open Records Act applies to a private Oklahoma Sheriff's Association who retains a portion of state fee revenue it collects from uninsured motorists in its capacity as Plan Administrator for a state program. "Those who voluntarily choose to participate in a program which is primarily supported by tax dollars cannot reasonably expect the public which funds the program will be denied the right to scrutinize the basis on which the payments are made." *Tulsa Tribune Co. v Fulton*, 1984 OK 46, ¶ 13, 696 P.2d 497, 501. (Nursing homes' cost reports and audits on file with the Oklahoma Department of Human Services were open records unless they fell within an exception).

EYS is clearly "supported in part" by public funds. EYS has a contract with Community Strategies Inc., a non-profit entity acting as the Board for EPIC schools. The contract requires the Board to pay a portion of the revenues it collects from six different state and federal government funds to EYS for services, including management of the Learning Fund. (Exhibits 6 and 7).

Finally, EYS implicitly concedes that records in its custody are public records subject to disclosure under the Open Records Act. In a marketing video created for parents of its students to explain the learning fund accounts, Epic acknowledges that the money in the accounts comes from state funds. (Exhibit 8). EYS, pursuant to its management agree with Epic Charter Schools, pays for the marketing expenses of Epic Schools.

III. CONCLUSION

The State Auditor and Inspector respectfully requests this Court to enter an order compelling Epic Youth Services, LLC to comply with the Subpoena, and for any other relief this Court deems just, equitable, or necessary, including the State Auditor's attorney fees and costs incurred in prosecuting this enforcement action.

Respectfully Submitted,



Niki Batt, OBA No. 20157
Vice Deputy Attorney General
Sandra Balzer, OBA No. 20618
Assistant Attorney General
Legal Counsel Division
OFFICE OF THE ATTORNEY GENERAL
313 North East 21st Street
Oklahoma City, Oklahoma 73105

405/521.3921
405/522.4536 – Facsimile

CERTIFICATE OF MAILING

I hereby certify that on this 5th day of March 2020, I mailed a true and correct copy of the MOTION FOR AN ORDER COMPELLING COMPLIANCE WITH AN ADMINISTRATIVE SUBPOENA by regular United States mail, postage prepaid, to:

Elizabeth A. "Libby" Scott
Lee Pugh
Crowe & Dunlevy
Braniff Building
324 N. Robinson Ave. Suite 100
Oklahoma City, OK 73102
Attorneys for Respondent

Niki S. Batt



SUBPOENA

(FOR DOCUMENTS)

IN THE NAME OF THE STATE OF OKLAHOMA

TO: Epic Youth Services, LLC (InnovatED)
Community Strategies, Inc.
Epic One-on-One Charter School
Epic Blended Charter School

SUBJECT: Subpoena #25

RE: Investigation being conducted by the State Auditor and Inspector under the authority of 74 O.S. § 212(C).

GREETINGS: You are hereby commanded, pursuant to the authority of 74 O.S. § 215, setting aside all manner of excuse and delay, to provide to the State Auditor and Inspector, at State Capitol, Room 123 in the County of Oklahoma, State of Oklahoma, by the 25th day of February, 2020, at the hour of 12:00 P.M. the following:

1. *Access to all e-mail accounts registered through epiccharterschools.org from July 1, 2014 through January 31, 2020*
2. *Credit card statements for all credit cards used to make Learning Fund purchases for the time period July 1, 2014 through January 31, 2020*
3. *QuickBooks (QBB backup files) data for Learning Fund purchases for the time period July 1, 2014 through January 31, 2020*
4. *Bank of Oklahoma Statements for 309037624 and 312373460 for the time period July 1, 2014 through January 31, 2020 (as applicable) and bank statements for any other bank account related to the Learning Fund*
5. *Access to all records documenting the \$250 technology fee or other technology related service fees charged to learning fund accounts for July 1, 2014 through January 31, 2020*
6. *Access to all vendor contracts or service agreements for goods or services purchased with the Learning Fund*
7. *Access to all records pertaining to the approval process for all Learning Fund transactions*
8. *Access to all documentation pertaining to the \$85 service fee charged to student Learning Fund accounts*
9. *Access to all Learning Fund memos, policies and procedures or other directives used in the management of Learning Fund accounts.*
10. *Access to Epicenter or other software used to manage or administer the Learning Fund*

EXHIBIT

1

11. Access to all hard copy records or scanned records documenting the expenditures of the Learning Fund from July 1, 2014 through January 31, 2020

NOTE: All records not involving direct access may be digitally presented.

The above requested records may also be submitted by:

U. S. mail to: Office of State Auditor and Inspector
Attn: Brenda Holt, Director, Special Investigative Unit
State Capitol Building
2300 N. Lincoln Blvd., Room 123
Oklahoma City, OK 73105

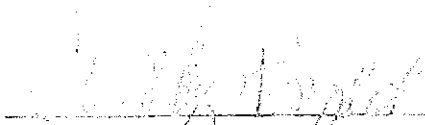
By email to: rstachowitz@sai.ok.gov

NOTICE: In the event such records cannot be provided in accordance with 74 O.S. § 215, you are hereby requested to provide a written explanation, signed under oath, specifying:

1. The name(s) and title/position(s) of the employees or other individuals who searched for and were unable to find the requested records.
2. An explanation of why the requested records either do not exist and/or are missing.
3. An explanation of what steps were taken to obtain the requested records from any outside person including, but not limited to, software vendors, contractors, banks, credit card institutions, former employees, contractors, vendors or any other person or businesses who would maintain such records in the normal course of business.

Hereof FAIL NOT, under penalty of the law.

IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of February 2020.



Cindy Byrd, CPA

Oklahoma State Auditor & Inspector

ACKNOWLEDGEMENT OF RECEIPT OF SUBPOENA

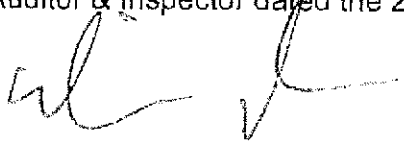
I, Jalena Ross, acknowledge that I have received Subpoena #25, for Epic Youth Services, LLC/InnovatED, from the Office of State Auditor & Inspector dated the 25th day of February 2020.

Jalena Ross
Signature

2/25/20
Date

ACKNOWLEDGEMENT OF RECEIPT OF SUBPOENA

I, William Hickman, acknowledge that I have received Subpoena #25, for Communities Strategies, Inc./Epic Blended Charter School, from the Office of State Auditor & Inspector dated the 25th day of February 2020.

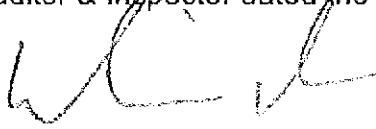

Signature

2/25/2020
Date

Hand delivered by Sherita Holt on
2/25/2020 at 1:15pm.

ACKNOWLEDGEMENT OF RECEIPT OF SUBPOENA

I, William Hoxner, acknowledge that I have received Subpoena #25, for Community Strategies, Inc./Epic On-on-One Charter School, from the Office of State Auditor & Inspector dated the 25th day of February 2020.



Signature

2/25/2020

Date

Handed to me by the SA on 2/25/2020 and I have read it
at 1:30 pm



SUBPOENA

(FOR DOCUMENTS)

IN THE NAME OF THE STATE OF OKLAHOMA

TO: Epic Youth Services, LLC

SUBJECT: Subpoena #3

RE: Investigation being conducted by the State Auditor and Inspector under the authority of **74 O.S. § 212(C)** relative and appertaining to Epic Youth Services, LLC, 4101 NW 122nd St., Oklahoma City, Oklahoma.

GREETINGS: You are hereby commanded, pursuant to the authority of **74 O.S. § 215**, setting aside all manner of excuse and delay, to provide to the State Auditor and Inspector, at STATE CAPITOL, ROOM 123 in the County of OKLAHOMA, State of Oklahoma, by the 10th day of OCTOBER, 2019, at the hour of 5:00 P.M. the following:

1. *Organizational chart for Epic Youth Services, LLC.*
2. *List of Epic Youth Services, LLC employees. For each individual, provide their job title, e-mail address, and phone number.*
3. *Electronic (excel or csv file preferred) file containing all learning fund revenues received and expenditures made between July 1, 2015 through June 30, 2019.*
4. *Epic Youth Services, LLC vendor list (preferably in excel format).*

NOTE: All records may be digitally presented.

The above requested records may also be submitted by:

U. S. mail to: Office of State Auditor and Inspector
Attn: Brenda Holt, Director, Special Investigative Unit
State Capitol Building
2300 N. Lincoln Blvd., Room 123
Oklahoma City, OK 73105

By email to: rstachowitz@sal.ok.gov

EXHIBIT

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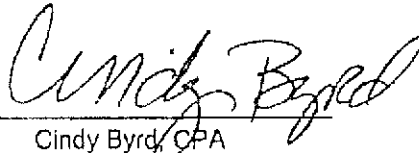
NOTICE: In the event such records cannot be provided in accordance with 74 O.S. § 215, you are hereby requested to provide a written explanation, signed under oath, specifying:

1. The name(s) and title/position(s) of the employees or other individuals who searched for and were unable to find the requested records.
2. An explanation of why the requested records either do not exist and/or are missing from Epic Youth Services, LLC.
3. An explanation of what steps were taken to obtain the requested records from any outside sources including, but not limited to, software vendors/contractors, banks, credit card institutions, former employees, contractors, vendors or any other person or businesses who would maintain such records in the normal course of business.

.....

Hereof FAIL NOT, under penalty of the law.

IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of September 2019.



Cindy Byrd, CPA

Oklahoma State Auditor & Inspector



ACKNOWLEDGEMENT OF RECEIPT OF SUBPOENA

I, JOSHUA BROCK, acknowledge that I have received subpoena #3, for Epic Youth Services, LLC from the Office of State Auditor & Inspector, dated the 24th day of September 2019.

JRB
Signature

9/25/2019
Date



SUBPOENA

(FOR DOCUMENTS)

IN THE NAME OF THE STATE OF OKLAHOMA

TO: Epic Youth Services, LLC

SUBJECT: Subpoena #14

RE: Investigation being conducted by the State Auditor and Inspector under the authority of **74 O.S. § 212(C)** relative and appertaining to Epic Youth Services, LLC, 4101 NW 122nd St., Oklahoma City, Oklahoma.

GREETINGS: You are hereby commanded, pursuant to the authority of **74 O.S. § 215**, setting aside all manner of excuse and delay, to provide to the State Auditor and Inspector, at State Capitol, Room 123 in the County of Oklahoma, State of Oklahoma, by the 13th day of November 2019, at the hour of 5:00 P.M., the following:

1. *Credit card statements for all credit cards used to make Learning Fund purchases for the time period July 1, 2014 through July 30, 2019*
2. *QuickBooks (QBB backup file) records for Learning Fund purchases for the time period July 1, 2014 through July 30, 2019*
3. *Bank of Oklahoma Statements for 309037624 and 312373440 for the time period July 1, 2014 through July 30, 2019 (as applicable)*
4. *Explanation of how the \$250 technology fee was distributed for FY2018*

NOTE: *All records may be digitally presented.*

The above requested records may also be submitted by:

U. S. mail to: Office of State Auditor and Inspector
Attn: Brenda Holt, Director, Special Investigative Unit
State Capitol Building
2300 N. Lincoln Blvd., Room 123
Oklahoma City, OK 73105

By email to: rstachowitz@sai.ok.gov

EXHIBIT

3

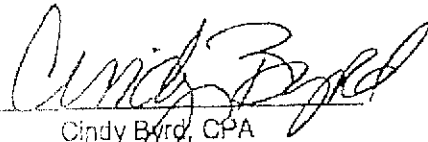
NOTICE: In the event such records cannot be provided in accordance with 74 O.S. § 215, you are hereby requested to provide a written explanation, signed under oath, specifying:

1. The name(s) and title/position(s) of the employees or other individuals who searched for and were unable to find the requested records.
2. An explanation of why the requested records either do not exist and/or are missing from Community Strategies, Inc.
3. An explanation of what steps were taken to obtain the requested records from any outside sources including, but not limited to, software vendors/contractors, banks, credit card institutions, former employees, contractors, vendors or any other person or businesses who would maintain such records in the normal course of business.

.....

Hereof FAIL NOT, under penalty of the law.

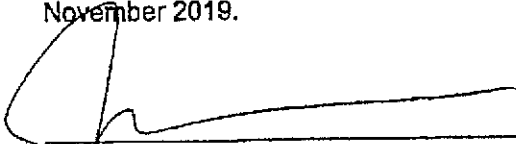
IN WITNESS WHEREOF, I have hereunto set my hand this 5th day of November 2019.



Cindy Byrd, CPA
Oklahoma State Auditor & Inspector

ACKNOWLEDGEMENT OF RECEIPT OF SUBPOENA

I, JOSHUA BROCK, acknowledge that I have received subpoena #14, for Epic Youth Services, LLC from the Office of State Auditor & Inspector, dated the 5th day of November 2019.



Signature

11/7/2019

Date



J. Kevin Stitt
Office of the Governor
State of Oklahoma

July 19th, 2019

Cindy Byrd
Oklahoma Auditor & Inspector
2300 North Lincoln Boulevard, Room 123
Oklahoma City, Oklahoma 73105

Dear Auditor Byrd:

As authorized by Section 212 (C) of Title 71 of the Oklahoma Statutes, I respectfully request an audit of Epic Charter School and all related entities. As required by the above citations, the cost of the audit shall be borne by Epic.

The scope of the audit should include a three year look back on all previously issued audits, as well as any federal audits during that time period.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Kevin Stitt".

J. Kevin Stitt
Governor

EXHIBIT
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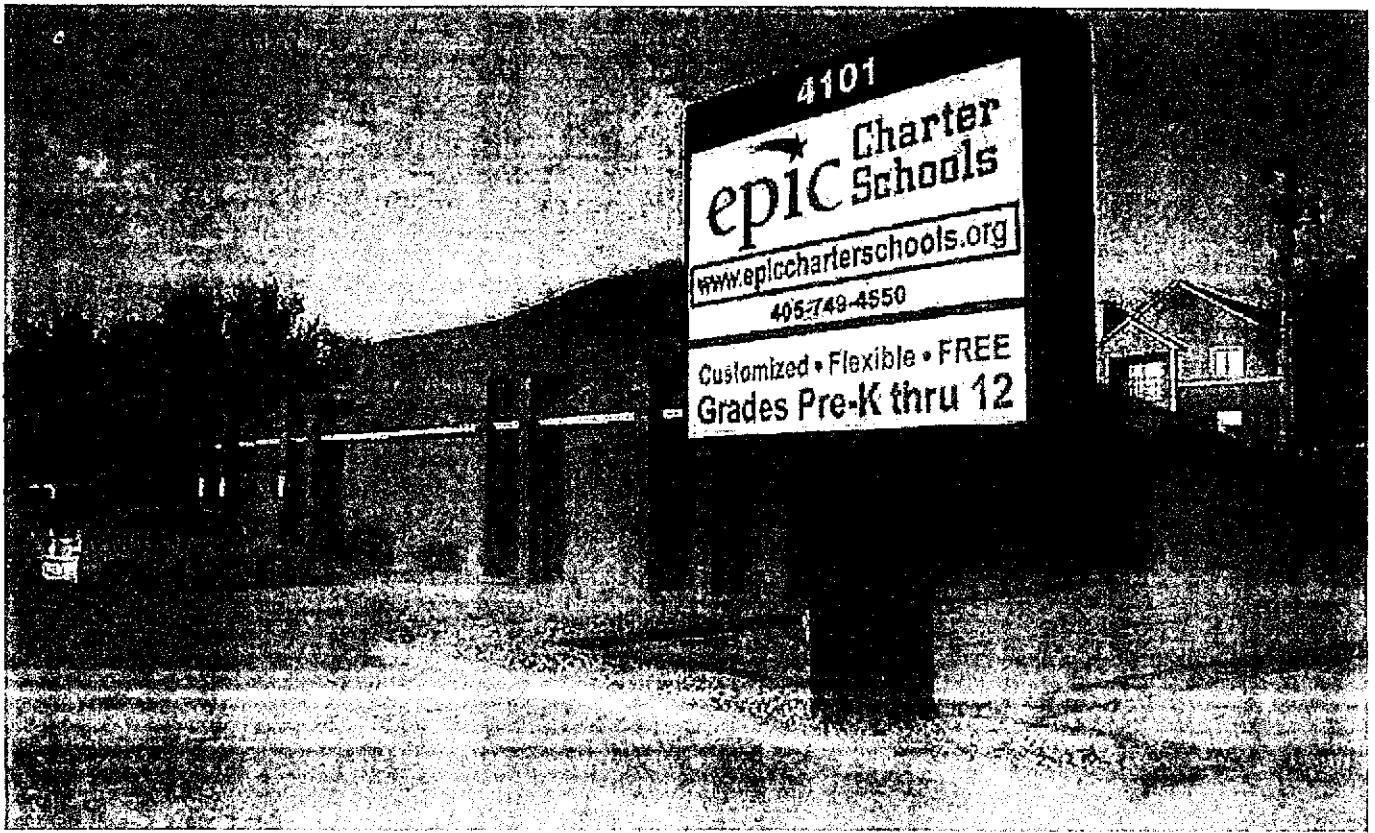
https://www.tulsaworld.com/news/local/education/our-kids-have-become-a-piggy-bank-epic-charter-schools/article_445f6458-c147-5efa-ab29-781c72d64011.html

TOP STORY

'Our kids have become a piggy bank': Epic Charter Schools shields \$50M in taxpayer funds from public scrutiny

By Andrea Eger Tulsa World
Feb 23, 2020

EXHIBIT
5



Epic Charter Schools in Oklahoma City, in 2019. Bryan Terry/The Oklahoman

Epic released this video in 2019, explaining its Learning Fund amid...

On top of a 10% cut of every dollar of revenue, Epic Charter Schools is paying its for-profit management company millions more in taxpayer dollars every year for school expenditures that are never audited and which Epic claims are shielded from public scrutiny.

School officials now acknowledge payments for previous years totaled \$50.6 million for something Epic calls the "Learning Fund." And based on a recent uptick in student enrollment, Epic's allocation for 2019-2020 alone could be \$28 million.

For a full year, Epic has repeatedly denied the Tulsa World's request under the Oklahoma Open Records Act for itemized expenditure records from its Learning Fund.



Epic Charter Schools. JIM BECKEL/The Oklahoman

Photo by JIM BECKEL/The Oklahoman

“Once the funds are paid to the management company, the dollars are no longer public funds and, therefore, the records of the expenditures of the learning fund dollars are not subject to the open records statute,” Epic’s attorney William Hickman wrote in the most recent denial letter.

But with the assistance of an attorney, the World did obtain other records that show the constant shuffling of public dollars for the Learning Fund to Epic Youth Services, the private management company that law enforcement investigators say has made millionaires out of school co-founders David Chaney and Ben Harris.

These transfers began at a rate of about \$120,000 each, 10 to 13 times per year, when Epic first began operating, for annual totals of \$1.2 million to \$1.7 million. But amid staggering student enrollment growth, these lump sum payments for the Learning Fund spiked as high as \$3 million in the last few years, with invoices totaling \$20.3 million for the 2018-19 academic year.

Ultimately, Epic released invoices for five of its eight past years of operation, which total more than \$42 million, although at least one invoice was missing for one of those years.

That works out to an average of \$865.80 per student, according to the state's official student enrollment figures.

If Epic had spent that average amount for its students counted by the state in the three years for which Epic did not provide invoices, the charter school could have expended about \$52.7 million for the Learning Fund since 2011. An Epic spokeswoman said the actual total was \$50.6 million, but she could not provide any additional documentation to show that.

The unique appeal of setting aside \$1,000 in state funding per student has been one of the **controversial** online school's chief recruiting tools.

"At a traditional school, that 'per-pupil' funding would be used to cover the costs of things such as textbooks, necessary supplemental items, access to dedicated technology, physical education, athletics and even fine arts in many public schools," stated an Epic **marketing video** released in spring 2019 amid news that the school's student enrollment and financial practices are under investigation by state and federal law enforcement officials. "So, what's the difference in Epic using a Learning Fund for those same expenses? Well, we give parents and students choices."

How it works

Through the Learning Fund, each student enrolled by Oct. 1 at Epic's virtual charter school, called Epic One-on-One, has an account with a beginning balance of \$1,000. Once any curriculum and technology costs are covered, those funds can be expended for books and materials ordered directly through the school or paid to outside vendors for extracurricular activities.

Records made public show that Epic Youth Services has billed \$11.4 million for students in Epic's other school model, Blended Learning Centers, which offers residents of Oklahoma and Tulsa counties a blend of online and in-person

instruction. But “Enrolling into the Learning Centers will take the full amount of the student’s Learning Fund,” according to Epic’s website.

With approval from school employees, Epic One-on-One parents and students can choose from a catalog of 1,400 Learning Fund vendors currently.

Offered services run the gamut from typical public school opportunities such as art, music, tutoring and P.E. classes, to activities and services that are more commonly funded privately by parents.

These include horseback riding, professional photo headshots for pageants or modeling and acting gigs, summer camps, driver’s education, martial arts, aircraft flight training, gymnastics, private soccer clubs and even full-time soccer and hockey academies.

One of the reasons Epic’s model has been criticized is the various financial incentives the charter school offers not only to its employees, but also to its students for helping it expand.

Epic employs a common referral marketing strategy by offering families an additional \$200 in their children’s Learning Funds for each new student referral with no limit.

“As many of you know, Epic grows as each family tells another family about the educational services we offer. It’s all about ‘word of mouth’ at EPIC. So, when you share the love, Epic shares it right back,” its website states.

Vendors wishing to obtain Learning Fund dollars sign a contract with the school, not the for-profit Epic Youth Services company, and are asked to sign an affidavit that states neither they nor their employees are registered sex offenders and/or have no felony convictions within the last 10 years.



Epic Charter School, at 3810 S. 103rd E. Ave in 2019. IAN MAULE/Tulsa World

Questions raised by law enforcement

Over the summer, investigators at the Oklahoma State Bureau of Investigation revealed in public court documents that the handling of Learning Fund expenditures is one of Epic's financial practices being scrutinized.

"Ben Harris and David Chaney enticed ghost students to enroll in Epic by offering each student an annual learning fund ranging from \$800 to \$1,000," stated an OSBI search warrant filed in July. "The parents of many of the homeschool students admitted they enrolled their children in Epic to receive the \$800 learning fund without any intent to receive instruction from Epic."

In additional records filed in court in August, OSBI revealed its **inquiry had expanded** to include allegations of forgery by top executives at Epic and willful neglect by members of its independent governing board.

It was then that OSBI first publicly documented Epic's arrangement of shifting lump sums of state funding for the Learning Fund over to Epic Youth Services, the private management company, on top of the 10% cut of state and federal revenue the company receives.

One issue, the OSBI agent wrote, is that Epic was coding the transfer of funds as "instructional services" in the Oklahoma Cost Accounting System (OCAS), which all public schools must use to account for their use of public funds. And instructional services "must be a course supported by a teacher of record, a recorded grade and included on the transcript," the agent wrote.

Chaney and Brock were accused in that OSBI record of "knowingly and intentionally" using the Learning Fund to make fraudulent expenditures, concealing the fraudulent expenditures by disguising the payments as instructional services and falsifying corporate records, according to the court documents.

On Friday, State Auditor Cindy Byrd and an OSBI spokeswoman confirmed the state's investigations and forensic audit are ongoing.

What about accounting and transparency requirements?

Epic has repeatedly responded to news about the law enforcement investigations, as well as public criticism from lawmakers, by citing its clean audit reports from a "state-approved" auditor and by the Oklahoma State Department of Education.

"There is nothing secretive about the Learning Fund expenses," that Epic marketing video states. "All transactions are transparent and everything is audited annually just as all school expenses are audited. Some critics of Epic don't like the Learning Fund and we can't figure out why."

But Epic's routine, annual school audits, by a Cushing-based firm called CBEW Professional Group, all note "none of the activities of EYS (Epic Youth Services) is included in these financial statements."

And in denying the Tulsa World's request for public records that would show where all of the state funding allocated for Epic's Learning Fund has gone, the school's attorney William Hickman also acknowledged that fact.

Hickman defended the school's denial of the records request by stating no one at the state Department of Education or Epic One-on-One's sponsor, the Statewide Virtual Charter School Board, scrutinizes those expenditures either.

"The state department of education, the statewide virtual charter school board, and auditors have not treated the learning fund expenditures as public funds," he said. "Simply stated, Epic, like all public schools, is audited each year for all public funds, and the learning fund expenditure records requested by your client have not been a part of these audits because those funds are not public dollars."

State education officials said Epic and all other virtual charter schools will be subject to a new level of detail in reporting their expenditures from now on because of a new state law.

"Upon passage of House Bill 1395 last year, the (state Department of Education) promptly began steps for implementation, including setting new OCAS codes for charter management organizations, and provided direction to the virtual schools as to how expenditures to these organizations should be coded," said Brad Clark, general counsel at the state Education Department, whose wife is Epic's school board clerk.

"Specific to Epic, the OSDE has been in recent communication with the school about its use of OCAS and corresponding coding of expenditures, including those for instructional services, extracurricular activities and technology. For example, on December 20, 2019, the (education department) sent Epic a list of questions relating to its reported expenditures and OCAS coding of same for Fiscal Year 2019 and has been in recent communication with the school about its self-ascribed 'Learning Fund.' "

The author of House Bill 1395 said she is following up this session with a new bill, called the Virtual Charter School Transparency and Reform Act, because she thinks more should be done.

“We did not have appropriate coding before House Bill 1395, so I do hope this is a giant step in the right direction to bring the transparency we all want in any area of government,” said Rep. Sheila Dills, R-Tulsa. “I firmly believe any entity receiving public dollars should be held to the same level of transparency. I think the attorney general’s opinions are clear on those records that deal with public dollars — and if they’re not public, they should be.”

Are Epic’s Learning Fund expenditures private?

The Open Records Act defines a public record, in part, as “all documents under the authority of, or coming into the custody, control or possession of public officials, public bodies or their representatives in connection with the transaction of public business, the expenditure of public funds or the administering of public property.”

A “frequently asked questions” section on Epic’s website states that Learning Fund expenditures are subject to the approval of the school.

And multiple Epic parents have shown the Tulsa World their children’s Learning Fund accounts, which include itemized expenditure details and the various school employees who approved them.

Previously, Epic’s website directed that Learning Fund vendor invoices be submitted through its parent portal, which is password protected and includes access to a child’s grades and Learning Fund account.

Millions in state dollars flowing from Epic Charter Schools for student Learning Funds

Year	Oct. 1 student enrollment	Total of Invoices revealed
2011-12	1,710	N/A
2012-13	2,241	\$1,222,950
2013-14	2,916	\$1,666,550
2014-15	4,370	N/A
2015-16	6,037	N/A
2016-17	9,077	\$7,800,000
2017-18	8,059	\$6,850,000
2018-19	13,532	\$13,250,000
Epic Blended Learning Centers		
2017-18	4,000	\$1,200,000
2018-19	2,000	\$600,000
TOTAL	60,000	\$27,850,000

Currently, Epic directs vendor invoices be sent to a school email address, activity@epiccharterschools.org, not the private company, Epic Youth Services.

DOCUMENT: See Epic's Learning Fund bills totaling \$42 million

When the World discovered that Epic had apparently updated its vendor invoice submission process, the World's attorney went back to Epic and asked that it release those records because they would appear to show at least part of where Epic is directing its Learning Fund dollars.

Epic's attorney Hickman responded on Thursday that the school had located 24,000 such emails that contain invoices and vendor statements, but they would be required to black out student names from the records before releasing them, at great expense.

"Based on the volume of records and the detailed redaction work that would be necessary, your request will cause serious disruption to the organization. My client estimates the cost to fulfill your request to be \$9,529," Hickman wrote.

In September, the Tulsa World offered to come and visually inspect public records in custody of the school, as provided for in the Oklahoma Open Records Act, but school officials deferred to their attorney's handling of the matter.

The executive director of Epic One-on-One's sponsor said she herself went to Epic's offices in 2019 and reviewed computer records there showing how students are using the dollars and how much vendors are being paid.

"We were looking at the Learning Fund process because it's an aspect of Epic that is unique and it was a topic being discussed," said Rebecca Wilkinson, executive director of the Statewide Virtual Charter School Board. "I was looking to see if students had access to those funds, if they were being used as described, if there was more than one student in a family how those funds were being distributed."

Asked for her impressions, Wilkinson said all of the individual student Learning Fund records she observed looked to be "in order," with the costs of curriculum and technology needs deducted before payments to vendors for various activities.

Vendor qualifications

One former Epic teacher said her short stint at the state's biggest virtual charter school left her troubled about the potential for misuse of Learning Funds and unqualified — or worse — vendors.

“What type of screening takes place to approve these vendors?” said Angie Wren, a teacher with 23 years' experience who has returned to Purcell Public Schools. “As a certified teacher and coach in Oklahoma, I am required to have an OSBI background check, completion of Care and Prevention of Athletic Injuries, along with mandatory annual training on concussion protocol, heat exhaustion and sudden cardiac arrest. I also have to follow district communication policies in place to protect students from any predatory cellphone use by staff members.”

Asked whether Epic does criminal background checks on Learning Fund vendors, Assistant Superintendent of Communications Shelly Hickman indicated no.

“We are not required to do so. Criminal background checks can only be done on people, not companies, which is why the affidavit process has been used,” Shelly Hickman said. “Epic is one of the few large public schools that has never had an allegation of sexual abuse in its entire operating history, so what we do must be working.”

Since Epic would not release any details about which of its 1,400 vendors had been paid or how much, the World contacted a sampling of ones offering services not common to traditional public schools.

In doing so, the Tulsa World discovered that a photographer offering Epic students photo headshots was the subject of news stories by every major outlet in Oklahoma City after his February 2018 arrest on a complaint of rape by instrumentation.

An Oklahoma City Police spokesman provided a copy of the report, which was made by a model who said she had worked with the photographer professionally for four months before she was sexually assaulted that afternoon. The World is not naming the man because police said the local district attorney's office ultimately declined to file charges in the case.

Contacted about his arrest, the Epic-approved vendor said, "No, I was never charged with anything. If a parent had any question, I would have no problems speaking on it. Even if Epic didn't want me as a vendor, I would have no problem with that."

The man said he had been an approved vendor at Epic for two or three years, but he's never served a student despite numerous calls.

"The last inquiry I had, she was east of Tulsa, like in Grove, so that didn't quite work out (because it would require too much travel)," he said. "I'm still listed on there and I still look forward to working with students either in person or virtually."

Epic did not respond when asked if the school was previously aware of the arrest. But Shelly Hickman said such a circumstance could result in the removal of an Epic vendor from their list and noted that the school has no invoices on file from that particular photographer.

"The allegations you refer to are about 2 years old. We have not removed this vendor from our list because we try hard not to penalize individuals and businesses for allegations that have yet to culminate into charges, let alone convictions," Shelly Hickman said. "If a family chooses to use this vendor, we intend to inform them of the public allegations so that they may do their own due diligence."

Vendor services, prohibitions

Epic has a new rule against Epic parents serving as vendors but offers an out for those who have obtained an employer identification number from the Internal Revenue Service.

Tulsa-based HeARTsong Creative openly bills itself as an Epic parent-owned Learning Fund vendor in promoting its theater arts and play-writing classes for area students in a social media group for Epic parents.

Ginny Sain said she and her co-owner sister, Anna-Maria Lane, both homeschool their children, and her sister's children are enrolled at Epic. They were unaware of any rule against parents being vendors, but none of their own children participates in their classes.

"I don't know. All I can say about that is we are a legitimate business, we have an IRS number," said Sain. "Maybe that (rule) is geared toward someone running things out of their home. No one has ever mentioned that to us."

HeARTsong Creative puts on after-school classes at a host of area schools, but specifically advertises that Epic students can attend sessions at Tulsa's Mayo Demonstration School and Zarrow International School and Collinsville's Herald Elementary.

Asked whether any parent had ever raised the issue of having to foot the \$150 bill while Epic students attend with public school funding, Sain said it had never come up "because no one has ever taken us up on the offer."

"They tend to come to the homeschool class (held at a local community center)," she said of the 15 or so Epic students they typically serve. "We pay for hourly rentals at those schools. That's why we offer that at some schools and not others the schools where we do not pay a fee, we don't invite students from outside."

An Epic spokeswoman said the school posted its new rule against parent vendors 18 months ago and that resulted in two vendors being "disqualified."

Some vendors contacted by the World, including a Tulsa-area woman offering baby/wedding registry services last year and the still-listed Destinations Executive Flight Center at Riverside Jones Airport, which offers aircraft flight training, did

not respond to voicemails or emails.

Currently, 17 soccer clubs throughout the state, from Lawton to the Oklahoma City suburbs, Guthrie, Stillwater, and Grove, and across the Tulsa metro, are listed as Epic vendors.

For example, the Broken Arrow Soccer Club has published instructions on its website for how parents of Epic students can get their player registration fees, which range from \$95-\$115 for the spring 2020 season, refunded after the soccer club invoices and receives payment from Epic.

“Once BASC receives the reimbursement check from Epic, we will then refund the fees the parent originally paid to their (debit or credit) card on record,” the website states.

Through the 2018-19 academic year, a Norman business called Stone Insurance Education, LLC, was listed as a vendor of “insurance licensing exam prep training.”

The business manager there, who asked that her name not be published, confirmed they had a signed vendor contract on file and a single invoice for an Epic student from 2016.

“We provide a service to prepare people to take the Oklahoma insurance licensing exam. People are generally hired only if they have passed the licensing exam,” she said. “It is not unusual for anyone 18 years or older to come and prep to take the exam.”

The company’s website lists course prices ranging from \$190 to \$260. Asked whether Epic would be billed the same amount for their student to participate as anyone else, she said: “We are a private provider. There is no discount for anyone. Our prices and fees are flat.”

One vendor, Tulsa Soccer Academy, bills itself as “Oklahoma’s only full-time soccer school” through a partnership whereby students enroll in Epic and split their time each day at Titan Sports and Performance Center between soccer training and online school.

The general manager at the academy's operator, Tulsa Soccer Club, said he was glad to answer questions about the unique partnership with Epic, which began in 2014.

"The rest of the world does this, soccer school. It probably hasn't grown as big as we'd hoped — we kind of fluctuate between 20 to 30 (students) — but we've got kids as young as 8, 9 years old to 16 years old. It is a pretty cool thing to be able to offer that," said Club Ambassador Eric Edwards.

Full-time tuition for Epic Charter Schools-enrolled students is listed on the Academy website at \$3,650 for the current academic year.

Edwards said he was surprised this week to receive the first request from an Epic student wanting the club to become an approved vendor so they could invoice club team dues.

"A team's dues could be \$150 to \$200 a month and these (Epic) vouchers are around \$1,000," said Edwards. "I'm going to look into it for him."

Oral Roberts University is listed as a vendor for summer swimming lessons, but spokeswoman Stephanie Hill declined to say how many Epic students have been served or what the costs were.

"Our administration believes this is information that should be obtained from the school and it is not our role to respond on behalf of anyone who lists us as a vendor," Hill said. "We don't want to get caught in something that has nothing to do with us."

What parents say

Broken Arrow resident Tasha Youngblood has two daughters enrolled at Epic and many questions about its Learning Fund practices.

For starters, she can't understand how Epic justifies charging students the same amount every year for the Chromebook laptop purchased their first year at the school.

And her daughter with autism receives such specialized instruction that she barely uses the online curriculum paid for out of the Learning Account “but they make us pay for one.”

Youngblood also questions the purpose of a blanket \$85 “processing fee” charged from every Epic student’s Learning Fund each year.

With whatever remains, Youngblood uses the Learning Fund to take one daughter to a sewing class and the other to an art class for special needs students.

“That processing fee costs them both a class, at least, every year. Where’s that money going?” she said. “Where’s the laptop fee going every year? It’s paid off. As a parent, I want to know where the money’s going. Broken Arrow (Public Schools) tells you where all of their money goes, Epic should, too. I feel like the school should be held accountable.”

If an \$85 processing fee were assessed for every one of the 60,814 Epic students counted by the state between fall 2011 and fall 2018, that would equal nearly \$5.2 million. If the fee were assessed only against the 47,942 students enrolled at Epic One-on-One, that’s just over \$4 million.

No public records were released to account for how much in processing fees had been debited from student accounts or spent. And there is no mention of such a fee anywhere in the EYS management contract.

Shelly Hickman, the Epic spokeswoman, said the funds cover “shared learning fund expenses that benefit all students, largely shipping expenses and enterprise-wide software licenses.”

She added: “Not one penny of the \$85 debit is kept by EYS.”

Hickman initially claimed “this was approved by the board when the board approved the EYS management contract.” But when pressed for documentation to show the arrangement exists in a contract, Hickman conceded.

"The processing fee is not in the contract nor does it need to be because the contract language clearly directs management of the Learning Fund to the (charter management organization)," she said. "The board is very much aware of the processing fee."

As for the annual laptop charge, Hickman said it is for "recurring costs of repair, replacement, support, warranty, and items that are not returned."

Joannie Reeves enrolled her middle school-age son in Epic for the entire 2018-19 school year while he was recovering from a spinal fusion surgery to correct a severe case of scoliosis.

She found out about Epic when she went to sign her son up for home study at Miami Public Schools.

"I wanted them to send his seventh-grade work home, but that's not what they offered," said Reeves. "A woman in the office said I should sign up for Epic and the principal's wife would even get a bonus because she's a principal at Epic."

Throughout her son Tommy's year at Epic, Reeves said she had deep concerns about one of the school's major expenses funded out of the Learning Fund -- curriculum. Her son's experience and her research of Epic's other curriculum offerings left her with the belief that their choices are only appropriate for remedial learners or students needing credit recovery.

"Our government has condoned these people making a profit off kids getting a half-assed education," said Reeves. "There needs to be accountability. It is supplemental instruction at best," said Reeves.

Tommy Reeves said he was embarrassed by how unchallenging and juvenile his lessons were, showing journalists an online social studies lecture about the Middle East by an instructor in a safari hat being interrupted repeatedly by a cartoon camel defecating in the background.

"This is baby stuff," he said, shaking his head and walking away from the family computer.

Reeves showed off a receipt for hundreds of dollars she spent out of pocket on a full set of seventh-grade textbooks she felt were important to ensure her son remained on grade level. The Reeves have their own computer, so Tommy didn't need Epic to furnish him one with the Learning Fund, which was allocated at \$900 per child last year.

"They didn't tell me we could use that on books or extracurricular classes until they called wanting me to enroll him for another year," she said. "His curriculum cost \$67. When I left, his Learning Fund was at \$600 or \$700, which they kept."

Reeves said her son's teacher at Epic put in a valiant effort, but the "one-on-one" time Epic advertises was usually limited to 10-15 minutes a week during sessions the teacher held for large groups of students at a public library.

"The State of Oklahoma — really I lay this at the feet of the Legislature — they're the ones that opened the door for crackpots to come in and sell this stuff for kids. Our kids have become a piggy bank for them," she said. "I am upset with the curriculum and I want to lay it at the appropriate people's feet. I don't want to come down on the teachers or anyone else at Epic trying to really do something. They could offer better than what they're offering."

Tommy spent the fall semester in a traditional public school in Oklahoma City, but violent episodes among other students led Reeves to enroll him in Oklahoma Virtual Charter Academy, another statewide virtual charter school.

"They gave us four boxes of books, a real curriculum and teachers are available to help him with his homework 24/7 unlike Epic, which puts everything off on the parents," Reeves said.

Staff writer Curtis Killman contributed to this story.

FIFTH AMENDED CHARTER SCHOOL OPERATING AGREEMENT

This Fifth Amended Charter School Operating Agreement (hereinafter referred to as the "Agreement" or the "Contract") is made and entered into as of the ~~17th~~ day of August, 2016, by and between by and between Epic Youth Services, LLC ("EYS"), an Oklahoma limited liability corporation and Community Strategies, Inc., a Oklahoma not-for-profit corporation (the "BOARD") for the benefit of a School to be called Epic One-on-One Charter School (the "School").

RECITALS

The BOARD has been granted a charter (the "Charter") by Statewide Virtual Charter School Board, (the "Authorizer") to organize and operate a charter school, with Authorizer as the authorizing body.

The BOARD and EYS desire to create an enduring educational alliance, whereby the BOARD and EYS will work cooperatively to promote educational excellence and innovation, based on EYS'S school design, comprehensive educational program and management principles.

In order to continue to facilitate the organization of the Epic One-on-One Charter School (the "Charter School") and implementation of an innovative educational program at the Charter School, the parties desire to establish this arrangement for the management and operation of the Charter School.

Therefore, for good and valuable consideration, the receipt of which is hereby acknowledged, it is mutually agreed as follows:

**ARTICLE I
CONTRACTING RELATIONSHIP**

A. **Authority.** The BOARD represents that it is authorized to contract with a private entity and for that entity to provide educational management services. The BOARD further represents that it has been granted the Charter by Authorizer to organize and operate the Charter School. The BOARD is therefore authorized by the Authorizer to supervise and control the Charter School and is invested with all powers necessary or desirable for carrying out the educational program contemplated in this Agreement.

B. **Contract.** The BOARD hereby contracts with EYS, to the extent permitted by law, to provide all of the charter school management services provided for in this Agreement on the terms and conditions set forth herein, including without limitation the administration and supervision of the personnel, materials, equipment, and facilities necessary for the provision of educational services to students, and the management, operation and maintenance of the Charter School in accordance with the Charter School mission, educational goals, curriculum, methods of pupil assessment, admission policy and criteria, school calendar and school day schedule, age and grade range of pupils to be enrolled, educational goals, and method to be used to monitor compliance with performance of targeted educational outcomes, all as adopted by the BOARD and included in the Charter between the BOARD and Authorizer.

EXHIBIT

6

C. Designation of Agents. The BOARD designates the employees of EYS as agents of the Charter School having a legitimate educational interest such that they are entitled to access to educational records under 20 U.S.C. § 1232g, the Family Rights and Privacy ACT ("FERPA").

D. Status of the Parties. EYS is a for-profit corporation organized under the laws of Oklahoma, and is not in any way affiliated with the BOARD. The BOARD is a non-profit corporation organized under the laws of the State of Oklahoma and is not in any way affiliated with EYS. The parties to this Agreement intend that the relationship created by this Agreement is that of an independent contractor and not employer-employee. The relationship between EYS and the BOARD is based solely on the terms of this Agreement, and the terms of any written agreements that may now or hereafter be executed between EYS and the BOARD.

ARTICLE II TERM

This Agreement shall be effective as of the date of execution and, unless terminated or cancelled earlier pursuant to the provisions of this Agreement, shall continue until termination or expiration of the Charter. This Agreement shall automatically be extended for the duration of any extension of the Charter, provided that EYS is in compliance with this Agreement.

ARTICLE III OBLIGATIONS OF EYS

A. Responsibility. EYS shall be responsible and accountable to the BOARD for the administration, operation and performance of the Charter School in accordance with the Charter and this Agreement. EYS's responsibility, as set forth in this Agreement, is expressly limited by: (i) the Charter School's Budget, which is to be submitted to and approved by the BOARD as provided in this Agreement, and (ii) the availability of governmental funding, whether state, city or federal, to pay for said services. Neither EYS nor the BOARD shall be required to expend Charter School funds on services in excess of the amount described in the Charter School Budget, as may be amended from time to time.

B. Development of the Charter School. EYS shall provide customary charter school development services (the "Development Services"), including without limitation, assistance with the charter school application process, negotiations with the Authorizer and the charter appellate if necessary; development and opening of the Charter School Facility; development of a curriculum; development of a school operations plan; identification of furniture, fixtures, equipment and supplies; arrangement of transportation and food services as necessary; conduct of other procurement activities as necessary to start up the Charter School; preparation of specifications for technology and related services; recruitment, selection and pre-service training of school personnel; pre-opening recruitment of students; and identification of business systems for Charter School accounting needs.

C. Educational Program. EYS agrees to implement the educational goals and programs set forth in the Charter (the "Educational Program"). The parties hereto acknowledge that an essential principle of the Educational Program is its flexibility, adaptability and capacity to change in the interest of continuous improvement, effectiveness, and efficiency, and that the BOARD and EYS are interested in results and not in inflexible prescriptions. In the event EYS determines that it is necessary to modify the Educational Program, EYS shall inform the BOARD of the proposed changes and obtain BOARD approval, which shall not be unreasonably withheld, and if required under the Charter, approval of the Authorizer. Not less than semi-annually, and otherwise as reasonably requested, EYS will provide the BOARD with updated reports on progress towards implementing each of the Charter School's educational goals in the Educational Program. Notwithstanding anything to the contrary herein, the BOARD shall have the reasonable right to require that EYS discontinue elements of the Educational Program being used by EYS at the Charter School. .

D. Charter School Facility. EYS will assist the BOARD in locating a facility suitable for the operation of the Charter School (the "Charter School Facility"). The Charter School Facility shall be subject to BOARD approval, which approval shall not be unreasonably withheld. The Charter School Facility shall meet the requirements of all federal, state and local law and regulations for the operation of the Charter School and shall be suitable for the maximum number of students approved by the Authorizer in the Charter or such lesser number of students as may be recommended by EYS and approved by the BOARD, which approval shall not be unreasonably withheld. The BOARD shall consult with EYS prior to making or accepting any material modification to the Charter School Facility, or any amendment or modification to the terms and conditions of any lease or any purchase and sale agreement for the Charter School Facility and shall exercise good faith in acting upon the reasonable recommendations of EYS related to the Charter School Facility.

E. Purchases. EYS shall assist the BOARD in identifying and procuring such suitable materials, furniture, fixtures, equipment and supplies as may be necessary to the operation of the Charter School. Purchases made by EYS on behalf of the BOARD with Charter School funds, such as non-proprietary instructional and/or curriculum materials, books and supplies, and equipment shall be the property of the BOARD, exclusive of items leased or purchased by EYS pursuant to the terms of this Agreement. EYS agrees not to add any fees or charges to the cost of equipment, materials or supplies purchased by EYS on behalf of the BOARD, except interest charges if the purchases are financed pursuant to an equipment lease or equipment use agreement. In the event that EYS makes purchases on behalf of the BOARD with Charter School funds, EYS shall comply with all applicable laws and conduct the purchase as if the BOARD were making such purchases directly from a third party.

EYS may, at its discretion, finance purchases pursuant to an equipment lease and allow the Charter School to use such equipment. As appropriate, the title to the equipment would be held by the applicable lessor, and if subject to an option to purchase, ultimately would be held by the optioning party and/or the BOARD, as the case may be. EYS's provision of equipment pursuant to this Agreement shall be subject to, and the BOARD agrees to abide by, the terms and conditions of any applicable equipment lease between EYS and any third party lessor. At the

end of the term of any such equipment lease, such equipment shall be returned to EYS or any third party lessor, as appropriate under the leasing arrangement. For any property so leased that is subject to an option to purchase, EYS shall assist the BOARD in its decision to purchase such property and shall act on its behalf in meeting all notice requirements of the lessee therein in its exercise of the option to purchase. EYS, from the Revenues, as defined in Article V, Section A, shall make payment on behalf of the BOARD to the lessor as necessary to complete the transfer of title to the BOARD. Notwithstanding anything to the contrary herein, to the extent that there are not sufficient Revenues for such payment, EYS shall not be required to make such payment.

EYS MAKES NO EXPRESSED OR IMPLIED WARRANTIES AS TO ANY MATTER WHATSOEVER WITH REGARD TO ANY EQUIPMENT, MATERIALS OR SUPPLIES PURCHASED ON BEHALF OF OR FOR USE AT THE CHARTER SCHOOL, INCLUDING WITHOUT LIMITATION THE CONDITION OF ANY SUCH ITEM, ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. NO DEFECT OR PROBLEMS WITH ANY EQUIPMENT, MATERIALS OR SUPPLIES SHALL RELIEVE THE BOARD OF ITS OBLIGATIONS TO PAY FOR USE OF THE ITEM OR OF ANY OTHER OBLIGATION UNDER THIS AGREEMENT. NOTWITHSTANDING THE FOREGOING, EYS WILL ENFORCE ANY EXISTING MANUFACTURER WARRANTIES ON ALL EQUIPMENT, MATERIALS OR SUPPLIES PURCHASED ON BEHALF OF OR FOR USE AT THE CHARTER SCHOOL.

F. Proprietary Rights/Confidentiality. EYS shall own all copyright and other proprietary rights to all instructional materials, training materials, curriculum and lesson plans, and any other materials developed by EYS, its employees, agents or subcontractors, or by any individual working for or supervised by EYS which is developed during the routine performance of the individual's duties. EYS shall have the sole and exclusive right to license such materials for use by other school districts or customers. The BOARD shall own all proprietary rights to curriculum or educational materials that are (i) directly developed and directly paid for by the BOARD, or (ii) developed by EYS at the direction of the BOARD with funds specifically dedicated by the BOARD for the development of such curriculum or materials. Nothing in this Section shall be construed to grant the BOARD proprietary rights over curriculum or educational materials that are part of the general curriculum development of EYS not directly paid for by the BOARD.

During the term of this Agreement, EYS and the BOARD may each disclose proprietary information to the other, including currently existing proprietary information and proprietary information created in the future. The receiving party shall use all such efforts as may be reasonably requested by the owner of such proprietary information so as not to disclose, publish, copy, transmit, modify, alter or utilize such proprietary information during the term of this Agreement or at any time after its termination or expiration other than to the extent reasonably necessary for the implementation of this Agreement. Notwithstanding anything to the contrary herein, educational materials and teaching techniques used by or at the Charter School shall be subject to disclosure to the extent required by applicable state or federal law.

G. Subcontracts. EYS reserves the right to subcontract any and all aspects of all services it agrees to provide to the Charter School, including, but not limited to building cleaning, security, and/or food service. However, EYS shall not subcontract the management, oversight or operation of the teaching and instructional program, except as specifically permitted in this Agreement or with approval of the BOARD.

H. Student Recruitment. EYS and the BOARD shall be jointly responsible for the recruitment of students subject to agreement on general recruitment and admission policies. Students shall be selected in compliance with the procedures set forth in the Charter and state and federal law.

I. Learning Fund. EYS shall be responsible for managing the School's student learning fund (the "Student Learning Fund"). The Student Learning Fund is a fund that is allocated within the school budget on a per student basis, in the approximate amount of \$800 per student for a school year, that families are allowed to direct the spending of with the approval and consent of the School. The Board, or its designee, shall transfer the funds authorized for the Student Learning Fund to EYS pursuant to the invoice schedule set forth in Exhibit "A." The Board may, in its discretion, increase or reduce the amount allocated per student to the Student Learning Fund.

J. Due Process Hearings. EYS shall assist the BOARD in the performance of the BOARD'S obligations to make available to students of the Charter School due process hearings regarding suspensions, expulsions, special education, confidentiality and access to records pursuant to the Charter and applicable state, federal and local laws, rules and regulations.

K. Rules and Procedures. EYS shall recommend reasonable rules, regulations and procedures applicable to the Charter School and is authorized and directed to enforce such rules, regulations and procedures as may be adopted by the BOARD.

L. School Year and School Day. The school year and the school day shall be as provided in the Charter submitted to and approved by Authorized.

M. Pupil Performance Standards and Evaluation. EYS shall implement pupil performance evaluations that permit evaluation of the educational progress of each Charter School student. EYS shall be responsible and accountable to the BOARD for evaluating the performance of students who attend the Charter School. At a minimum, EYS will utilize assessment strategies required by the Charter. The BOARD and EYS will cooperate in good faith to identify other measures of and goals for the Charter School students and Charter School performance, including but not limited to parent satisfaction.

N. Services to Disabled Students and Special Education. EYS shall assist with special education services to students who attend the Charter School in conformity with the requirements of state and federal law and the Charter. EYS may subcontract as necessary and appropriate for the provision of special education services, subject to approval by the BOARD, which approval shall not be unreasonably withheld. Such services shall be provided in a manner that complies with local, state and federal laws and applicable regulations and policies.

O. Compliance with Charter and Applicable Laws. EYS shall take those steps necessary to ensure that it complies with the Charter, and any laws, ordinances, rules and regulations applicable to EYS or its responsibilities with regard to the Charter School as set forth in this Agreement, unless such requirements are or have been waived. If EYS is notified by the state, by the Authorizer, or by any other governmental authority that EYS or the BOARD may be in violation of the Charter or any applicable laws, ordinances, rules and regulations, EYS shall timely notify the BOARD of the claimed violation and shall take steps to cure in a timely fashion any and all such violations which relate to responsibilities of EYS hereunder.

P. Unusual Events. EYS agrees to timely notify the BOARD and/or Charter School administrator of any anticipated or known: (i) material health or safety issues, (ii) labor, employee or funding problems, or (iii) problems of any other type that could adversely affect the BOARD in complying with its responsibilities under the Charter or this Agreement.

Q. Charter School Records/Proprietary. The financial, educational and student records pertaining to the Charter School are the property of the BOARD, and such records are subject to the applicable provisions of state law. All Charter School records shall be physically or electronically available, upon request, of the Charter School. Except as prohibited under the Charter and applicable law, the Authorizer and the public shall, upon reasonable request, have access to the records of the Charter School.

ARTICLE IV OBLIGATIONS OF THE BOARD

A. Good Faith Obligation. The BOARD shall establish reasonable fiscal and academic policies governing the operation of the Charter School. The BOARD shall exercise good faith in acting upon the recommendations of EYS in all matters covered by this Agreement, including but not limited to, EYS's recommendations concerning additions and changes to policies, rules, regulations and budgets.

B. Assistance to EYS. The BOARD shall cooperate with EYS in furnishing all information and submitting all forms and reports required in connection with the Charter or this Agreement, including providing timely notice of all BOARD meetings. The BOARD shall timely furnish EYS all information, documents and records necessary for EYS to properly perform its responsibilities under this Agreement.

C. Compliance with Charter and Applicable Laws. The BOARD shall take those steps necessary to ensure that it complies with the Charter, and any laws, ordinances, rules and regulations applicable to the BOARD or its responsibilities with regard to the Charter School as set forth in this Agreement, unless such requirements are or have been waived. If the BOARD is notified by the state, by the Authorizer, or by any other governmental authority that the BOARD or EYS may be in violation of the Charter or any applicable laws, ordinances, rules and regulations, the BOARD shall timely notify EYS of the claimed violation and shall take steps to cure in a timely fashion any and all such violations which relate to responsibilities of the BOARD hereunder.

D. Unusual Events. The BOARD agrees to timely notify EYS of any anticipated or known: (i) material health or safety issues, (ii) labor, employee or funding problems, or (iii) problems of any other type that could adversely affect EYS in complying with its responsibilities hereunder.

E. Retained Authority. The BOARD shall retain the authority to, after prior good faith consultation with EYS, make reasonable regulations relative to anything necessary for the proper establishment, maintenance, management and administration of the Charter School as required by state law.

ARTICLE V FINANCIAL ARRANGEMENTS

A. Charter School Revenues. Except as specifically excluded by the terms of this Agreement, the term "Revenues" shall include all funds received by or on behalf of the Charter School, including but not limited to:

1. Funding provided by state and local governments to the Charter School for regular public school students enrolled in the Charter School.
2. Special education funding provided by federal and state governments to the Charter School that is directly allocable to students at the Charter School.
3. Gifted and talented funding provided by federal and state governments to the Charter School that is directly allocable to gifted and talented students at the Charter School.
4. At-risk funding provided by federal and state governments to the Charter School that is directly allocable to at-risk students at the Charter School.
5. Funding provided by federal and state governments to the Charter School that is directly allocable to students in the Charter School with limited English proficiency.

6. Federal and state funding sources, including without limitation Title I, National School Lunch Program, Medicaid and other government funded grants or programs, which are directly allocable to the Charter School.
7. Fees charged to students for extra services, as and to the extent permitted by law.
8. Grants from governments or the private sector for facilities, professional development, school start up or other needs of the Charter School.

Revenues shall not include Other Assets/Funds or Operating Advances, as those terms are hereafter defined. Revenues shall be managed and expended by EYS consistent with the annual Budget, as hereafter defined, and this Agreement.

B. Other Funds/Assets or Operating Advances. Any donated assets, any non-cash proceeds of fundraisers, and grants from private sources that are in-kind or are not cash. Any funds/assets, and/or cash, that are loaned to the school and are required to be repaid.

C. Budget

1. Projected Budget. EYS shall provide the BOARD with an annual projected Budget (the "Budget"). For the Charter School's first Fiscal Year, the Budget shall be submitted prior to the opening of the Charter School. The Budget for each subsequent Fiscal Year shall be submitted to the BOARD prior to September 1st. The Budget shall be consistent with the Charter, including without limitation the Charter School mission as set forth therein, and this Agreement.
2. Budget Detail. The Budget shall contain reasonable detail as requested by the BOARD. The Budget shall include projected expenses and costs reasonably associated with operating the Charter School and the EYS school design, including, but not limited to: BOARD Expenses; the projected cost of services and education programs provided to the Charter School; leasehold and other lease or purchase costs incurred for the Charter School Facility; maintenance and repairs to the Charter School Facility and capital improvements, except as otherwise agreed upon; personnel salaries and benefits expenses; payroll processing expenses; supplies and furnishings necessary to operate the Charter School; all taxes of any kind that are assessed or imposed; insurance premiums and deductible payments; utilities; transportation expenses; food service expenses; professional fees; school development and start up expenses, including promissory note payment related to the Development Allocation; general and administrative expenses, including costs of audits in connection with this Agreement; financial service supervision; Indirect Cost Allocation; and other costs and expenses connected to operating the Charter School.
3. Approval. The Budget shall be prepared by EYS and submitted to the BOARD for approval, which approval shall not be unreasonably withheld or delayed. The Budget shall include all expenditure items identified in this Agreement and such other

expenditure items as may hereafter be mutually agreed to by EYS and the BOARD. The BOARD shall notify EYS in writing that it approves or disapproves the annual Budget within thirty (30) days of submission by EYS. If the BOARD provides written notification to EYS within thirty (30) days that it does not approve the annual Budget as submitted, the BOARD shall identify specific reasons therefore and continue to deposit the Revenues into the Charter School Operating Account pursuant to fulfill its obligations under this Agreement, the Charter and applicable law; provided such operation shall not extend more than one hundred twenty (120) days beyond the BOARD'S written notice that it does not approve the annual budget as submitted, or beyond the last day of the school year which is the subject of the disputed budget, whichever is earlier. The annual Budget may be amended from time to time as deemed necessary by EYS and the BOARD. Each such amendment shall be submitted by EYS and approved by the BOARD pursuant to the procedure set forth in this paragraph.

D. Financial Reporting. EYS shall provide the BOARD with:

1. The projected annual Budget as required by the terms of this Agreement.
2. Monthly cash basis statements of all Revenues received, and of all direct expenditures for services and or expenses rendered to or incurred on behalf of the Charter School, whether incurred on-site or off-site, upon request.
3. Such other information as may be reasonably requested by the BOARD to enable its (i) monitoring of EYS' performance and the efficiency of EYS' operation of the Charter School, or (ii) furnishing of financial information which the BOARD is required to provide pursuant to its Charter or applicable law.

E. Access to Records. EYS shall keep accurate financial records pertaining to its operation of the Charter School, together with all Charter School financial records prepared by or in possession of EYS, and shall retain all of the said records for a period of five (5) years from the close of the Fiscal Year to which such books, accounts, and records relate, or such longer period as may be required by law. EYS and the BOARD shall maintain the proper confidentiality of personnel, students, and other records as required by law.

F. Annual Audit. The BOARD shall select and retain an independent auditor to conduct an annual audit of the Charter School in accordance with the Charter. The annual audit for each Fiscal Year shall be completed no later than December 31 of the immediately succeeding Fiscal Year. Subject to applicable law, all finance and other records of EYS related to the Charter School will be made available to the BOARD'S independent auditor.

G. Charter School Operating Account. Except as hereinafter provided, all monies received by the BOARD on behalf of the Charter School shall be immediately deposited in the Charter School Operating account established by the BOARD for the benefit of the Charter School (the "Charter School Operating Account") in a financial institution mutually acceptable to the

BOARD and EYS. Interest income earned on the Charter School Operating Account shall accrue to the BOARD. Monies on deposit in the Charter School Operating Account shall be applied and allocated within three (3) business days of receipt thereof in the following manner and order of priority:

1. The BOARD shall pay for such expenses as it may incur from time to time as a result of entering into the Charter and this Agreement ("BOARD Expenses"). BOARD Expenses shall be provided for in the Charter School's annual Budget and shall not normally exceed \$10,000.00 per Fiscal Year. As used in this Agreement, the term "Fiscal Year" shall mean the annual period beginning on July 1 and ending on the next succeeding June 30.
2. The balance of all Revenues shall facilitate payment of Operating Expenses as set forth in Article V, Section H below.
3. Other Funds shall be retained by the BOARD in the Charter School Operating Account and expended consistent with the terms of this Agreement.

H. Payment of Charter School Operating Expenses. The BOARD shall cause the Revenues to be deposited within three (3) business days of receipt thereof into the Charter School Operating Account established for the purpose of paying the Operating Expenses of the Charter School (the "Charter School Operating Account") consistent with the annual Budget and this Agreement. As used in this Agreement, the term "Operating Expenses" shall mean the current expenses of operating the Charter School, including, without limiting the generality of the foregoing: Charter School Facility payments; equipment lease payments; payroll processing expenses; personal salaries and benefits expenses; cost of assessment materials; cost of furniture, fixtures, equipment, technology, textbooks and other materials and supplies; insurance premiums and deductible payments; costs for public utility services; transportation expenses; food service expenses; custodial expenses; expenses for maintenance and repair of grounds and buildings; marketing expenses; auditing expenses; legal fees; promissory note payments, including without limitation such promissory note payments as may relate to the Development Allocation; Indirect Cost Allocation; and other items reflected in the annual Budget including but not limited to the expenses incurred by EYS from time to time hereafter in connection with moving the Charter School to a new school facility and operating the charter on a day to day basis. Monies in the Charter School Operating Account shall be disbursed in the following manner and order of priority:

1. Charter School Facility Payments. EYS or BOARD shall pay the Charter School Facility payment as it becomes due and payable. If EYS pays the BOARD shall reimburse EYS.
2. Equipment Lease Payments. EYS or BOARD shall pay the equipment, if any, as it becomes due and payable. If EYS pays the BOARD shall reimburse EYS.

3. Other Operating Expenses. EYS or BOARD shall pay other Operating Expense. Charter School as they become due and payable. If EYS pays the BOARD shall reimburse EYS.

I. Development Allocation. EYS shall be entitled to payment for the performance of Development Services hereunder (the "Development Allocation"). The Development Allocation shall be equal to One Hundred Twenty Five Thousand and No/100 Dollars (\$125,000.00). Simultaneous herewith, the BOARD shall execute a promissory note in form acceptable to EYS, which promissory note shall set forth the repayment terms of the Development Allocation.

J. Indirect Cost Allocation. EYS shall be entitled to payment, in accordance with the annual Budget and the terms of this Agreement, of an Indirect Cost Allocation for the performance of its responsibilities hereunder. Commencing July 1 of the first year of operation of the Charter School and each Fiscal Year thereafter, the Indirect Cost Allocation shall be equal to ten percent (10%) of collected Revenues. The Indirect Cost Allocation shall be paid monthly, in an amount equal to ten percent of collected revenue for the month at the end of each month. On or before July 31 of each year, EYS shall provide the BOARD a reconciliation of actual collected Revenues for the immediately preceding Fiscal Year. Any shortfall of Indirect Cost Allocation shall be immediately paid to EYS. Any overpayment of the Indirect Cost Allocation for the immediately preceding Fiscal Year shall be applied first to payment of any outstanding Operating Advances, next to pre-payment of any promissory notes between the BOARD and EYS, and last to the Indirect Cost Allocation due for the then current Fiscal Year.

K. Insufficient Funds. To the extent that there are not sufficient funds in the Charter School Operating Account to pay Operating Expenses in accordance with the annual Budget, subject only to the limitations set forth in Article V, Section L below, EYS shall deposit funds into the Charter School Operating Account for the payment of such budgeted and unpaid Operating Expenses as may then be due and owing ("Operating Advances"). On the first date that funds reside in the Charter School Operating Account EYS shall be automatically reimbursed for any outstanding Operating Advances plus interest thereon from the date funds are advanced at a rate per annum on the unpaid balance of 400 basis points over the Prime Rate compounded monthly ("Interest"). As used herein, the "Prime Rate" shall mean the rate of interest reported by the Wall Street Journal, Money Rates Section as the "Prime Rate" on the last day of the month immediately preceding the month in which the applicable Operating Advances are made and adjusted on the first day of each Fiscal Year to the Prime Rate reported on May 31 of the immediately preceding Fiscal Year. Interest shall be calculated monthly on the basis of the outstanding balance as of the last day of the immediately preceding month. At the request of EYS, the BOARD shall execute a promissory note in a form acceptable to EYS.

L. Availability of Funds. EYS shall only be required to perform its responsibilities in accordance with this Agreement to the extent that there are sufficient Revenues to provide the agreed level of services as provided for in the annual Budget. In the event Revenues are insufficient to provide the agreed level of services and subject to the termination rights provided in Article VII of this Agreement, EYS shall propose an amended annual Budget pursuant to the procedures set forth in Article V, Section C. Nothing in this Section shall be construed to

absolve EYS of its responsibility to fund Operating Advances pursuant to Article V Section K of this Agreement.

M. Other Public Schools. The BOARD acknowledges that EYS may enter into similar operating agreements with other public school or public charter school entities. EYS shall maintain separate accounts for expenses incurred by and on behalf of the Charter School and other schools operated by EYS. EYS shall only charge the Charter School for expenses incurred by or on behalf of the Charter School.

ARTICLE VI PERSONNEL & TRAINING

A. Personnel Responsibility. EYS shall select and hire a qualified principal or school leader and other personnel to perform services at the Charter School. Personnel shall be employees of EYS or the BOARD based on the preference of EYS and the employee. All costs for the principal or school leader position incurred by EYS will be reimbursed by the BOARD, unless otherwise agreed upon by the BOARD and EYS. Notwithstanding anything to the contrary herein, the BOARD shall have the right to approve each principal hired by EYS, which approval shall not be unreasonably withheld or delayed. Any rejection of any principal must be for good cause, must be in writing, and shall enumerate specific reasons for the rejection. Failure of the BOARD to approve or reject the designee within ten (10) days of notice shall be deemed an acceptance of the designee by the BOARD. The BOARD and EYS shall be responsible for all compensation for their respective employees. The BOARD shall have the right, exercisable on a reasonable basis, in accordance with all applicable laws, and only upon a majority vote of said BOARD, to require that EYS remove or, at EYS's option, transfer any employee working at the Charter School, which removal or transfer shall be effective at the end of ten (10) business days, unless otherwise agreed to by EYS and the BOARD. EYS shall have the responsibility and authority to determine staffing levels, and to select, evaluate, assign, discipline, transfer and terminate personnel consistent with applicable state and federal law, the Charter and this Agreement.

B. Principals and Teachers. EYS shall provide a principal for the Charter School, subject to the review and approval of the BOARD as set forth in Article VI, Section A, above. EYS shall determine the number of teachers and the applicable grade levels and subjects required for the operation of the Charter School as set forth in this Agreement. EYS shall provide the Charter School with such teachers, qualified in the appropriate grade levels and subject areas, as are required to operate the Charter School. Teachers may be employed by EYS or the BOARD at the discretion of EYS and the employee. All costs for teaching personnel incurred by EYS will be reimbursed by the BOARD, unless otherwise agreed upon by the BOARD and EYS. The curriculum taught by such teachers shall be consistent with the Educational Program approved by the BOARD. Such teachers may, at the discretion of EYS, work at the Charter School on a full or part-time basis. If assigned to the Charter School on a part time basis, such teachers may also work at other schools managed or operated by EYS, or another public or private school. Each teacher assigned to the Charter School shall hold a valid teaching certificate issued by the

state board of education or be working toward such certification, as permitted by state law. Teachers that are not certified must be approved for alternative certification by the authorizer.

C. Other Staff. EYS shall determine the number and the functions of other non-instructional staff required for the operation of the Charter School as set forth in this Agreement. EYS shall provide the Charter School with qualified staff to effectively operate the Charter School in accordance with this Agreement. Non-Instructional staff may be employed by EYS or the BOARD at the discretion of EYS and the employee. All costs for non-instructional personnel incurred by EYS will be reimbursed by the BOARD, unless otherwise agreed upon by the BOARD and EYS. Non-instructional staff may, at the discretion of EYS, work at the Charter School on a full or part-time basis. If assigned to the Charter School on a part time basis, teachers and other staff members may also work at other schools managed or operated by EYS, or another public or private school.

D. Professional Development. EYS shall provide education in its methods, curriculum, program, and technology to all teaching and administrative personnel. Non-instructional personnel shall receive such professional development as EYS determines reasonable and necessary under the circumstances.

E. Limitations on Discretion. All decisions made by EYS, and any discretion exercised by EYS, in its decisions regarding staffing levels and its selection, evaluation, assignment, discipline, and transfer of personnel, shall be consistent with state and federal law, and consistent with the parameters adopted and included within the Charter and this Agreement.

ARTICLE VII TERMINATION OF AGREEMENT

A. Termination.

1. By EYS. EYS may, at its option, terminate this Agreement prior to the end of the term specified in Article II in the event the BOARD fails to remedy a Material Event within thirty (30) days after written notice from EYS. As used in this Section, a "Material Event" includes, but is not limited to: (i) EYS' failure to receive for any reason, the contracted for revenues, compensation, or reimbursement as required by the terms of this Agreement; or (ii) the BOARD'S failure to adopt EYS' reasonable recommendations with respect to Charter School policies, rules and regulations, which failure has a material adverse effect on EYS' ability to implement the Charter School design as set forth in the Charter or this Agreement; (iii) in the event the BOARD makes decisions regarding the personnel, Educational Program or Charter School Facility substantially inconsistent with the reasonable recommendations of EYS; or (iv) in the event the number of enrolled students suddenly falls below seventy-five percent (75%) of student capacity for the Charter School for reasons beyond the control of EYS and the number of enrolled students remains below that level for thirty (30) days and results in the inability of the Charter School to remain open; or (v) in the event

that during any Fiscal Year, there is a reduction of more than ten percent (10%) in the available combined federal and state funding for the Charter School on a per pupil basis in comparison to the funding that was available in the prior Fiscal Year; or (vi) fraudulent misrepresentation or other willful misconduct by the BOARD that has a material adverse effect on the Charter School; or (vii) the insolvency or bankruptcy of the Charter School; (viii) the loss or suspension of the Charter; or (ix) the enactment, repeal, promulgation or withdrawal of the state charter law such that this Agreement or the operation of the Charter School in conformity with this Agreement or the BOARD's Charter violates the law; or (x) in the event of any material amendment or modification to the Charter; or (xi) in the event the parties are unable to locate a suitable Charter School Facility adequate for the Educational Program and in full compliance with all applicable building and safety codes; or (xii) in the event that use of the Charter School Facility becomes impractical by reason of fire, flood or other act of God.

2. By the BOARD. The BOARD may terminate this Agreement prior to the end to the term specified in Article II in the event that EYS shall fail to take reasonable steps to remedy a Material Event within thirty (30) days after written notice from the BOARD. As used in this Section, a "Material Event" includes, but is not limited to: (i) failure of EYS to provide services in accordance with the terms of this Agreement; or (ii) failure of EYS to follow policies, procedures, rules, or regulations duly adopted by the BOARD that are not in violation of federal or state laws, the Charter, or this Agreement; or (iii) fraudulent misrepresentation or other willful misconduct by EYS that has a material adverse effect on the Charter School; or (iv) the insolvency or bankruptcy of EYS; or (v) the loss or suspension of the Charter; or (vi) the enactment, repeal, promulgation or withdrawal of the state charter law such that this Agreement or the operation of the Charter School in conformity with this Agreement or the BOARD's Charter violates the law.

B. Termination/Expiration.

1. Effective Date of Termination. In the event this Agreement is terminated by either party prior to the end of the term specified in Article II, absent extraordinary circumstances, including without limitation the fraudulent misrepresentation or willful misconduct of either party, the termination will not become effective until the end of the academic year during which the notice of termination is delivered.
2. Personal Property. Upon termination or expiration of this Agreement, EYS shall have the right to: (i) remove equipment and other assets owned or leased by EYS; or (ii) require that the BOARD reimburse EYS for any equipment purchased by EYS with EYS funds and used for purposes of the Charter School pursuant to Article III Section D; or (iii) require that the BOARD remit to EYS such amounts as may remain outstanding under any equipment lease entered into pursuant to Article III Section D, including without limitation any amounts due to exercise

any option to purchase under any such lease and complete transfer of title to the Charter School. Equipment and other assets owned by the Charter School shall remain the property of the Charter School.

3. Intellectual Property. Upon termination or expiration of this Agreement for any reason, each party shall, within fifteen (15) days of the effective date of such termination, return, or at the request of the other party destroy, all curriculums, educational materials, and other intellectual property belonging to such other party.
4. Payment. Upon termination or expiration of this Agreement for any reason, the BOARD shall immediately remit to EYS all outstanding Indirect Cost Allocation and Operating Advances together with accrued Interest earned thereon and shall reimburse EYS for any other Operating Expenses incurred by EYS on behalf of the Charter School. All such amounts due upon termination shall be payable solely from assets of the Charter School, including without limitation Revenues, Other Funds and such other assets as may be acquired by or on behalf of the Charter School with Charter School Revenues or Other Funds; provided, however, that if the BOARD receives any grant monies or other designated funds which are governed by a use agreement that prohibits the use of such funds to make payment to EYS pursuant to this subsection (the "Restricted Funds"), the BOARD shall not be required to include the Restricted Funds in such payment to EYS.

C. Transition. In the event of termination of this Agreement for any reason by either party prior to the end of the Agreement's term, EYS will, in exchange for the compensation terms included in this agreement, provide the BOARD reasonable assistance for up to ninety (90) days to assist in the transition to another administrative or structural arrangement; provided, however, that EYS shall not be required to provide any assistance to another management company or service provider.

ARTICLE VIII INDEMNIFICATION

Each party hereto shall indemnify and hold harmless the other party, its officers, employees, agents and consultants from and against any and all actions, claims, suits, liabilities, proceedings, penalties, fines, costs, and expenses (including reasonable attorneys' fees at both the trial and appellate levels, including paralegal expenses) relating directly or indirectly to any breach of this Agreement or of the Charter or any violation of the state Charter law or any other applicable law by such indemnifying party, its officers, employees, agents and consultants, servants or subcontractors, as applicable. Such indemnification may be achieved by the purchase of general liability and property insurance policies, or by such other means as the parties may mutually agree.

ARTICLE IX INSURANCE

A. Insurance Coverage. EYS shall obtain and on behalf of the BOARD maintain such policies of insurance as may be required by the Charter or applicable law. To the extent allowed by law, the costs of such insurance to the BOARD shall be included in the Charter School Budget, to be prepared by EYS and approved by the BOARD. EYS shall provide proof of such insurance to the BOARD at the BOARD's request. Any cost incurred by EYS to obtain this insurance shall be reimbursed by the BOARD. The BOARD and EYS shall be listed as named insureds on such policies. To the extent reasonably practicable, the parties shall cooperate with each other in providing such information and complying with such reporting requirements as may be required by any applicable insurer(s)

B. Workers' Compensation Insurance. Each party shall maintain workers' compensation insurance as required by law, covering their respective employees. Costs incurred by EYS for workers compensation insurance for employees allocated to the charter school shall be reimbursed according to the percentage of the employee that is allocated to the charter school.

ARTICLE X WARRANTIES AND REPRESENTATIONS

A. BOARD Warranties and Representations. The BOARD represents that it has the authority under law to execute, deliver and perform this Agreement and to incur the obligations provided for under this Agreement. The BOARD warrants that its actions have been duly and validly authorized and that it will adopt any and all resolutions or expenditure approvals required for execution of this Agreement.

B. EYS Warranties and Representations. EYS warrants and represents that it is a corporation in good standing and is authorized to conduct business in the State of Oklahoma. EYS will comply with all registration and licensing requirements relating to conducting business under this Agreement. The BOARD agrees to assist EYS in applying for such licenses and permits and in obtaining such approvals and consents.

C. Mutual Warranties. The BOARD and EYS mutually warrant to the other that there are no pending actions, claims, suits or proceedings, to its knowledge, threatened or reasonably anticipated against or affecting it which if adversely determined, would have a material adverse effect on its ability to perform under this Agreement.

ARTICLE XI
MISCELLANEOUS

A. Entire Agreement. This Agreement represents the entire understanding and agreement between the parties with respect to the subject matter hereof, and supersedes all other negotiations, understandings, and representations (if any) made by and between such parties.

B. Force Majeure. Notwithstanding any other sections of this Agreement, neither party shall be liable for any delay in performance or inability to perform due to acts of God or due to war, riot, embargo, fire, explosion, sabotage, flood, accident, labor strike, or other acts beyond its reasonable control; provided either party may terminate this Agreement in accordance with the termination provisions contained in this Agreement if sufficient grounds exist as provided in the Article governing termination.

C. Resolution of Disputes. The parties agree that each will make every good faith effort to resolve any and all disputes under this Agreement amicably before taking any action under Article XI Section D below.

D. State Governing Law/Waiver of Jury Trial. The rights of all parties hereto shall be subject to the jurisdiction of and be construed according to the laws of the State of Oklahoma. EYS and the BOARD hereby waive the right to a jury trial in any action, proceeding or counterclaim brought by either EYS or the BOARD against the other.

E. Official Notices. All notices and other communications required by the terms of this Agreement shall be in writing and sent to the parties hereto at the facsimile number or address set forth below. Notice may be given by (i) facsimile with written evidence of confirmed receipt by the receiving party of the entire notice, (ii) certified or registered mail, postage prepaid, return receipt requested, or (iii) personal delivery. Notice shall be deemed to have been given on the date of transmittal or personal delivery if given by facsimile or personal delivery, or upon the date of postmark, if sent by certified or registered mail. Notices to the BOARD shall be sent to the current address of the then current BOARD President, with a copy to the then current BOARD attorney. The address of the parties hereto for the purposes aforesaid, inclusive of the address of the current BOARD President, and BOARD attorney, are as follows:

The BOARD:
Attn: Mr. Douglass Scott, Esq., Chairman
4117 NW 122nd Street, Suite A
Oklahoma City, OK 73120
Telephone: 405-749-4550
Facsimile: 405-749-4540

with a copy to: Betsy Brown, Secretary/Treasurer
4117 NW 122nd Street, Suite A
Oklahoma City, OK 73120
Telephone: 405-749-4550
Facsimile: 405-749-4540

EYS Schools Inc.
Attn: William H. Hickman, Esq.
114 East Main Street
Norman, OK 73069
Telephone: 405-605-2375
Facsimile: 405-605-2374

F. Assignment. No party shall assign its rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. EYS, however, may assign this Agreement to an entity wholly owned or controlled by EYS.

G. Amendment. This Agreement shall not be altered, amended, modified or supplemented except by memorandum approved by the BOARD and signed by both the BOARD President and an authorized officer of EYS.

H. Waiver. No waiver of any provision of this Agreement shall be deemed or shall constitute a waiver of any other provision. Nor shall such waiver constitute a continuing waiver unless otherwise expressly stated.

I. Cost and Expenses. If any party commences an action against the other party as a result of a breach or alleged breach of this Agreement, the prevailing party shall be entitled to have and recover from the losing party reasonable attorneys' fees and costs of suit.

J. Delegation of Authority. Nothing in this Agreement shall be construed as delegating to EYS powers or authority of the BOARD that are not subject to delegation by the BOARD under state law and the Charter.

K. Compliance with Law. The parties to this Agreement agree to comply with all applicable laws and regulations.

L. Compliance with Charter. The parties to this Agreement agree to comply with the terms and conditions set forth in the Charter awarded to the BOARD.

M. Further Assurances. The parties hereby agree from time to time to execute and deliver such further and other assurances, assignments and documents and do all matters and things which may be convenient or necessary to more effectively and completely carry out the intentions of this Agreement.

N. Interpretations. This Agreement shall not be construed more strictly against one party than against the other merely because it may have been prepared by counsel for one of the parties, it being recognized that both parties have been represented by counsel in connection with the negotiation of the terms hereof and have contributed substantially and materially to its preparation.

O. Time of Essence. Time of performance by either party of each and every provision or covenant herein contained is of the essence of this Agreement.

P. Binding Effect. All of the terms and provisions of this Agreement, whether so expressed or not, shall be binding upon, inure to the benefit of, and be enforceable by the parties and their respective legal representatives, successors, and permitted assigns.

Q. Headings. The headings contained in this Agreement are for convenience of reference only, and shall not limit or otherwise affect in any way the meaning or interpretation of this Agreement.

R. Severability. If any part of this Agreement or any other agreement entered into pursuant hereto is contrary to, prohibited by or deemed invalid under applicable law or regulation, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited or invalid, but the remainder hereof shall not be invalidated thereby and shall be given full force and effect so far as possible.

S. Survival. All covenants, agreements, representations, and warranties made herein or otherwise made in writing by any party pursuant hereto shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

T. Third Parties. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies on any person other than the parties hereto and their respective legal representatives, successors, and permitted assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third person to any party to this Agreement, nor shall any provision give any third person any right to subrogation or action over or against any party to this Agreement.

U. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

[Signatures on following page.]

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date and year first above written.

EPIC YOUTH SERVICES, LLC

By: David Chesney

Title: CEO

Date: 8/17/16

COMMUNITY STRATEGIES, INC.

By: D. S. A.

Title: Chairman/President

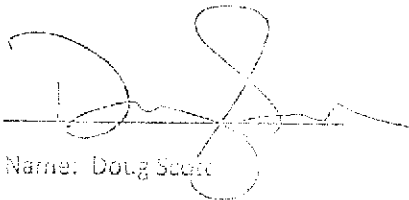
Date: 8/17/2016

Amendment to Fifth Amended Charter School Operating Agreement

As of August, 21, 2019, the agreement entitled Fifth Amended Charter School Operating Agreement between Community Strategies, Inc. and Epic Youth Services is amended as follows:

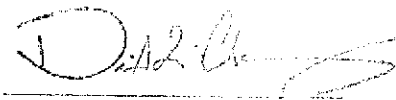
Section I. is removed and replaced with the following:

- I. Learning Fund. EYS shall be responsible for managing the School's student learning fund (the "Student Learning Fund"). The Student Learning Fund is a fund that is allocated within the school budget on a per student basis, in the approximate amount of \$800 per student for a school year, that families are allowed to direct the spending of with the approval and consent of the School. The Board, or its designee, shall transfer the funds authorized for the Student Learning Fund to EYS to purchase and manage school assets and services on behalf of the school. The Board may, in its discretion, increase or reduce the amount allocated per student to the Student Learning Fund.



Name: Doug Scott

Community Strategies, Inc., Board President



Name: David Chaney

EYS

CHARTER SCHOOL OPERATING AGREEMENT

This Charter School Operating Agreement (hereinafter referred to as the "Agreement" or the "Contract") is made and entered into as of the ____ day of May, 2017, by and between by and between Epic Youth Services, LLC ("EYS"), an Oklahoma limited liability corporation and Community Strategies, Inc., a Oklahoma not-for-profit corporation (the "BOARD") for the benefit of a School to be called Epic Blended Charter School (the "School").

RECITALS

The BOARD has been granted a charter (the "Charter") by Rose State College, (the "Authorizer") to organize and operate a charter school, with Authorizer as the authorizing body.

The BOARD and EYS desire to create an enduring educational alliance, whereby the BOARD and EYS will work cooperatively to promote educational excellence and innovation, based on EYS'S school design, comprehensive educational program and management principles.

In order to facilitate the organization of the Epic Blended Charter School (the "Charter School") and implementation of an innovative educational program at the Charter School, the parties desire to establish this arrangement for the management and operation of the Charter School.

Therefore, for good and valuable consideration, the receipt of which is hereby acknowledged, it is mutually agreed as follows:

ARTICLE I CONTRACTING RELATIONSHIP

A. Authority. The BOARD represents that it is authorized to contract with a private entity and local entity to provide educational management services. The BOARD further represents that it has been granted the Charter by Authorizer to organize and operate the Charter School. The BOARD is therefore authorized by the Authorizer to supervise and control the Charter School in accordance with all powers necessary or desirable and set forth in the educational program contemplated in this Agreement.

B. Agency. The BOARD hereby contracts with EYS, to the extent permitted by law, to provide all of the charter school management services provided for in this Agreement on the terms and conditions set forth herein, including without limitation the administration and supervision of the personnel, materials, equipment, and facilities necessary for the provision of educational services to students, and the management, operation and maintenance of the Charter School in accordance with the Charter School mission, educational goals, curriculum, methods of pupil assessment, admission policy and criteria, school calendar and school day schedule, age and grade range of pupils to be enrolled, educational goals, and method to be used to monitor compliance with performance of targeted educational outcomes, all as adopted by the BOARD and included in the Charter between the BOARD and Authorizer.

C. Designation of Agents. The BOARD designates the employees of EYS as agents of the Charter School having a legitimate educational interest such that they are entitled to access to educational records under 20 U.S.C. § 1232g, the Family Rights and Privacy ACT ("FERPA").

of title to the BOARD. Notwithstanding anything to the contrary herein, to the extent that there are not sufficient Revenues for such payment, EYS shall not be required to make such payment.

EYS MAKES NO EXPRESSED OR IMPLIED WARRANTIES AS TO ANY MATTER WHATSOEVER WITH REGARD TO ANY EQUIPMENT, MATERIALS OR SUPPLIES PURCHASED ON BEHALF OF OR FOR USE AT THE CHARTER SCHOOL, INCLUDING WITHOUT LIMITATION THE CONDITION OF ANY SUCH ITEM, ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. NO DEFECT OR PROBLEMS WITH ANY EQUIPMENT, MATERIALS OR SUPPLIES SHALL RELIEVE THE BOARD OF ITS OBLIGATIONS TO PAY FOR USE OF THE ITEM OR OF ANY OTHER OBLIGATION UNDER THIS AGREEMENT. NOTWITHSTANDING THE FOREGOING, EYS WILL ENFORCE ANY EXISTING MANUFACTURER WARRANTIES ON ALL EQUIPMENT, MATERIALS OR SUPPLIES PURCHASED ON BEHALF OF OR FOR USE AT THE CHARTER SCHOOL.

F. Proprietary Rights/Confidentiality. EYS shall own all copyright and other proprietary rights to all instructional materials, training materials, curriculum and lesson plans, and any other materials developed by EYS, its employees, agents or subcontractors, or by any individual working for or supervised by EYS which is developed during the routine performance of the individual's duties. EYS shall have the sole and exclusive right to license such materials for use by other school districts or customers. The BOARD shall own all proprietary rights to curriculum or educational materials that are (i) directly developed and directly paid for by the BOARD, or (ii) developed by EYS at the direction of the BOARD with funds specifically allocated by the BOARD for the development of such curriculum or materials. Nothing in this Section shall be construed to grant the BOARD proprietary rights over curriculum or educational materials that are part of the general curriculum development of EYS not directly paid for by the BOARD.

During the term of this agreement EYS and the BOARD may each disclose proprietary information to the other, including, but not limited to, existing proprietary information and proprietary information created in the future. The receiving party shall use all such information only for the purposes specifically required by the disclosing party and shall not disclose, sell, copy, transmit, modify, or otherwise use such proprietary information during the term of this agreement or at any time after its termination or expiration other than to the extent reasonably necessary for the implementation of this Agreement. Notwithstanding anything to the contrary herein, the Board shall retain the right to license and use the Charter School which it will be disclosing such information for purposes of this Agreement.

G. Subcontracts. EYS reserves the right to subcontract any and all aspects of all services it agrees to provide to the Charter School, including, but not limited to building cleaning, security, and/or food service. However, EYS shall not subcontract the management, oversight or operation of the teaching and instructional program, except as specifically permitted in this Agreement or with approval of the BOARD.

H. Student Recruitment. EYS and the BOARD shall be jointly responsible for the recruitment of students subject to agreement on general recruitment and admission policies. Students shall be selected in compliance with the procedures set forth in the Charter and state and federal law.

I. Learning Fund. EYS shall be responsible for managing the School's student learning fund (the "Student Learning Fund"). The Student Learning Fund is a fund that is allocated within the school budget on a per student basis, in the approximate amount of \$800 per student for a school year, that families are allowed to direct the spending of with the approval and consent of the School. The Board, or its designee, shall transfer the funds authorized for the Student Learning Fund to EYS pursuant to the invoice schedule set forth in Exhibit "A." The Board may, in its discretion, increase or reduce the amount allocated per student to the Student Learning Fund.

J. Due Process Hearings. EYS shall assist the BOARD in the performance of the BOARD'S obligations to make available to students of the Charter School due process hearings regarding suspensions, expulsions, special education, confidentiality and access to records pursuant to the Charter and applicable state, federal and local laws, rules and regulations.

K. Rules and Procedures. EYS shall recommend reasonable rules, regulations and procedures applicable to the Charter School and is authorized and directed to enforce such rules, regulations and procedures as may be adopted by the BOARD.

L. School Year and Calendar. The school year and the school calendar shall be set forth in the Charter and shall be approved by the Board.

M. Program, Learning Standards and Evaluation. EYS shall implement a program of student evaluation as the primary method of the educational progress of each Charter School student. EYS shall be responsible and accountable to the BOARD for evaluation of the performance of students, staff and the Charter School. At all times, EYS shall use a variety of strategies and measures to evaluate the performance of the Charter School. The BOARD and EYS will cooperate in good faith to identify other measures of performance for the Charter School students and Charter School performance, including but not limited to parent satisfaction.

N. Services to Disabled Students and Special Education. EYS shall assist with special education services to students who attend the Charter School in conformity with the requirements of state and federal law and the Charter. EYS may subcontract as necessary and appropriate for the provision of special education services, subject to approval by the BOARD, which approval shall not be unreasonably withheld. Such services shall be provided in a manner that complies with local, state and federal laws and applicable regulations and policies.

O. Compliance with Charter and Applicable Laws. EYS shall take those steps necessary to ensure that it complies with the Charter, and any laws, ordinances, rules and regulations applicable to EYS or its responsibilities with regard to the Charter School as set forth in this Agreement, unless such requirements are or have been waived. If EYS is notified by the state, by the Authorizer, or by any other governmental authority that EYS or the BOARD may be in violation of the Charter or any applicable laws, ordinances, rules and regulations, EYS shall timely notify the BOARD of the claimed violation and shall take steps to cure in a timely fashion any and all such violations which relate to responsibilities of EYS hereunder.

P. Unusual Events. EYS agrees to timely notify the BOARD and/or Charter School administrator of any anticipated or known: (i) material health or safety issues, (ii) labor, employee or funding problems, or (iii) problems of any other type that could adversely affect the BOARD in complying with its responsibilities under the Charter or this Agreement.

Q. Charter School Records/Proprietary. The financial, educational and student records pertaining to the Charter School are the property of the BOARD, and such records are subject to the applicable provisions of state law. All Charter School records shall be physically or electronically available, upon request, at the Charter School. Except as prohibited under the Charter or applicable law, the Authorizer and the public shall, upon reasonable request, have access to the records of the Charter School.

ARTICLE IV OBLIGATIONS OF THE BOARD

A. Good Faith Obligation. The BOARD shall establish reasonable fiscal and academic policies governing the operation of the Charter School. The BOARD shall exercise good faith in relying upon the recommendations of EYS in all matters covered by this Agreement, including but not limited to, EYS's recommendations concerning additions and changes to policies, rules, regulations and budgets.

B. Assistance to EYS. The BOARD shall cooperate with EYS in furnishing all information and submitting all forms and reports required in connection with the Charter or this Agreement, including providing timely notice of all BOARD meetings. The BOARD shall timely furnish EYS all information, documents and records necessary for EYS to properly perform its responsibilities under this Agreement.

C. Compliance with Charter and Applicable Laws. The BOARD shall take those steps necessary to ensure that it complies with the Charter, and any laws, ordinances, rules and regulations applicable to the BOARD or its responsibilities with regard to the Charter School as set forth in this Agreement, unless such requirements are or have been waived. If the BOARD is notified by the state, by the Authorizer, or by any other governmental authority that the BOARD or EYS may be in violation of the Charter or any applicable laws, ordinances, rules and regulations, the BOARD shall timely notify EYS of the claimed violation and shall takes steps to cure in a timely fashion any and all such violations which relate to responsibilities of the BOARD hereunder.

D. Unusual Events. The BOARD agrees to timely notify EYS of any anticipated or known: (i) material health or safety issues, (ii) labor, employee or funding problems, or (iii) problems of any other type that could adversely affect EYS in complying with its responsibilities hereunder.

E. Retained Authority. The BOARD shall retain the authority to, after prior good faith consultation with EYS, make reasonable regulations relative to anything necessary for the proper establishment, maintenance, management and administration of the Charter School as required by state law.

ARTICLE V FINANCIAL ARRANGEMENTS

A. Charter School Revenues. Except as specifically excluded by the terms of this Agreement, the term "Revenues" shall include all funds received by or on behalf of the Charter School, including but not limited to:

1. Funding provided by state and local governments to the Charter School for regular public school students enrolled in the Charter School.
2. Special education funding provided by federal and state governments to the Charter School that is directly allocable to students at the Charter School.
3. Gifted and talented funding provided by federal and state governments to the Charter School that is directly allocable to gifted and talented students at the Charter School.
4. At-risk funding provided by federal and state governments to the Charter School that is directly allocable to at-risk students at the Charter School.
5. Funding provided by federal and state governments to the Charter School that is directly allocable to students in the Charter School with limited English proficiency.
6. Federal and state funding sources, including without limitation Title I, National School Lunch Program, Medicaid and other government funded grants or programs, which are directly allocable to the Charter School.

7. Fees charged to students for extra services, as and to the extent permitted by law.
8. Grants from governments or the private sector for facilities, professional development, school start up or other needs of the Charter School.

Revenues shall not include Other Assets/Funds or Operating Advances, as those terms are hereafter defined. Revenues shall be managed and expended by EYS consistent with the annual Budget, as hereafter defined, and this Agreement.

B. Other Funds/Assets or Operating Advances. Any donated assets, any non-cash proceeds of fundraisers, and grants from private sources that are in-kind or are not cash. Any funds/assets, and/or cash, that are loaned to the school and are required to be repaid.

C. Budget

1. Projected Budget. EYS shall provide the BOARD with an annual projected Budget (the "Budget"). For the Charter School's first Fiscal Year, the Budget shall be submitted prior to the opening of the Charter School. The Budget for each subsequent Fiscal Year shall be submitted to the BOARD prior to September 1st. The Budget shall be consistent with the Charter, including without limitation the Charter School mission as set forth therein, and this Agreement.
2. Budget Detail. The Budget shall contain reasonable detail as requested by the BOARD. The Budget shall include projected expenses and costs reasonably associated with operating the Charter School and the NYC school design, including, but not limited to: BOARD Expenses; the projected cost of services and education programs provided to the Charter School; leasehold and other lease or purchase costs incurred for the Charter School facility; maintenance and repairs to the Charter School facility and capital improvements, except as otherwise agreed upon; personnel salaries and benefits; expenses; payroll processing expenses; supplies and furnishings necessary to operate the Charter School; all taxes of any kind then assessed or imposed; insurance premiums and deductible payments; utilities; transportation expenses; food service expenses; professional fees; school development and start-up expenses, including promissory note payment related to the Development Allocation; general and administrative expenses, including costs of audits in connection with this Agreement; financial service supervision; Indirect Cost Allocation; and other costs and expenses connected to operating the Charter School.
3. Approval. The Budget shall be prepared by EYS and submitted to the BOARD for approval, which approval shall not be unreasonably withheld or delayed. The Budget shall include all expenditure items identified in this Agreement and such other expenditure items as may hereafter be mutually agreed to by EYS and the BOARD. The BOARD shall notify EYS in writing that it approves or disapproves the annual Budget within thirty (30) days of submission by EYS. If the BOARD provides written notification to EYS within thirty (30) days that it does not approve the annual

Budget as submitted, the BOARD shall identify specific reasons therefore and continue to deposit the Revenues into the Charter School Operating Account pursuant to fulfill its obligations under this Agreement, the Charter and applicable law; provided such operation shall not extend more than one hundred twenty (120) days beyond the BOARD'S written notice that it does not approve the annual budget as submitted, or beyond the last day of the school year which is the subject of the disputed budget, whichever is earlier. The annual Budget may be amended from time to time as deemed necessary by EYS and the BOARD. Each such amendment shall be submitted by EYS and approved by the BOARD pursuant to the procedure set forth in this paragraph.

D. Financial Reporting. EYS shall provide the BOARD with:

1. The projected annual Budget as required by the terms of this Agreement.
2. Monthly cash basis statements of all Revenues received, and of all direct expenditures for services and or expenses rendered to or incurred on behalf of the Charter School, whether incurred on-site or off-site, upon request.
3. Such other information as may be reasonably requested by the BOARD to enable its (i) monitoring of EYS' performance and the efficiency of EYS' operation of the Charter School, or (ii) furnishing of reports and information which the BOARD is required to provide pursuant to its Charter or applicable law.

H. Access to Records. EYS shall keep accurate financial records pertaining to the operation of the Charter School. EYS shall retain all Charter School financial records generated by or in possession of EYS, and shall retain all of the said records for a period of five (5) years from the close of the Fiscal Year in which such books, accounts, and records relate, or such longer period as may be required by law. EYS and the BOARD shall maintain the proper confidentiality of personnel, students, and other records as required by law.

F. Annual Audit. The BOARD shall select and retain an independent auditor to conduct an annual audit of the Charter School in accordance with the Charter. The annual audit for each Fiscal Year shall be completed no later than December 31 of the immediately succeeding Fiscal Year. Subject to applicable law, all finance and other records of EYS related to the Charter School will be made available to the BOARD'S independent auditor.

G. Charter School Operating Account. Except as hereinafter provided, all monies received by the BOARD on behalf of the Charter School shall be immediately deposited in the Charter School Operating account established by the BOARD for the benefit of the Charter School (the "Charter School Operating Account") in a financial institution mutually acceptable to the BOARD and EYS. Interest income earned on the Charter School Operating Account shall accrue to the BOARD. EYS shall have the ability to transfer Monies between all Depository accounts of charter schools under the BOARD corporate structure. Monies on deposit in the Charter School Operating Account shall be applied and allocated within three (3) business days of receipt thereof in the following manner and order of priority:

1. The BOARD shall pay for such expenses as it may incur from time to time as a result of entering into the Charter and this Agreement ("BOARD Expenses"). BOARD Expenses shall be provided for in the Charter School's annual Budget and shall not normally exceed \$10,000.00 per Fiscal Year. As used in this Agreement, the term "Fiscal Year" shall mean the annual period beginning on July 1 and ending on the next succeeding June 30.
2. The balance of all Revenues shall facilitate payment of Operating Expenses as set forth in Article V, Section H below.
3. Other Funds shall be retained by the BOARD in the Charter School Operating Account and expended consistent with the terms of this Agreement.

H. Payment of Charter School Operating Expenses. The BOARD shall cause the Revenues to be deposited within three (3) business days of receipt thereof into the Charter School Operating Account established for the purpose of paying the Operating Expenses of the Charter School (the "Charter School Operating Account") consistent with the annual Budget and this Agreement. As used in this Agreement, the term "Operating Expenses" shall mean the current expenses of operating the Charter School, including, without limiting the generality of the foregoing: Charter School Facility payments; equipment lease payments; payroll processing expenses; personnel salaries and benefits expenses; cost of assessment materials; cost of furniture, fixtures, equipment, technology, textbooks and other materials and supplies; insurance premiums and deductible payments; costs for public utility services; transportation expenses; food service; operating custodial expenses; expenses for maintenance and repair of grounds and buildings, including, expenses; building expenses; legal fees; promissory note payments, including without limitation such promissory note payments as may relate to the Development Allocation; indirect Cost Allocation; and other items reflected in the annual Budget including but not limited to the expenses incurred by EYS from time to time hereafter in connection with moving the Charter School to a new school facility and operating the Charter on a day to day basis. Revenues from the Charter School Operating Account shall be expended in the following manner and order of priority:

1. Charter School Facility Payment. EYS or BOARD shall pay the Charter School Facility payment as it becomes due and payable. If EYS pays the BOARD shall reimburse EYS.
2. Equipment Lease Payments. EYS or BOARD shall pay the equipment, if any, as it becomes due and payable. If EYS pays the BOARD shall reimburse EYS.
3. Other Operating Expenses. EYS or BOARD shall pay other Operating Expense. Charter School as they become due and payable. If EYS pays the BOARD shall reimburse EYS.

I. Development Allocation. EYS shall be entitled to payment for the performance of Development Services hereunder (the "Development Allocation"). The Development Allocation

shall be equal to ~~One Hundred Twenty Five Thousand and No/100 Dollars (\$125,000.00)~~
Simultaneous herewith, the BOARD shall execute a promissory note in form acceptable to EYS,
which promissory note shall set forth the repayment terms of the Development Allocation.

J. Indirect Cost Allocation. EYS shall be entitled to payment, in accordance with the annual Budget and the terms of this Agreement, of an Indirect Cost Allocation for the performance of its responsibilities hereunder. ~~Commencing July 1 of the first year of operation of the Charter School and each Fiscal Year thereafter, the Indirect Cost Allocation shall be equal to ten percent (10%) of collected Revenues~~ The Indirect Cost Allocation shall be paid monthly, in an amount equal to ten percent of collected revenue for the month at the end of each month. On or before July 31 of each year, EYS shall provide the BOARD a reconciliation of actual collected Revenues for the immediately preceding Fiscal Year. Any shortfall of Indirect Cost Allocation shall be immediately paid to EYS. Any overpayment of the Indirect Cost Allocation for the immediately preceding Fiscal Year shall be applied first to payment of any outstanding Operating Advances, next to pre-payment of any promissory notes between the BOARD and EYS, and last to the Indirect Cost Allocation due for the then current Fiscal Year.

K. Insufficient Funds. To the extent that there are not sufficient funds in the Charter School Operating Account to pay Operating Expenses in accordance with the annual Budget, subject only to the limitations set forth in Article V, Section L below, EYS shall deposit funds into the Charter School Operating Account for the payment of such budgeted and unpaid Operating Expenses as may then be due and owing ("Operating Advances"). On the first date that funds reside in the Charter School Operating Account EYS shall be automatically reimbursed for any outstanding Operating Advances plus interest thereon from the date funds are advanced at a rate per annum of the unpaid balance of 900 basis points over the Prime Rate compounded monthly ("Interest"). As used herein, the "Prime Rate" shall mean the rate of interest reported by the Wall Street Journal, Money Rates Section as the "Prime Rate" on the last day of the month immediately preceding the month in which the applicable Operating Advances are made and adjusted on the first day of each Fiscal Year to the Prime Rate reported on May 31 of the immediately preceding Fiscal Year. Interest shall be calculated monthly on the basis of the outstanding balance as of the last day of the immediately preceding month. At the request of EYS, the BOARD shall execute a promissory note in a form acceptable to EYS.

L. Availability of Funds. EYS shall only be required to perform its responsibilities in accordance with this Agreement to the extent that there are sufficient Revenues to provide the agreed level of services as provided for in the annual Budget. In the event Revenues are insufficient to provide the agreed level of services and subject to the termination rights provided in Article VII of this Agreement, EYS shall propose an amended annual Budget pursuant to the procedures set forth in Article V, Section C. Nothing in this Section shall be construed to absolve EYS of its responsibility to fund Operating Advances pursuant to Article V Section K of this Agreement.

M. Other Public Schools. The BOARD acknowledges that EYS may enter into similar operating agreements with other public school or public charter school entities. EYS shall maintain separate accounts for expenses incurred by and on behalf of the Charter School and

other schools operated by EYS. EYS shall only charge the Charter School for expenses incurred by or on behalf of the Charter School.

ARTICLE VI PERSONNEL & TRAINING

A. Personnel Responsibility. EYS shall select and hire a qualified principal or school leader and other personnel to perform services at the Charter School. Personnel shall be employees of EYS or the BOARD based on the preference of EYS and the employee. All costs for the principal or school leader position incurred by EYS will be reimbursed by the BOARD, unless otherwise agreed upon by the BOARD and EYS. Notwithstanding anything to the contrary herein, the BOARD shall have the right to approve each principal hired by EYS, which approval shall not be unreasonably withheld or delayed. Any rejection of any principal must be for good cause, must be in writing, and shall enumerate specific reasons for the rejection. Failure of the BOARD to approve or reject the designee within ten (10) days of notice shall be deemed an acceptance of the designee by the BOARD. The BOARD and EYS shall be responsible for all compensation for their respective employees. The BOARD shall have the right, exercisable on a reasonable basis, in accordance with all applicable laws, and only upon a majority vote of said BOARD, to require that EYS remove or, at EYS's option, transfer any employee working at the Charter School, which removal or transfer shall be effective at the end of ten (10) business days, unless otherwise agreed to by EYS and the BOARD. EYS shall have the responsibility and authority to determine staffing levels, and to select, evaluate, assign, discipline, transfer and terminate personnel consistent with applicable state and federal law, the Charter and this Agreement.

B. Instructional Personnel. EYS shall select and hire a principal for the Charter School, subject to the review and approval of the BOARD as set forth in Article VI, Section A, above. EYS shall determine the number of teachers and the applicable grade levels and subjects required for the operation of the Charter School as set forth in this Agreement. EYS shall provide the Charter School with such teachers, qualified by the appropriate grade levels and subject areas, as are required to operate the Charter School. Teachers may be employed by EYS or the BOARD at the discretion of EYS and the employee. All costs for teaching personnel incurred by EYS will be reimbursed by the BOARD, unless otherwise agreed upon by the BOARD and EYS. The curriculum taught by such teachers shall be consistent with the Educational Program approved by the BOARD. Such teachers may, at the discretion of EYS, work at the Charter School on a full or part-time basis. If assigned to the Charter School on a part-time basis, such teachers may also work at other schools managed or operated by EYS, or another public or private school. Each teacher assigned to the Charter School shall hold a valid teaching certificate issued by the state board of education or be working toward such certification, as permitted by state law. Teachers that are not certified must be approved for alternative certification by the authorizer.

C. Other Staff. EYS shall determine the number and the functions of other non-instructional staff required for the operation of the Charter School as set forth in this Agreement. EYS shall provide the Charter School with qualified staff to effectively operate the Charter School in accordance with this Agreement. Non-Instructional staff may be employed by EYS or the BOARD at the discretion of EYS and the employee. All costs for non-instructional personnel

incurred by EYS will be reimbursed by the BOARD, unless otherwise agreed upon by the BOARD and EYS. Non-instructional staff may, at the discretion of EYS, work at the Charter School on a full or part-time basis. If assigned to the Charter School on a part time basis, teachers and other staff members may also work at other schools managed or operated by EYS, or another public or private school.

D. Professional Development. EYS shall provide education in its methods, curriculum, program, and technology to all teaching and administrative personnel. Non-instructional personnel shall receive such professional development as EYS determines reasonable and necessary under the circumstances.

E. Limitations on Discretion. All decisions made by EYS, and any discretion exercised by EYS, in its decisions regarding staffing levels and its selection, evaluation, assignment, discipline, and transfer of personnel, shall be consistent with state and federal law, and consistent with the parameters adopted and included within the Charter and this Agreement.

ARTICLE VII TERMINATION OF AGREEMENT

A. Termination.

1. By EYS. EYS may, at its option, terminate this Agreement prior to the end of the term specified in Article II in the event the BOARD fails to remedy a Material Event within thirty (30) days after written notice from EYS. As used in this Section, a "Material Event" includes, but is not limited to: (i) EYS' failure to receive funding or grants, due contracted for revenues, compensation, or reimbursements as required by the terms of this Agreement; or (ii) the BOARD'S failure to accept EYS' reasonable recommendations with respect to funding, policies, regulations, which failure has a material adverse effect on EYS' ability to implement the Charter School design as set forth in the Charter of this Agreement; or (iii) the event the BOARD makes decisions regarding the personnel, Instructional Program or Charter School Facility substantially inconsistent with the reasonable recommendations of EYS; or (iv) in the event the number of enrolled students suddenly falls below seventy-five percent (75%) of student capacity for the Charter School for reasons beyond the control of EYS and the number of enrolled students remains below that level for thirty (30) days and results in the inability of the Charter School to remain open; or (v) in the event that during any Fiscal Year, there is a reduction of more than ten percent (10%) in the available combined federal and state funding for the Charter School on a per pupil basis in comparison to the funding that was available in the prior Fiscal Year; or (vi) fraudulent misrepresentation or other willful misconduct by the BOARD that has a material adverse effect on the Charter School; or (vii) the insolvency or bankruptcy of the Charter School; (viii) the loss or suspension of the Charter; or (ix) the enactment, repeal, promulgation or withdrawal of the state charter law such that this Agreement or the operation of the Charter School in conformity with this Agreement or the BOARD's Charter violates the law; or (x)

in the event of any material amendment or modification to the Charter; or (xi) in the event the parties are unable to locate a suitable Charter School Facility adequate for the Educational Program and in full compliance with all applicable building and safety codes; or (xii) in the event that use of the Charter School Facility becomes impractical by reason of fire, flood or other act of God.

2. By the BOARD. The BOARD may terminate this Agreement prior to the end to the term specified in Article II in the event that EYS shall fail to take reasonable steps to remedy a Material Event within thirty (30) days after written notice from the BOARD. As used in this Section, a "Material Event" includes, but is not limited to: (i) failure of EYS to provide services in accordance with the terms of this Agreement; or (ii) failure of EYS to follow policies, procedures, rules, or regulations duly adopted by the BOARD that are not in violation of federal or state laws, the Charter, or this Agreement; or (iii) fraudulent misrepresentation or other willful misconduct by EYS that has a material adverse effect on the Charter School; or (iv) the insolvency or bankruptcy of EYS; or (v) the loss or suspension of the Charter; or (vi) the enactment, repeal, promulgation or withdrawal of the state charter law such that this Agreement or the operation of the Charter School in conformity with this Agreement or the BOARD's Charter violates the law.

B. Termination/Expiration.

1. Effective Date of Termination. In the event this Agreement is terminated by either party prior to the end of the term specified in Article II, absent extraordinary circumstances, including without limitation, the fraudulent misrepresentation or willful misconduct of either party, the termination will not become effective until the end of the academic year during which the notice of termination is delivered.
2. Personal Property. Upon termination or expiration of this Agreement, EYS shall be responsible to: (i) remove equipment and other personal property owned by EYS, or (ii) require that the BOARD reimburse EYS for any equipment purchased by EYS with EYS funds and used for purposes of the Charter School pursuant to Article III Section D; or (iii) require that the BOARD remit to EYS such amounts or any remain outstanding under any equipment lease entered into pursuant to Article III Section D, including without limitation any amounts due to exercise any option to purchase under any such lease and complete transfer of title to the Charter School. Equipment and other assets owned by the Charter School shall remain the property of the Charter School.
3. Intellectual Property. Upon termination or expiration of this Agreement for any reason, each party shall, within fifteen (15) days of the effective date of such termination, return, or at the request of the other party destroy, all curriculums, educational materials, and other intellectual property belonging to such other party.

4. Payment. Upon termination or expiration of this Agreement for any reason, the BOARD shall immediately remit to EYS all outstanding ~~Indirect Cost Allocation and Operating Advances~~ together with accrued interest earned thereon and shall reimburse EYS for any other Operating Expenses incurred by EYS on behalf of the Charter School. All such amounts due upon termination shall be payable solely from assets of the Charter School, including without limitation Revenues, Other Funds and such other assets as may be acquired by or on behalf of the Charter School with Charter School Revenues or Other Funds; provided, however, that if the BOARD receives any grant monies or other designated funds which are governed by a use agreement that prohibits the use of such funds to make payment to EYS pursuant to this subsection (the "Restricted Funds"), the BOARD shall not be required to include the Restricted Funds in such payment to EYS.

C. Transition. In the event of termination of this Agreement for any reason by either party prior to the end of the Agreement's term, EYS will, in exchange for the compensation terms included in this agreement, provide the BOARD reasonable assistance for up to ninety (90) days to assist in the transition to another administrative or structural arrangement; provided, however, that EYS shall not be required to provide any assistance to another management company or service provider.

ARTICLE VIII INDEMNIFICATION

Each party hereto shall indemnify and hold harmless the other party, its officers, directors, agents and consultants from and against any and all claims, suits, liabilities, proceedings, penalties, fines, costs, and expenses (including reasonable attorneys' fees at both the state and appellate levels, including paralegal expense) relating directly or indirectly to any breach of this Agreement or of the Charter or any violation of the state Charter law or any other applicable law by such indemnifying party, its officers, directors, agents and consultants, employees, subcontractors, as applicable; such indemnification shall be achieved by the purchase of general liability and property insurance policies, or by other mechanisms as the parties may mutually agree.

ARTICLE IX INSURANCE

A. Insurance Coverage. EYS shall obtain and on behalf of the BOARD maintain such policies of insurance as may be required by the Charter or applicable law. To the extent allowed by law, the costs of such insurance to the BOARD shall be included in the Charter School Budget, to be prepared by EYS and approved by the BOARD. EYS shall provide proof of such insurance to the BOARD at the BOARD's request. Any cost incurred by EYS to obtain this insurance shall be reimbursed by the BOARD. The BOARD and EYS shall be listed as named insureds on such policies. To the extent reasonably practicable, the parties shall cooperate with each other in providing such information and complying with such reporting requirements as may be required by any applicable insurer(s)

B. Workers' Compensation Insurance. Each party shall maintain workers' compensation insurance as required by law, covering their respective employees. Costs incurred by EYS for workers compensation insurance for employees allocated to the charter school shall be reimbursed according to the percentage of the employee that is allocated to the charter school.

ARTICLE X WARRANTIES AND REPRESENTATIONS

A. BOARD Warranties and Representations. The BOARD represents that it has the authority under law to execute, deliver and perform this Agreement and to incur the obligations provided for under this Agreement. The BOARD warrants that its actions have been duly and validly authorized and that it will adopt any and all resolutions or expenditure approvals required for execution of this Agreement.

B. EYS Warranties and Representations. EYS warrants and represents that it is a corporation in good standing and is authorized to conduct business in the State of Oklahoma. EYS will comply with all registration and filing requirements relating to conducting business under this Agreement. The BOARD agrees to assist EYS in applying for such licenses and permits and in obtaining such approvals and clearance.

C. Mutual Warranties. The BOARD and EYS mutually warrant to the other that there are no pending actions, claims, suits or proceedings, to its knowledge, threatened or reasonably anticipated against or affecting it which if adversely determined, would have a material adverse effect on its ability to perform under this Agreement.

ARTICLE XI
MISCELLANEOUS

A. Entire Agreement. This Agreement represents the entire understanding and agreement between the parties with respect to the subject matter hereof, and supersedes all other negotiations, understandings, and representations (if any) made by and between such parties.

B. Force Majeure. Notwithstanding any other sections of this Agreement, neither party shall be liable for any delay in performance or inability to perform due to acts of God or due to war, riot, embargo, fire, explosion, sabotage, flood, accident, labor strike, or other acts beyond its reasonable control; provided either party may terminate this Agreement in accordance with the termination provisions contained in this Agreement if sufficient grounds exist as provided in the Article governing termination.

C. Resolution of Disputes. The parties agree that each will make every good faith effort to resolve any and all disputes under this Agreement amicably before taking any action under Article XI Section D below.

D. State Governing Law/Waiver of Jury Trial. The rights of all parties hereto shall be subject to the jurisdiction of and be construed according to the laws of the State of Oklahoma. EYS and the BOARD hereby waive the right to a jury trial in any action, proceeding or counterclaim brought by either EYS or the BOARD against the other.

E. Written Notices. All notices and other communications required by the terms of this Agreement shall be in writing and shall be given to the parties hereto at the residential number or address set forth below. Notice may be given by (i) facsimile with written evidence of confirmed receipt by the receiving party of the original, (ii) certified or registered mail, postage prepaid, return receipt requested, or (iii) personal delivery. Notice shall be deemed to have been given on the date of transmittal or personal delivery. Notices by facsimile or personal delivery, or by certified mail or postmark if sent by registered or certified mail. Notices to the BOARD shall be given to the current address of the then current BOARD President, with a copy to the then current BOARD attorney. The address of the parties hereto for the purposes aforesaid, inclusive of the address of the current BOARD President, and BOARD attorney, are as follows:

The BOARD:
Attn: Mr. Douglas Scott, Esq., Chairman
4117 NW 122nd Street, Suite A
Oklahoma City, OK 73126
Telephone: 405-749-4550
Facsimile: 405-749-4540

with a copy to: Betsy Brown, Secretary/Treasurer
4117 NW 122nd Street, Suite A
Oklahoma City, OK 73120
Telephone: 405-749-4550
Facsimile: 405-749-4540

EYS Schools Inc.
Attn: William H. Hickman, Esq.
114 East Main Street
Norman, OK 73069
Telephone: 405-605-2375
Facsimile: 405-605-2374

F. Assignment. No party shall assign its rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. EYS, however, may assign this Agreement to an entity wholly owned or controlled by EYS.

G. Amendment. This Agreement shall not be altered, amended, modified or supplemented except by memorandum approved by the BOARD and signed by both the BOARD President and an authorized officer of EYS.

H. Waiver. No waiver of any provision of this Agreement shall be deemed or shall constitute a waiver of any other provision. Nor shall such waiver constitute a continuing waiver unless otherwise expressly stated.

I. Costs and Expenses. In any party commences an action against another party as a result of a breach or alleged breach of this Agreement, the prevailing party shall be entitled to have and recover from the defendant any reasonable attorneys' fees and costs of suit.

J. Delegation of Authority. Nothing in this Agreement shall be construed as conferring on EYS powers or authority over the BOARD that are not subject to delegation by the BOARD under state law and the Charter.

K. Compliance with Law. The parties to this Agreement agree to comply with all applicable laws and regulations.

L. Compliance with Charter. The parties to this Agreement agree to comply with the terms and conditions set forth in the Charter awarded to the BOARD.

M. Further Assurances. The parties hereby agree from time to time to execute and deliver such further and other assurances, assignments and documents and do all matters and things which may be convenient or necessary to more effectively and completely carry out the intentions of this Agreement.

N. Interpretations. This Agreement shall not be construed more strictly against one party than against the other merely because it may have been prepared by counsel for one of the

parties, it being recognized that both parties have been represented by counsel in connection with the negotiation of the terms hereof and have contributed substantially and materially to its preparation.

O. Time of Essence. Time of performance by either party of each and every provision or covenant herein contained is of the essence of this Agreement.

P. Binding Effect. All of the terms and provisions of this Agreement, whether so expressed or not, shall be binding upon, inure to the benefit of, and be enforceable by the parties and their respective legal representatives, successors, and permitted assigns.

Q. Headings. The headings contained in this Agreement are for convenience of reference only, and shall not limit or otherwise affect in any way the meaning or interpretation of this Agreement.

R. Severability. If any part of this Agreement or any other agreement entered into pursuant hereto is contrary to, prohibited by or deemed invalid under applicable law or regulation, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited or invalid, but the remainder hereof shall not be invalidated thereby and shall be given full force and effect so far as possible.

S. Survival. All covenants, agreements, representations, and warranties made herein or otherwise made in writing by any party pursuant hereto shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

T. Third Parties. Nothing in this Agreement, whether explicit or implied, is intended to confer any rights or remedies on any person other than the parties hereto and their respective legal representatives, successors, and permitted assigns, nor is anything in this Agreement intended to release or discharge the obligation or liability of any third person to any party to this Agreement, nor shall any provision give any third person any right of enforcement or action over or under any party to this Agreement.

U. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

[Signatures on following page.]

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date and year first above written.

House committee advances bills to reform U.S. oil and gas leasing, give state
Board of Education subpoena power

EXHIBIT
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