

CHARTER SCHOOL AGREEMENT

BETWEEN

THE COLORADO CHARTER SCHOOL INSTITUTE

AND

THE UTE MOUNTAIN UTE TRIBE

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CHARTER SCHOOL CONTRACT

This charter school contract (the “Contract”) is effective as of the date of execution for a contract term to begin July 1, 2021, by and between the State Charter School Institute (the “Institute” or “CSI”) and the Ute Mountain Ute Tribe, a federally recognized Indian tribe of the United States (“Tribe”), doing business as Kwiyaqat Community Academy (the “School”), for the establishment of a Charter School, organized as a Tribally chartered organization, located in Towaoc, Colorado.

SECTION 1: RECITALS

WHEREAS, the Colorado General Assembly has enacted the Charter Schools Act (the “Charter Schools Act”), **C.R.S. 22-30.5-101 et seq.**, allowing for the creation and operation of charter schools within the state by its terms and for certain purposes as enumerated in **C.R.S. 22-30.5-102(2) & (3)**;

WHEREAS, The Colorado General Assembly has subsequently enacted **C.R.S. 22-30.5-501 et seq.**, (the “State Charter Institute Act”) authorizing the creation of the Institute and empowering the Institute to enter into charter school contracts as specified therein;

WHEREAS, pursuant to **C.R.S. 22-30.5-503(1)(b)(III), 22-30.5-504(1) and 22-30.5-508(1)**, the Institute has the authority to approve applications to establish charter schools in the State of Colorado and thereafter to enter into contracts with such schools setting forth the terms and conditions under which a charter school is to operate;

WHEREAS, on August 3, 2020, the Colorado Charter School Institute (“CSI”) received a new school application from KWIYAGAT COMMUNITY ACADEMY (“KCA” or “the Applicant”) in Towaoc, Colorado;

WHEREAS, the Applicant proposes to locate within the geographic boundaries of Montezuma-Cortez School District RE-1, which does retain Exclusive Chartering Authority;

WHEREAS, on January 21, 2020 the Montezuma-Cortez Board of Education approved the Applicant’s request for release to apply to CSI;

WHEREAS, the application was reviewed in accordance with Colorado law C.R.S. § 22-30.5-509, et seq., as amended;

WHEREAS, the application was examined in accordance with national best practices for charter school application review which included, but was not limited to, CSI staff and external expert review of the submitted application using a standards-based review rubric, and a virtual applicant interview;

WHEREAS, the CSI Review Team reviewed the application and requested additional information from the Applicant, which was supplied by the Applicant and examined by the reviewers;

WHEREAS, on September 3, 2020, representatives of the Applicant Team held a geographic meeting virtually, which CSI attended, to receive public input on the application;

WHEREAS, on September 8, 2020, the CSI Performance Management Committee held a public hearing during which the Applicant provided information to the Board and answered questions about the application;

WHEREAS, on October 20, 2020, CSI staff presented its recommendation to the CSI Board of Directors Performance Management Committee;

WHEREAS, the Applicant had an opportunity to provide feedback on the Staff Recommendation in advance of the October 20, 2020 meeting;

WHEREAS, the New School Application Recommendation Report was forwarded for consideration at the October 27, 2020 CSI Board Meeting; and

WHEREAS, on October 27, 2020, the Institute approved the New School Application, subject to certain conditions and negotiation and execution of a contract acceptable to the Institute and to the School, as reflected in Institute Resolution # 2032, which is attached hereto as **Exhibit A** and is incorporated by reference herein, and the negotiated milestones for opening, which are attached hereto as **Exhibit D** and are incorporated herein by reference; and

WHEREAS, this Contract, together with the New School Application (the “Application”) (as modified and incorporated by reference herein) and with the attachments and exhibits thereto, contains all terms, conditions and provisions hereof and the entire understandings and all representations of understandings and discussions of the parties relating thereto, and all prior representations, understandings and discussions are merged herein and superseded and canceled by this Contract.

NOW, THEREFORE, in consideration of the mutual covenants, representations, warranties and agreements contained herein, the parties agree as follows:

AGREEMENT

SECTION 2: THE SCHOOL

2.1 Parties. This Agreement is entered into between the Tribe and the Institute. The person authorized to sign on behalf of the Tribe is the Chair of the Ute Mountain Ute Tribal Council acting pursuant to authority granted by official resolution of the Tribal Council and as attested by the Recording Secretary of the Tribal Council. The person authorized to sign on behalf of the Institute is the Chair of the Board of Directors of the Institute and as attested by the

Secretary of the Board of Directors. The Tribe agrees to cause the School to meet the duties assigned to it in this Contract.

2.2 Term. This Contract is effective as of the date of execution for a charter term to begin July 1, 2021 and terminate on June 30, 2024, with a possible automatic two-year contract extension should the School meet the following benchmarks:

1. The School attains and maintains a Performance rating on the Colorado Department of Education School Performance Framework (“SPF”) and the CSI Annual Review of Schools (“CARS”) for the 2021-22 and 2022-23 school years, as applicable;
2. The School demonstrates financial viability as evidenced by meeting TABOR reserve requirements, meeting enrollment projections (with a reasonable variance allowed), and gradually increasing enrollment in accordance with the charter application, for the 2021-22 and 2022-23 school years; and
3. The School demonstrates a pattern of compliance with federal and state laws and regulations, the charter contract, and Institute requirements. This will be based on a review of any Notices of Concern or Breach received during the initial three-year contract term and the nature and severity of such Notices.

This Contract may be renewed in accordance with the State Charter Institute Act, the Institute rules, and as set forth in **Section 11** below. Although this Contract is for operation of the School as a charter school for a period of 3 years, any financial commitment on the part of the Institute contained in this Contract is subject to annual appropriation by the General Assembly and the parties agree that the Institute has no obligation to fund the financial obligations under this Contract other than for the current year of the Contract term; and that the Institute has not irrevocably pledged and held for payment sufficient cash reserves for funding the School at or above the per pupil allocation or for providing services described herein for the entire term of the Contract. The Institute will notify the Tribe immediately upon learning that funds may not be available for any period of the Contract term.

2.3 Charter School Legal Status. The Tribe represents that it shall maintain the School’s status as a Tribally-chartered nonprofit governmental entity as described in Section 7871 of the United States Internal Revenue Code with all authorities and obligations as set forth in the Charter approved by the Ute Mountain Ute Tribal Council on November 18, 2020, by Resolution Number 2020-183. The School is to remain organized and maintained as a governmental agency of the Tribe separate from the Institute for all purposes of this Contract. As provided by the Charter Schools Act, the School will constitute a public school in Colorado. Notwithstanding its existence as a separate legal entity from the Institute, the educational programs conducted by the School are considered to be operated by the School as a public school under the legal supervision of the Institute. As such, the Tribe will ensure that the School complies with Colorado laws and Institute policies that are applicable to public schools unless waived in accordance **Section 5.09** of this Contract. The parties agree that the phrase “Colorado laws and Institute policies that are applicable to public schools” shall be construed to include only Colorado statutes and rules (and implementing Institute policies) that explicitly refer to “institute charter schools” or “public schools,” unless the statutory context or Federal law clearly

requires a broader or narrower application. The Institute is subject to Tribal and federal laws for all activities occurring on the Ute Mountain Ute Reservation.

2.4 Milestones. The Tribe represents that it negotiated each milestone incorporated herein and came to a mutually agreeable understanding with the Institute for each milestone included in the application recommendation and application approval resolution and attached hereto as **Exhibit D**. The School shall meet all of the pre-opening Milestones attached hereto as **Exhibit D** by the identified dates. Completion of the milestones is subject to review and approval by the Institute. Failure to timely or adequately fulfill any material term of the Milestones, as determined by the Institute, shall be considered a material violation of conditions, standards or procedures provided for in the Contract and shall be grounds for intervention or revocation of the Charter pursuant to **Section 3.5** and **Section 11** of the Contract. The Institute also reserves the right to delay or prohibit the School's opening until the School has satisfied each of the pre-opening Milestones set forth in **Exhibit D**. The Institute may waive or modify the Milestones contained therein or may grant the School an additional planning year upon good cause shown.

2.5 Contacts. Each year, the School shall submit a contact identification form in accordance with Institute procedures which identifies a primary School contact in addition to contact information for Tribal Council members, School Board members, and other key School personnel. The Institute will follow the information provided on the contact identification form in communicating with the School, but reserves the right to communicate with other School personnel or School Board or Tribal Council members depending on the nature and subject matter of the communication. The School shall timely notify the Institute of any material changes to the information provided on the contact identification form. Formal notices shall be sent in accordance with **Section 12.8** below.

SECTION 3: INSTITUTE-SCHOOL RELATIONSHIP

3.1 Institute Responsibilities and Rights

A. **Oversight Authority.** The Institute shall have broad oversight authority over the School pursuant to **C.R.S. §§ 22-30.5-503(5), 505 and 507(2)**, and the State Board of Education (the "State Board") shall also have general supervision of the School pursuant to **C.R.S. § 22-30.5-503(6)**. The School shall be accountable to the Institute and is subject to all applicable federal and state laws, regulations of the State Board and the Colorado Department of Education, and Institute policies and regulations unless specifically waived.

B. **Right to Review.** Subject to Tribal regulations and policies with respect to entry onto the Reservation, in order to fulfill its accountability responsibility, all records established and maintained in accordance with the provisions of this Contract, policies and regulations, and federal and state law and regulations shall, subject to the limitations set forth below, be open to inspection and review and made available in a timely manner to Institute officials who have legitimate educational interests in such

records within the meaning of the Family Educational Rights and Privacy Act (“FERPA”). Records include, but are not limited to, the following:

- i.* School records including, but not limited to, student cumulative files, policies, special education and related services;
- ii.* Financial records, including bank statements;
- iii.* Educational program, including test administration procedures and student protocols;
- iv.* Interim assessment measures;
- v.* Personnel records, including evidence that criminal background checks have been conducted;
- vi.* School operations, including health, safety and occupancy requirements; and
- vii.* Inspection of the facility.

Further, so long as the Institute complies with Tribal laws regarding entry onto the Ute Mountain Ute Reservation, this Contract makes explicit the Institute’s right to make visits to the School in order to fulfill its oversight responsibilities. Records must be maintained in Colorado and Institute staff must be granted unlimited access to any electronic student record systems.

Notwithstanding anything to the contrary herein, the Institute shall not have access to (1) documents constituting communications with the School’s attorney and which are protected by attorney client privilege, or attorney work product doctrine; or (2) documents that would otherwise be executive session minutes, or attorney client consultation in executive session or subject to a work product exception, or other confidential attorney client communications, in whatever form, relating to negotiations with the Institute.

C. **Complaints**. In accordance with Institute policy, complaints received by the Institute will first be directed to the School’s administration and then to the School Board (and Tribal Council, if applicable) for resolution. Where a grievant has followed the School’s Grievance Policy and Tribe’s Personnel Policies and escalates the complaint to the Institute, the Institute agrees to notify the School and, if appropriate, the School Board of any formal complaint within five (5) business days of receipt of the complaint and will include information about the substance of the complaint. Due consideration shall be accorded to any complainant’s request for anonymity.

D. **Feedback about Progress**. The Institute will provide information to the School about its status in relationship to the requirements contained in **Section 7** in accordance with the CSI Annual Review of Schools and associated timelines.

E. **Access to Data and Information**. The Institute will timely provide the School with access to any data and information pertaining to the School that it receives from the State or other sources including but not limited to test scores, Exceptional Student Education Act data, school improvement status, accreditation, special education, and funding information.

F. **Accreditation Data and Process.** No later than five (5) business days following the receipt of the information, the Institute shall provide to the School the data used by the Colorado Department of Education (“Department”) to conduct its analysis of the School’s performance and the Department’s initial recommendation considering the type of performance plan the School should be required to implement. The Institute shall give due consideration to any appeal made by the School to the plan assignment, provided that the School has submitted valid and reliable data for consideration in accordance with a reasonable deadline established by the Institute. The Institute shall present any appeal it reasonably determines to be valid to the Department in accordance with **CCR 301-1**. No later than five (5) business days following the receipt of the information, the Institute shall provide to the School the final plan assignment determination that the School shall implement. No later than ten (10) business days following approval by the Institute Board, the Institute shall provide to the School the final accreditation status assigned to the School and the Institute’s assessment of the progress made by the School toward the goals and objectives set forth in **Section 7** of this Contract.

G. **Tribal Employment Rights Ordinance.** The Tribe agrees that the Institute is exempt from the Tribe’s *Tribal Employment Rights Ordinance* due to its status as a governmental entity of the state of Colorado in the same or similar manner that the School is a governmental entity of the Tribe.

3.2 School Responsibilities and Rights.

A. **Records.** The School shall comply with applicable federal and state laws concerning the maintenance, retention and disclosure of student records, including, but not limited to, the **Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g**. The Tribe further agrees to assist and cooperate with the Institute in accessing or reviewing any records as part of its oversight responsibility or to address its compliance requirements, whether or not such records are subject to public disclosure.

Student records include but are not limited to immunization records, class schedules, records of academic performance, IEP and 504 records, disciplinary actions, attendance and standardized test results and documentation required under federal and state law regarding the education of students with disabilities. The School shall maintain up-to-date information about enrolled students in the School’s online student data systems. All paper records shall be maintained at the School and shall be open to inspection, consistent with law, during reasonable business hours.

The Tribe acknowledges that the the Colorado Open Records Act (“CORA”), **C.R.S. 24-72-201 et seq.**, and the Open Meetings Law (“OML”), **C.R.S. 24-6-401 et seq.**, apply to institute charter schools in general. The Institute acknowledges that Colorado laws do not apply to the Tribe in general and apply to the School only to the extent set forth in this Contract. The parties agree that the Institute will not include the

CORA and OML as part of its accreditation and renewal processes for the School, due to the legal ambiguity about these statutes' application to the School.

B. Notice to the Institute.

Timely Notice: The School will timely notify the Institute (and other appropriate authorities) in the following situations:

- i.* The discipline of employees at the School arising from misconduct or behavior that may have resulted in harm to students or others, or that constituted violations of law;
- ii.* Any changes in current Board membership, including resignations and appointments; and
- iii.* Any complaints filed against the School or its employees, administration, or Board members by any governmental agency.

Immediate Notice: The School will immediately notify the Institute of any of the following:

- i.* Conditions that may cause it to vary from the terms of this Contract, applicable Institute requirements, or federal or state law;
- ii.* Any circumstance requiring the unplanned extended closure of the School, including, but not limited to, a natural disaster, such as an earthquake, storm, flood or other weather related event, other extraordinary emergency, or destruction of or damage to the school facility;
- iii.* Any circumstances requiring lockdown, emergency procedures or any other action that may affect school health or safety;
- iv.* The arrest, dismissal or resignation of any members of the School Board or School employees for a crime punishable as a felony or any crime related to the misappropriation of funds or theft;
- v.* Misappropriation of funds;
- vi.* A default on any obligation, which will include debts for which payments are past due by sixty (60) days or more;
- vii.* Any change in the School Board's status as a governmental entity of the Tribe; and
- viii.* Any changes to Tribal laws applicable to the School or any other matter relevant to performance of obligations by either party under this Contract.

C. Compliance. The School will comply with all applicable federal and state laws, regulations and rules, local ordinances, and Institute policies (as further described in Section 2.3 above), except to the extent that the School has obtained waivers from state law and Institute policies in accordance with **Section 5.09** below. The School is expected to be aware of the federal and state laws and Institute policies with which the School must comply. Noncompliance will be addressed through the Institute's School Compliance Policy. A compliance attestation document will be provided to the School Leader and School Board Chair for signature on a yearly basis. The Institute reserves the

right to conduct audits and require submission of certain documents or assurances in order to monitor compliance.

D. **Reports.** The School will timely provide to the Institute any reports necessary and reasonably required for the Institute to meet its oversight and reporting obligations. Required reports include, but are not limited to, those listed on the CSI online compliance calendar (or its replacement) with projected due dates for the current school year. Timely notification will be provided by the Institute when due dates are changed or if additional reports are required by the federal government or the Colorado Department of Education (“CDE”). The Institute will continuously update the list of required reports and due dates and provide this information to the School via the CSI online compliance calendar (or its replacement). Failure by the School to provide reports by set deadlines may constitute a material breach of the Contract in accordance with Institute compliance policies and procedures, and the Institute may take action under **Sections 3.5 or Section 11** of this Contract.

E. **Indemnification.** To the extent permitted by law and not covered by insurance or not otherwise barred by the Colorado Governmental Immunity Act, the School Board and the School shall indemnify and hold the Institute and its employees, directors, officers, agents, and assigns harmless from all liability, claims and demands of third parties arising on account of personal injury, sickness, disease, death, property loss, infringement on intellectual property rights or damage or any other losses of any kind whatsoever to the extent the same are proximately caused by any act, error, or omission, whether negligent, grossly negligent, intentional or otherwise, of any of its employees, directors, officers, agents, assigns, subcontractors, and representatives. The parties may withhold funds for damages, attorneys’ fees, costs and expenses incurred in connection with any pending or threatened suits, actions, grievances, charges or proceedings. The forgoing provision will not be deemed a relinquishment or waiver of any kind of applicable bar or limitation liability provided by the Colorado Governmental Immunity Act, Tribal sovereign immunity, or other law. This clause shall apply to disputes that arise post-termination of the contract between the Institute and the School for claims arising relating to the contract.

3.3 Procedures for Contract Amendments. If the Institute requests a change to this Contract, the Institute will send written notice to the Tribe and School in accordance with Sections 12.2 and 12.8. The Tribe will have 60 days to review and accept or reject the proposed changes.

Except as otherwise specified in the Contract, if the Tribe desires any changes to this Contract, the Tribe shall submit (or cause the School to submit) a written request, in a form and manner prescribed by the Institute Charter Modification process (or its replacement), which request shall, at a minimum, identify the change being requested, the rationale for the proposed change, and a description of all considered academic, organizational, and financial impacts.

The Institute shall have 60 days to review and accept or reject any complete request for contract modification. Failure to receive advance approval for such changes may be considered

a material breach of the Contract. With regard to the negotiated Milestones attached hereto as **Exhibit D**, the parties agree that the dates set forth may be modified by the Institute.

3.4 Voluntary Dispute Resolution. The parties may choose to attempt to resolve disputes arising out of the implementation of this Contract, and not subject to immediate appeal to the State Board, by means of the dispute resolution process set forth in this Section. Should both parties agree to pursue dispute resolution, they further agree that they shall continue without delay to their performance under this Contract, except for any performance which may be directly affected by such dispute.

- i.* **Informal negotiation.** If both parties agree to dispute resolution, authorized representatives of the Institute and the School will meet to discuss a possible resolution to the dispute. Either party may invite the administration of the Colorado Lieutenant Governor to attend negotiations, but only so long as doing so does not violate rules of confidentiality or create a conflict of interest.
- ii.* **Formal notification of dispute.** If the dispute is not resolved through informal negotiation, either party may submit to the other a written notice identifying the specific action with which it disagrees, any Contract provision which it alleges has been breached, and the specific corrective action it wishes the other party to take. Such notice must be given within twenty (20) days of the time the party knew or should have known of the action at issue and that informal resolution under **Section 3.4(i)** was unsuccessful.
- iii.* **Mediation.** If the parties are unable to negotiate a resolution to the dispute within ten (10) business days of receipt of such formal notice, either party may request mediation. The party making the request will notify the other party of the request in writing. Within one calendar week of receipt of notice by the other party, the authorized representatives of the parties will attempt to agree on a mediator. If the parties through their representatives fail to reach an agreement within one calendar week after the first attempt to agree, they will request appointment of a mediator by the American Arbitration Association or such other organization as may be mutually agreed upon.
- iv.* **Procedure.** Within thirty (30) days of appointment, the mediator will conduct a hearing limited to the issues raised in the notice required by **Sections 3.4(ii)**. The mediator will have authority to make procedural rules and will issue a report to the parties within thirty (30) days after the close of the hearing. Such report will contain findings and a recommendation regarding the issue(s) in dispute. The mediator's recommendation will be forwarded to the Institute and to the School. This shall not be deemed the "release" of the mediator's recommendation.
- v.* **Action on mediator's recommendation.** The parties shall attempt in good faith to negotiate a resolution based on the mediator's recommendation. The parties agree to waive any right to seek review of the mediator's findings or the underlying matter by the State Board of Education under § 22-30.5-107.5(3) to (6), C.R.S. The parties further agree that if the Institute Board and the Tribal Council cannot negotiate a resolution based on the mediator's recommendation within sixty (60) days of the date thereof, the sole remaining remedy available

to either party will be termination of this Contract. Solely in the context of post-mediation disputes under this Section 3.4(v), the parties further agree to waive any right to appeal any termination of the Contract to the State Board of Education, under § 22-30.5-511(6), C.R.S.

- vi. **Institute's authority.** The dispute resolution process set forth in this Contract will not be required prior to the exercise of any contractual right or statutory authority by the Institute Board, including remedial authority for any material breach of this Contract, such as proceedings to revoke or not renew the Contract.
- vii. **Failure to advance the process.** Failure to advance the process within the time specified in **Section 3.4** will be deemed a waiver of any right to contest an action covered by this procedure with respect to the specific action at issue and will forever bar any claim or proceeding related to such action. In other words, if a party fails to advance the process within the time specified, that party has no right to complain that the process has not moved ahead. However, notwithstanding this provision, the parties may agree in writing to extend any of the time limits for a specified period.
- viii. **Costs shared.** The parties will share equally the costs of mediation, including any per diem expenses, plus any actual and necessary travel and subsistence expenses. A party who unilaterally cancels or withdraws from a scheduled mediation will pay the full cost of any fees assessed by the mediator.

3.5 Other Remedial Courses of Action. The Institute may revoke or deny renewal of the Contract for any of the grounds set forth in **C.R.S.22-30.5-511** and **1 C.C.R. 302-1, Rule 10.00**. In accordance with Institute policy, the Institute may, at its sole discretion, take other remedial actions prior to initiating revocation procedures in accordance with **Section 11**. Remedies include, but are not limited to, those listed below. These remedies may be applied individually, in succession, or simultaneously.

- i. **Withholding of some or all of the funds due to the School.** This action may be taken in situations as allowed by **C.R.S. 22-30.5-105(2)(c)(IV)**, which include failure to submit reports and budgets listed on the CSI online compliance calendar (or its replacement) or as otherwise required by law, regulation, or Institute policy by the established deadlines.
- ii. **Seeking or requiring technical assistance** from the Colorado Department of Education or another organization if the School is required to prepare and implement a priority improvement plan or turnaround plan.
- iii. **Requesting that the Commissioner** issue a temporary or preliminary order in accordance with **C.R.S. 22-30.5-701 et seq.**
- iv. **[Deleted]**
- v. **Notice of Breach.** This action will be initiated as deemed necessary by the Institute and in accordance with the procedures described in the Institute's school compliance policy and CSI rules. A Notice of Breach shall state the deficiency and the basis for it and provide an opportunity to contest the deficiency, may place the School on Intensive Monitoring, and/or may provide the School with an opportunity to cure the deficiency within a reasonable

timeframe prescribed by the Institute. The Institute reserves the right to require the submission of a plan to remedy the deficiency. Upon the written request of the Institute, the School shall develop a plan to remedy the failure or deficiency and submit it to the Institute for review and comment. The plan may be revised at the discretion of the School, with the agreement of the Institute. If the Institute reasonably determines that the plan is not effective in remedying the deficiency, the Institute may require the School to review and revise the plan or may proceed with revocation or any other remedial action the Institute deems necessary.

3.6 Institute Violations of Tribal, Federal or State Law or Breaches of This Contract. If the Tribe believes that the Institute has violated any provision of this Contract, Tribal, federal, or state law, the Tribe will send the Institute notice of the violation and provide an opportunity to cure. The notice will state the deficiency and the basis for the notice, shall provide an opportunity for the Institute to contest the deficiency, shall set forth a reasonable timeframe for remedying the deficiency, and shall set forth the expected results. If the Institute does not remedy the violation or breach, the Tribe may initiate the dispute resolution procedures outlined in **Section 3.4**.

3.7 Tribal Sovereign Immunity. The parties agree and acknowledge that, despite any language in this contract which may suggest otherwise, such as but not limited to the provisions regarding indemnity and dispute resolution, neither the Tribe nor any of its employees, officers, governmental entities, programs, or any other person or entity entitled to the sovereign protection of the Tribe hereby with this Contract consents to have any claim against them adjudicated in any court, tribunal, or other adjudicative body, that such consent may only be obtained by official resolution of the Ute Mountain Ute Tribal Council, and no such resolution exists for the purposes of this Contract.

Should the Tribe become liable to the Institute under this Contract, the parties agree that the Institute may invoke the State of Colorado's right to intercept payments due under other contracts with the Tribe. The template language from those other contracts is hereby adopted in this Contract, as follows:

Despite any other remedial action by the State, Grantee shall remain liable to the State for any damages sustained by the State in connection with any breach by Grantee, and the State may withhold the amount to Grantee estimated to be the State's damages until such time as the exact amount of damages due to the State from Grantee is determined. The State may withhold any reasonable amount that may be due Grantee as the State deems necessary to protect the State against loss including, without limitation, loss as a result of outstanding liens and excess costs incurred by the State in procuring from third parties replacement Work as cover.

SECTION 4: SCHOOL GOVERNANCE

4.1 Governance. The Ute Mountain Ute Tribal Council has the ultimate authority over all activities on the Ute Mountain Ute Reservation, including the activities of the School,

which will remain a Tribally-chartered entity for the term of this Contract. The Tribal Council will establish a Board of Directors for the School (“School Board”) which will manage and govern the School upon the authority granted to it by the Tribal Council through the School’s Charter and Bylaws. The members of the Tribal Council and the School Board are fiduciaries of the School and shall operate in accordance with the Tribe’s *Constitution and By-Laws*, and the School’s Charter and Bylaws, which charter and bylaws may not conflict with the School’s obligation to operate in a manner consistent with this Contract and applicable Tribal, state, and federal laws. The School’s Charter and Bylaws are attached to this contract as **Exhibit B**. The Charter and Bylaws or the School will provide for governance of the operation of the School in a manner consistent with this Contract and Tribal, state, and federal law. The School Board shall follow the requirements of the Tribe in amending its charter and bylaws and shall provide the Institute with notice of any such changes within 10 days of any such ratification or adoption by the Tribal Council.

4.2 Corporate Purpose. The purpose of the School will be limited to such purposes as are set forth in its charter as a nonprofit Tribal governmental entity and as may be accepted and approved by the IRS with regard to its status as an exempt organization under **Section 7871** of the Internal Revenue Code.

4.3 Transparency. As described in Section 3.2(A) above, the School Board and the Tribe acknowledge and agree that the School is subject to the Colorado Sunshine Act (**C.R.S. 24-6-401 et seq.**) and the Colorado Open Records Act (**C.R.S. 24-72-100.1 et seq.**) and any subsequent amendments thereto, to the extent applicable to Tribal entities operating on the Ute Mountain Ute Reservation. Subject to Tribal laws regarding entry onto the Ute Mountain Ute Reservation, the Tribe will make the School Board-adopted policies, meeting agendas and minutes and related documents readily available for public inspection, including the online publication of School Board meeting minutes, agendas, and meeting notices. Public notice of all regular and special meetings will be given and posted in accordance with Tribal law and policy. The Institute reserves the right to require submission or perform an audit of School Board materials, including but not limited to, notices, agendas, and meeting minutes.

Additionally, to promote transparency, the Tribe will ensure that the following information, at a minimum, is easily accessible on the School’s website:

- i.* School Board membership and contact information for the School Board Chair; and
- ii.* Governing Board meeting calendar.

4.4 Conflict of Interest Policy. The Tribe has adopted and strictly enforces a Business Conflicts Code, Ethics Code, and Personnel Policy Manual that establish conflict of interest policies which preserve the mission and vision of the School while addressing nepotism, excessive compensation, and any other potential conflicts of interest among School staff, leadership, and governing board. These policies (as amended from time to time) shall remain in place and shall apply to the School for the duration of this Contract.

4.5 Grievance Policy. The School shall be subject to the Tribe's grievance policies for resolution of public complaints or, if there is none, policies it develops in conjunction with the Institute. The School will make a copy of the Institute's grievance policy (as posted on the Institute's BoardDocs page and as amended from time to time) available annually to all students and parents, as well as all personnel working at the School. The Institute may request that the Tribe modify its grievance policies as applied to the School, which request the Tribe shall not unreasonably deny. Any material changes to these grievance policies as applied to the School may be made only with the approval of the Institute in accordance with **Section 3.3** and the School Board.

SECTION 5: OPERATION OF SCHOOL AND WAIVERS

5.1 Operational Powers. The School (or, where appropriate, the Tribe on the School's behalf) shall be responsible for its own operations including, but not limited to, fiscal matters, preparation of a budget, contracting for services including legal representation and independent auditing, and personnel matters; leasing or purchasing facilities for the School; accepting and expending gifts, donations or grants of any kind in accordance with such conditions as may be prescribed by the donor as are consistent with law and this Contract; and adoption of policies and bylaws consistent with the terms of this Contract. The School (and the Tribe on the School's behalf) may contract with third party providers for operational and administrative services to the extent permitted by law and this Contract, in accordance with **Sections 7.2 and 8.8** below. The School (and the Tribe on the School's behalf) may negotiate and contract with a School District, the governing body of a state college or university, a school food authority, or any third party for the use, operation and maintenance of a school building and grounds, and the provision of any service, activity or undertaking that the School is required to perform in order to carry out the educational program described herein, subject to the Institutes' prior right to review such contracts.

5.2 Performance Evaluations. The School Board or other agent of the Tribe shall conduct a performance evaluation of the lead administrator ("School Leader") at least annually in accordance with C.R.S. 22-9-106, unless waived, in which case a replacement plan and rationale shall be submitted and approved in accordance with Section 5.09 and the School Board shall operate in compliance with such replacement plan. The School Leader or his/her designee shall conduct performance evaluations of the School's employees at least annually in accordance with C.R.S. 22-9-106, unless waived, in which case a replacement plan and rationale shall be submitted and approved in accordance with Section 5.09 and the School shall operate in accordance with that plan.

5.3 Transportation. The School has elected to provide transportation in accordance with the Transportation Plan submitted to the Institute. Any transportation of students provided by the School shall be the sole responsibility of the School. Any changes to the Transportation Plan shall be subject to advance approval by the Institute in accordance with **Section 3.3** above. The School shall be responsible for- and shall comply with all regulatory, safety, insurance, and licensing requirements.

5.4 Food Services. The Institute and the School acknowledge and agree that food services will be provided to students attending the school in accordance with the Food Service Plan submitted to the Institute. Any changes to the Food Service Plan shall require advance Institute approval in accordance with **Section 3.3** above. To the extent the School chooses to participate in Child Nutrition Programs under an approved School Food Authority (SFA), those programs shall be provided in accordance with all applicable state and federal laws as well as all School Food Authority rules, policies, and procedures pertaining thereto.

5.5 Insurance. The School will purchase insurance protecting the School and its Board, employees, and volunteers, and the Institute where appropriate, consisting of comprehensive general liability insurance, errors and omissions liability insurance (also known as school entity liability insurance), and auto liability insurance. The School will also purchase workers' compensation insurance coverage.

The School shall implement the plan to meet applicable insurance coverage requirements set forth in the Application. Any material revision to the terms of such plan may be made only with the prior approval of the Institute. Insurance terms and conditions must be acceptable to the Institute and underwritten by insurers that are legally authorized in the State of Colorado and that are rated by A.M. Best Company not lower than "A-VII". Non-rated insurers must be approved by the Institute. Minimum coverage requirements are listed below:

- Comprehensive general liability - \$2,000,000
- Errors and omissions (covering officers, directors and employees) - \$1,000,000
- Property insurance - As required by landlord or lender
- Motor vehicle liability (if appropriate) - \$1,000,000
- Bonding or Crime - \$25,000
- Workers' compensation - (as required by state or Tribal law)

The School will provide certificates of insurance to the Institute in accordance with the timelines provided in the CSI online compliance calendar or its replacement or as otherwise required by the Institute. All insurance policies purchased by the School will state that coverage will not be suspended, voided, cancelled, reduced in coverage or in limits, except after 45 days prior written notice by certified mail return receipt requested, has been given to the Institute. The School will notify the Institute within 10 days if for any reason there is a lapse in insurance coverage. The School is solely responsible for any deductibles payable under the policies purchased by the School.

5.6 Volunteer Requirements. Any requirement adopted by the School that requires parents commit to or accrue a number of volunteer hours shall be subject to a waiver process that considers individual family circumstances, and the School shall not condition the continued enrollment of any student on the commitment of the student's parents to provide any number of volunteer hours or donations in lieu thereof. The School agrees to conduct background checks of volunteers, as appropriate, and to require evidence of insurance and driver's licensure if the School will be using volunteers' private vehicles for student transportation.

5.7 Nonreligious, Nonsectarian Status. The School agrees that it shall operate in all respects as a nonsectarian, nonreligious, non-home-based public school. The School shall not be affiliated with any nonpublic sectarian school or religious organization, consistent with applicable law.

5.8 Commitment to Nondiscrimination. The School shall comply with all applicable federal, state and local laws, rules and regulations prohibiting discrimination on the basis of race, color, creed, national origin, sex, sexual orientation, marital status, religion, ancestry, disability or need for special education services.

5.9 Waivers

A. **Automatic Waivers.** Pursuant to **C.R.S. 22-30.5-103** and **1 CCR 301-35**, automatic waivers are those automatically granted upon the establishment of a charter contract. Pursuant to **C.R.S. 22-30.5-104(6)**, the State Board will adopt, by rule, a list of automatic waivers to which the School shall be subject. The School shall submit a request for automatic waivers in accordance with Institute Policies and Procedures and state laws and regulations.

B. **Non-Automatic Waivers.** In addition to waivers automatically granted, the Institute agrees to jointly request waivers of additional state laws or regulations to the extent permitted by state laws, rules and regulations upon request by the School and upon approval by the Institute. The waivers to be requested jointly from state law or regulation are set forth in **Exhibit C**. The School shall submit a request for non-automatic waivers in accordance with Institute Policies and Procedures and state laws and regulations. Institute approval of requests to waive either Institute policies or State laws or regulations will not be unreasonably withheld. To the extent the State Board does not grant the requested waivers or imposes conditions upon the School with respect to such waivers, it is agreed that representatives of the parties will meet to negotiate the effect of such State Board action.

C. **Subsequent or Additional Waiver Requests.** The School may request subsequent or additional waivers after the original request in accordance with Institute Policies and Procedures and state laws and regulations.

D. **Legal Liabilities.** The School shall operate in compliance with all Institute policies, procedures and regulations, and all applicable federal, state and local laws, rules and regulations, unless specifically waived pursuant to this **Section 5.9**, as more specifically described in **Section 2.3** and **Section 3.2(C)** above.

E. **Compliance Assurance.** The School will take reasonable steps to assure that staff at the School, members of the School Board, and administrators at the School comply with all replacement policies or practices adopted by the School in connection with waiver of state statutes or rules or Institute policies, or, when appropriate, comply with the intent of waived state statutes, state board rules, and Institute policies.

SECTION 6: SCHOOL ENROLLMENT AND DEMOGRAPHICS

6.1 School Enrollment and Demographics. The School shall provide instruction to students in grades K through 1 for the first year of this Contract, and may add one grade per year for years 2 to 5 of this initial Contract, as further described in the Application.

Material increases or decreases to total enrollment, including the addition or subtraction of a grade level served (other than the gradual buildout described above), require advance Institute approval in accordance with Institute policies and procedures. Such changes to the grade span served also require permission from the Colorado Department of Education; changes will be requested in accordance with state laws and regulations, CDE policies, and Institute policy. Under no circumstance shall the School's student enrollment exceed the capacity of the facility or site as set forth in the Certificate of Occupancy. The Tribe acknowledges that if actual enrollment declines below the minimum enrollment required for financial viability, the School's charter may be revoked.

Material increases or decreases" means, for purposes of this **Section 6.1**, either (1) planning or expecting to increase or decrease total enrollment by 10% or more of the planned enrollment described in the Application, (2) or making operational changes that should reasonably be expected to cause such a change in total enrollment.

6.2 Student Recruitment and Enrollment. Enrollment in the School shall be open to any child who resides within the state, except as limited by **C.R.S. 22-30.5-507(3)**. Student recruitment and enrollment decisions shall be made in a nondiscriminatory manner specified by the School in the Application. In all cases, student recruitment and enrollment decisions shall be without regard to disability, race, creed, color, sex, sexual orientation, national origin, religion, ancestry, need for special education services, or any other protected class in accordance with federal and state laws and constitutional provisions. Enrollment preferences, selection method, timeline, and procedures are described in **Exhibit E**. Any material changes to the School's enrollment policies and procedures may be made only with the approval of the Institute and the School Board of Directors.

6.3 Continuing Enrollment. Pursuant to Colorado state law, students who enroll in the School will remain enrolled in the School through the highest grade served by the school, absent expulsion, graduation, court ordered placement, or IEP placement. Students wishing to transfer from the School to a school in their home District may do so only through the home District's procedures.

6.4 Indigent Students. The School shall have a fees policy that waives all fees for indigent students in accordance with applicable federal and state law and Institute policy. The School shall survey its student population for eligibility for free and reduced-price lunches pursuant to federal guidelines in accordance with State Board of Education regulations. On all fee lists and schedules, the School shall include notification of the policy of waiver of fees for indigent students.

6.5 Denial of Admission. The School shall only deny admission to a student to the extent permitted by law.

SECTION 7: EDUCATIONAL PROGRAM

7.1 Vision and Mission.

Vision:

Kwiyagat Community Academy envisions a future where the graduates of the school will have a strong grounding in Nuchiu culture and language while incorporating modern perspectives as contributing members of the Ute Mountain Ute community. The new generation of school graduates will foster a revitalization of the Nuchiu language and culture and use this knowledge to ground them in a positive self-identity and create community connections built on mutual respect, academic success and focused career goals.

Mission:

The mission of the Kwiyagat Community School will be to ensure an educational program where the Nuchiu culture and language guides the educational experience and is characterized by small class sizes with an interdisciplinary, indigenous, and project-based approach that results in high academic performance and desired character skills, personal wellness and community involvement.

The School Board shall operate the School in a manner consistent with the vision and mission statements as approved by the Institute. Revisions to the vision and mission statements or general implementation of the educational program as set forth in the Application shall be considered material changes to the Contract and shall require prior approval of the Institute.

7.2 Contracting for Core Educational Services. The School and the Institute agree that the School will contract with the Tribe for personnel but is not contracting with an educational service provider (ESP) for implementation of its core educational program. Unless otherwise agreed upon in writing by the Institute, the School (or the Tribe on the School's behalf) shall not have authority to enter into a contract or subcontract for the management or administration of its core instructional program or services, including management of special education and related services. This shall not prevent the School (or the Tribe on the School's behalf) from engaging independent contractors to teach selected, specific courses as a portion of the School's educational program or operations.

7.3 Educational Accountability, School Performance and Accreditation. The School shall comply with the educational accountability and accreditation provisions of Colorado law and Institute policy, as amended from time to time, including, but not limited to:

- i.* the Educational Accountability Act of 2009, C.R.S. 22-11-101 *et seq.*;

- ii. the Preschool to Postsecondary Education Alignment Act, C.R.S. 22-7-1001 *et seq.*; and
- iii. the Accreditation Rules of the State Board, including, but not limited to, tailoring educational programming to meet the individual needs of "exceptional children" as defined in such rules, unless waived.

As required by the Colorado Department of Education, to receive a school code, the School shall meet the definition of a Colorado public school, shall submit all required staff and student data to the Institute, and shall be accountable for all state- and federally-mandated accountability requirements as appropriate for the approved grade configuration of the school identified in **Section 6.1**. School codes will be requested in accordance with state laws and regulations, CDE policies, and Institute policy.

7.4 Performance Frameworks and CSI Annual Review of Schools. The School shall be subject to the Performance Frameworks developed by the Institute and as may be amended from time to time. Based on the Performance Frameworks, the Institute will annually issue for each school the CSI Annual Review of Schools (or its replacement). The CSI Annual Review of Schools shall supersede any and all assessment measures, educational goals and objectives, financial operations metrics, and organizational performance metrics set forth in the Application and not explicitly incorporated into the Performance Frameworks and CSI Annual Review of Schools (or its replacement). The specific terms, form and requirements of the Performance Frameworks and CSI Annual Review of Schools (or its replacement), including any required indicators, measures, metrics, and targets, are maintained and disseminated by the Institute and will be binding on the School.

7.5 Student Performance Goals. The School shall make reasonable progress towards meeting academic standards as defined by the Colorado School Performance Framework and the CSI Annual Review of Schools (or its replacement). Reasonable progress will be established and measured through the implementation of annually agreed-upon academic targets, developed through use of the Unified Improvement Plan process. The School's progress will be monitored and measured with the CSI Annual Review of Schools (or its replacement) and evaluated annually as set forth above. The parties agree that the terms "reasonable progress" or "adequate progress" are defined through this process and that the School will be held accountable pursuant to these definitions.

7.6 Monitoring. The Institute shall monitor and periodically report to the School on the School's progress in relation to the indicators, measures, metrics and targets set out in the Performance Frameworks and CSI Annual Review of Schools (or its replacement). Such reporting shall take place at least annually.

7.7 Renewal. The School's performance in relation to the indicators, measures, metrics and targets set forth in the Performance Frameworks and the CSI Annual Review of Schools (or its replacement) shall provide the basis upon which the Institute will decide whether to renew the School's Charter at the end of the contract term.

7.8 Framework Amendment. The parties intend that, where this Contract references or is contingent upon state or federal laws, that they be bound by any applicable modifications or amendments to such laws upon the effective date of said modifications or amendments. The specific terms, form and requirements of the Performance Frameworks and CSI Annual Review of Schools (or its replacement) may be modified or amended to the extent required to align with changes to applicable state or federal accountability requirements as set forth in law, state and/or nationally recognized best practices, or other circumstances that make assessment based on the existing Performance Framework and CSI Annual Review of Schools (or its replacement) requirements impracticable. In the event that such modifications or amendments are required, the Institute will use best efforts to apply expectations for school performance in a manner as consistent as possible with those set forth in the Performance Frameworks and CSI Annual Review of Schools (or its replacement).

7.9 Student Attendance. The School shall comply with all state and federal laws and regulations and Institute policy concerning student attendance. Attendance of students at the School shall be in compliance with Colorado's compulsory attendance laws, including, without limitation, hour requirements and the distinction made between excused and unexcused absences.

7.10 Conduct and Discipline. The School shall implement student disciplinary policies and procedures, including policies and procedures for the suspension and expulsion of students and the discipline and placement of students with disabilities, in accordance with state and federal laws and regulations, Institute policies, and the School's Student Discipline Policy. The Institute reserves the right to audit and/or request submission of the School's discipline policies and procedures at any time, with or without cause. The authority to hold expulsion hearings, wherein a student may be expelled from the School, shall remain with the School Board or a designee of the School Board (provided the State Board of Education approves a waiver of § 22-33-105(7)(b), C.R.S.).

7.11 Student Welfare and Safety.

A. The School shall comply with all Institute-approved policies and regulations, and comply with all applicable federal and state laws concerning student welfare, safety and health, including, without limitation, Institute policies and laws addressing the reporting of child abuse, bullying prevention, accident prevention and disaster response, and any state regulations governing the operation of school facilities. The School is solely responsible for annually developing, implementing and delivering an emergency response and safety plan to CSI and providing a copy of the safety plan and other safety protocols to the parents of all enrolled students consistent with state and federal law, including but not limited to the Colorado Safe Schools Act, **C.R.S. 22-32-109.1** as it now exists or may be amended. The School will deliver these plans to CSI upon request. CSI will treat emergency response plans and safety protocols as confidential and protected information as allowed under **C.R.S. 24-72-204(2)(a)(VIII)**, and any requests to CSI for security or emergency response plans and protocols provided to CSI by the School will be referred to the School as required under **C.R.S. 24-72-304(2)(a)(VIII)(C)**. Additionally, the School will annually deliver written notice (electronic or otherwise) to the parents of all enrolled students disclosing the School's safety plan.

B. The School shall not authorize any personnel (whether employees, independent contractors, or otherwise) to carry concealed weapons on School grounds or at School activities without first notifying the Institute and complying with the requirements of this Section 7.11. Such notice shall be made before the School initially begins authorizing any personnel to carry concealed weapons, as well as annually thereafter within 30 days of the first day of classes each school year. Before initially authorizing such personnel to carry concealed weapons, and annually thereafter, the School must:

- i.* Deliver written notice (electronic or otherwise) to the parents of all enrolled students (1) disclosing the School's safety plan which includes the plan to authorize concealed carry by designated personnel, and (2) providing notice of the meeting described in paragraph *ii.* below, at least 30 days in advance of such meeting;
- ii.* Allow public comment on the plan to authorize concealed carry by designated personnel at a regularly scheduled open meeting of the School's governing board within 30 days of the first day of classes for the school year, and vote to approve or disapprove the plan in open session at that meeting or the immediately following meeting (although specific details of the plan may be withheld from open session in compliance with C.R.S. 24-6-402(4)(d));
- iii.* Post notices around the School grounds, in prominent public view, of the presence of armed personnel; and
- iv.* Certify that all such personnel designated to carry concealed weapons during the applicable school year have complied with (1) the Armed School Employees Insurability Standards promulgated by the Colorado School Districts Self Insurance Pool and in effect for that school year, or (2) if the School's insurer has adopted the insurability standards materially similar to those adopted by the Colorado School Districts Self Insurance Pool, such standards.
- v.* Provide documentation of notification to local law enforcement and the geographic school district personnel of the presence of armed personnel and the current school safety plan.

Compliance with these conditions shall be certified in the initial notice to the Institute under this Section 7.11(B) and in the annual notice to the Institute thereafter. The School shall include with these notices a current copy of an insurance policy rider or endorsement specifically covering liabilities arising from armed personnel (although any names and sensitive security details may be redacted, if present in the rider or endorsement). This Section 7.11(B) does not apply to School Resource Officers or other P.O.S.T.-certified peace officers.

7.12 School Calendar; Hours of Operation. The days and hours of operation of the School shall not be materially less than those set forth in the Application unless previously approved in writing by the Institute, but in no case shall fall below the minimum number of days

and hours set forth in law. For purposes of this Section, "material" is defined as a 10% reduction in time or transition to or from a 4-day school week.

7.13 Online Program. The School's educational program as contained in the Application and reviewed by the Institute does not include online program elements. The School is prohibited from offering a partial or exclusive online program without prior written authorization from the Institute, or as otherwise provided in the Milestones to this Contract

7.14 Additional Programs. The School shall not offer programs other than those contained in the Application and reviewed by the Institute (including public or private preschool, home school enrichment/options, or online programming) without prior written authorization from the Institute. Additional programs, if approved by the Institute, may require funds to be maintained and accounted for separately from the School's ordinary accounts and may require a Contract modification in accordance with **Section 3.3** above.

7.15 Curriculum, Instructional Program, and Pupil Performance Standards. The School will have the authority and responsibility for designing and implementing its educational program, subject to the conditions of this Contract and in alignment with the Application. The educational program, pupil performance standards, and curriculum designed and implemented by the School will meet or exceed any content standards adopted by the state, will be designed to enable each pupil to achieve such standards, and will be consistent with the School's vision and mission. Any material changes to this provision may be made only with the approval of the Institute and the School Board.

A. **Curriculum.** The School shall have the authority and responsibility for refining the design and implementation of its educational program, subject to the conditions of this Contract, in a manner that is consistent with state law, including but not limited to requirements regarding content standards.

B. **Content Standards.** The educational program, pupil performance standards and curriculum designed and adopted by the School shall be consistent with the content standards required by the state pursuant to **C.R.S. 22-7-1013** and referenced in **C.R.S. 22-30.5-505(8)** and shall be designed to enable each pupil to achieve such standards.

C. **Instructional Requirements.** The School agrees to comply with all state statutory requirements concerning subjects of instruction, unless specifically waived by the State Board of Education, including but not limited to instruction in the areas of state and federal history and civil government, **C.R.S. § 22-1-104**; honor and use of the United States Flag, **C.R.S. § 22-1-106**; the federal constitution, **C.R.S. §§ 22-1-108 & -109**; and the effect of use of alcohol and controlled substances, **C.R.S. 22-1-110**.

7.16 Exceptional Students. The School shall identify academically low-achieving, at-risk students, and "exceptional children" as defined in federal and state law and regulations adopted by the Colorado State Board of Education, and shall provide its educational program to these students in a manner that appropriately serves their needs in accordance with governing law, as set forth in the Application and this Contract.

A. **Gifted and Talented Students.** The School shall identify and provide resources and support to gifted and talented students to enable them to meet their particular academic and emotional needs with a focus on literacy, mathematics, leadership, and creativity. The School shall follow state regulations and the Institute’s requirements for identifying, assessing and serving gifted and talented students. The School will implement the plan for meeting the needs of gifted and talented students, consistent with the plan provided to the Institute.

B. **English Language Learners.** The School shall identify and provide resources and support to English language learners to enable them to acquire sufficient English language proficiency to participate in the mainstream English language instructional program in accordance with state and federal law. The School shall follow the Institute’s requirements for identifying, assessing and exiting English language learners. The School shall implement the plan for meeting the needs of English language learners, consistent with the plan provided to the Institute.

C. **Education of Students with Disabilities.** The School shall provide services and accommodations to students with disabilities consistent with the **Individuals with Disabilities Education Act (20 U.S.C. § 1401 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.), and the Exceptional Children’s Educational Act (C.R.S. 22-20-101, et seq.)** (“ECEA”), and any other state and federal laws and regulations pertaining to the education of students with disabilities regardless of the law and regulation’s applicability to Indian tribes.

Admission of Students with Disabilities

- i. Admission of applicants with an Individualized Education Plan (IEP) or Section 504 Plan shall be in compliance with federal and state laws and Institute policies, procedures, and requirements, including the CSI Enrollment Procedures for Students with Disabilities, as may be amended from time to time. Every student who is admitted with an IEP or Section 504 Plan from his or her previous school shall be placed directly into a program that meets the requirements of such IEP or Section 504 Plan, unless and until an IEP or Plan review meeting is held and the IEP or Section 504 Plan is revised.
- ii. Admission decisions shall be made without regard to special education status or need for accommodations. In the unusual event that, after a student is enrolled in the School, the School’s IEP Team determines that the School cannot provide a Free Appropriate Public Education (FAPE) in the School as the Least Restrictive Environment, the School shall contact the Institute Director of Special Education to discuss placement and service alternatives.

- iii.* The IEP Team convened at the School shall have the authority to make offers of a FAPE and decisions regarding the staffing and methodology used to provide special education and related services at the School.

Education of students with disabilities.

- i.* The School shall implement a plan for meeting the needs of students with disabilities in accordance with state and federal laws and regulations, Institute policy and procedures, and as approved by the Institute. Any material changes to the plan for serving students with disabilities may be made only with the approval of the Institute and the School Board.
- ii.* The school is solely responsible for implementing, providing, and subsidizing those specialized instructional and related services required pursuant to student IEPs, as well as the services, modifications, or accommodations required by a student's Section 504 Plan. The School shall provide all special education support services to students at the School in accordance with state and federal laws and regulations and Institute policy, and in accordance with the plan for meeting the needs of students with disabilities as approved by the Institute. Any material changes to the plan for serving students with disabilities may be made only with the advance approval of the Institute and the School Board.
- iii.* The Institute contracts with a suite of Special Education Coordinators. The School shall utilize one of the Institute Special Education Coordinators and assign special education support staff as necessary to meet student needs, which staff shall be licensed in accordance with federal requirements and Colorado law.
- iv.* The School shall be responsible for providing and paying the cost of defense of any and all charges, complaints or investigations concerning special education by the Office for Civil Rights (OCR), the Department's Federal Complaints Officer, IDEA due process proceedings, or any other similar investigations, and shall be entitled to manage the defense of and settlement of any such claims in cooperation with the Institute. The parties agree that any liability, claims, and demands arising from or relating to the education of students with disabilities shall be satisfied from School funds (and not from Institute funds), unless the Institute has withheld special education funding for purpose of assuming control over the portion of the School's special education program at issue in the proceeding, in which case the Institute and School shall share responsibility proportionately based on the amount of funding withheld. The parties further agree that the Tribe has not waived Tribal sovereign immunity (except with respect to School funds).
- v.* Pursuant to **C.R.S. 22-30.5-503(3) and 22-20-106**, the Institute serves as the Local Educational Agency ("LEA") with oversight authority for delivering special education services to the School. The School will take direction from and work collaboratively with the Institute with regard to the provision of special

education services, evaluations and concerns, and shall provide for the attendance of any School employees who should be present at any meetings at which IEPs are developed or modified. If the School and the Institute disagree as to the correct interpretation or application of a federal or state statute or regulation concerning the education of students with disabilities, the Institute's position shall control.

- vi. The Institute reserves the right to jointly direct with the School the development and/or modification of any IEP for special education students of the School. The Institute's Director of Exceptional Student Services, or designee, shall maintain the same oversight responsibilities and authority as in all other Institute Schools. The School shall use Institute-approved special education forms and procedures and shall document compliance with the requirements of federal and state laws and regulations, including procedural due process. The Institute or the School may identify from time to time changes to the educational program of the School that (a) are reasonably necessary to comply with applicable law for educating students with disabilities, or (b) provide cost savings or other benefits in connection with educating students with disabilities. After good faith discussion of these changes with the School, the Institute shall have the right to require such changes necessary to comply with law, and shall have the right to request other changes on behalf of students with disabilities.
- vii. The School's special education teachers and all related service providers are required to participate in compliance-oriented training and meetings sponsored by the Institute, and newly hired special education teachers shall participate in a state-approved induction program.
- viii. In accordance with the CSI online compliance calendar (or its replacement), the School must report to the Institute its anticipated budgetary allocation and hiring plan for all special education teachers and related service providers who will be employed for the following year. No later than the first day of the opening of school, all special education teachers and related providers must be hired, appropriately qualified, and available to serve the identified needs of the students.
- ix. On an ongoing basis, the Institute will assess the performance of the School with regard to special education. If—in the Institute's sole discretion—the Institute finds the School's performance with regard to special education to be deficient pursuant to state and federal law, the Institute may take remedial steps. Such steps may include, but will not be limited to, increasing the Institute's level of oversight of the School. Should the Institute determine that any remedial steps are necessary, the Institute will oversee implementation of these steps. In the instance where the Institute takes on responsibility for tasks that would otherwise be carried out by the School due to noncompliance, the Institute may retain commensurate funds. Such circumstances are expected to be highly unusual. A written agreement specifying the services to be provided and their cost shall be executed, which agreement shall constitute an amendment to the Charter Contract, at the time of any such unusual intervention.

7.17 Assessment of Pupil Performance and Procedures for Corrective Action. The School shall implement any requirements necessary to meet the School's and the Institute's respective obligations under applicable provisions of federal and state law, including, but not limited to, those of the state Education Accountability Act of 2009 and the Every Student Succeeds Act or their equivalent. Schools will administer interim assessments as set forth in the Application and in adherence to the Institute's assessment policy. Schools receiving an Improvement, Priority Improvement or Turnaround rating will be required to administer a state or nationally normed interim assessment in the fall and spring, at a minimum, and in accordance with the assessment vendor's administration timelines and procedures. Any material revision to interim assessments may be made only with the prior approval of the Institute.

SECTION 8: FINANCIAL MATTERS

8.1 Funding and Disbursement of Per Pupil Revenue. Funding for the School shall be provided in accordance with the provisions of **C.R.S. 22-30.5-513**. The Institute will disburse funding to the School as soon as reasonably possible after those funds are allocated from the State to the Institute, subject to the adjustments set forth below.

A. The School is geographically located in Montezuma Cortez School District, which is the "Accounting District" for purposes of funding.

B. During each fiscal year of the term, the parties agree that the Institute shall provide funding to the School in the amount of ninety-six percent (96%) of the Accounting District's adjusted per pupil revenues ("PPR"), as defined by **C.R.S. 22-30.5-513(1)**.

C. The Institute may retain the School's per pupil share of the administrative overhead costs for actual and reasonable costs incurred by the Institute as a result of its performance of its statutory obligations; however, such costs shall not exceed 3% of PPR. Within ninety days after the end of each fiscal year, the Institute shall provide an itemized accounting of all the Institute's administrative overhead costs pursuant to **C.R.S. 22-30.5-513(2)(d)**. The Colorado Department of Education may retain an amount not to exceed 1% of PPR for administrative purposes from each Institute-authorized school.

D. **Federal Categorical Aid.** Each year the Institute will provide to the School the School's proportionate share of applicable federal Elementary and Secondary Education Act funding received by the Institute for which the School is eligible. The School is eligible for such funds upon approval of its plans for such funds either by the Institute or the Colorado Department of Education, as required. Funds will be distributed on a documented expenditure reimbursement basis on a monthly interval as long as the School provides the Institute with the required documentation.

E. **State Categorical Aid.** In accordance with timelines provided by the CSI finance department, the Institute will provide to the School the School's proportionate share of applicable state categorical aid (e.g., At-Risk Supplemental Aid, English Language Proficiency Act, Gifted and Talented, Amendment 23 Capital Construction

funds, or Transportation funding) received by the Institute for which the School is eligible. The School is eligible for such funds upon approval of its plans or other requirements for such funds either by the Institute or the Colorado Department of Education, as required.

F. The Institute will provide funding under the Colorado Exceptional Children's Education Act that is attributable to identified students with disabilities enrolled in the School and for which the School has supplied appropriate documentation to obtain such funding.

G. The parties shall cooperate in pursuing, appropriately disbursing, and properly accounting for funding provided by the federal and state governments for categorical programs such as Gifted and Talented, English as a Second Language, Medicaid Reimbursements, Title programs, and other federal and state grant sources and categorical aid programs for each eligible School student.

H. The School will have documented financial policies and procedures in place to include procedures that are compliant with federal statutes and regulations in accordance with the Uniform Guidance - Code of Federal Regulations. The School agrees to request its federal grant funds, at a minimum, on a quarterly basis using the appropriate documentation to obtain federal funds.

8.2 Disbursement of PPR Funding. Funding under **Section 8.1 (above)** will be made to the School in monthly installments, in accordance with **C.R.S. 22-54-115**, subject, however, to annual appropriation and the Institute's receipt of the funding. Initial monthly payments shall be based upon enrollment projections in accordance with **Section 8.5 (below)**. However, the actual funding for each fiscal year shall be based upon the actual pupil enrollment for such fiscal year, as defined in **C.R.S. 22-54-103(10)**; the Institute will adjust payments for such fiscal year, by credit or debit as applicable, as set forth in **Section 8.3 (below)**. Any adjustment resulting in a reduction of funding shall require reimbursement to the Institute by the School.

8.3 Adjustment to Funding. The Institute's monthly disbursement of funds will be adjusted as follows. Any and all mid-year legislative changes to the state's school finance formulas shall be passed along to the School as an adjustment (*i.e.*, a monthly debit or credit calculated to true-up the annual total by the end of the fiscal year) to the fiscal year's remaining monthly disbursements, beginning as soon as reasonably possible following the legislative change. Any and all adjustments imposed by CDE as part of CDE's per pupil true-up process (which typically applies to the January through June monthly disbursements) shall be passed along to the School, to the extent not offset by the Institute's early true-up adjustments. The Institute reserves the right to begin adjusting monthly disbursements following October 1st of the fiscal year (or any other applicable count day(s) established by law or by mutual agreement of the Parties), without waiting for CDE's true-up process, when in the Institute's sole discretion it appears to a reasonable certainty that the School's actual pupil count is materially different (as defined in Section 8.5) from the School's projected pupil count. Any PPR withheld from the School through the Institute's early true-up adjustments shall be kept in a separate account by the Institute and applied to offset the impact of CDE's true-up adjustments. Any additional funds paid to the School through the

Institute's early true-up adjustments shall likewise be calculated to offset the impact of CDE's true-up adjustments, and shall be contingent upon the Institute having sufficient operating funds available. Funding may also be adjusted in January for any services provided by the Institute under this Contract. Where the remaining monthly disbursements in the fiscal year are not reasonably sufficient to cover the adjustments required by this Section 8.3, true-up payments shall be made by direct payment to the School or the Institute.

8.4 Budget. The School shall be responsible for the preparation of its budget and shall implement the School Board-approved operating budget. In accordance with the timelines provided in the Institute's online compliance calendar (or its replacement or as otherwise requested by the Institute), the School shall submit to the Institute the School Board's adopted balanced budget for the upcoming school year, for Institute review for statutory compliance and compliance with the terms and conditions of the Contract. Any subsequently approved revisions to the budget shall be provided to the Institute within fifteen (15) days following School Board approval. Budgets must be developed and adopted in accordance with the state-mandated chart of accounts and **C.R.S. 22-44-102 et seq.** A material violation of this Section shall constitute a material breach and may result in the Institute initiating remedies described in **Sections 3.5 and 12** of the Contract.

8.5 Enrollment Projections. Each year of operation, in accordance with pupil enrollment projections deadlines set by CSI in accordance with CDE timelines, the School will provide the Institute with its best initial estimates of its anticipated enrollment for the next school year. In the event that the projected enrollment materially differs from the Institute's estimate of anticipated enrollment, the Institute reserves the right to report to CDE initial funding estimates based on the more conservative figure. A material difference in enrollment shall mean at least 10% greater or lesser than the School's own estimate. Both the School's and the Institute's estimates of anticipated enrollment shall be formulated reasonably, and shall be based upon the current enrollment, documented intents to enroll (new and current), average annual rates of attrition, and any other identified factors deemed relevant by the party making the estimate. It is agreed by the parties that the purpose of this **Section 8.5** is to provide information to allow the Institute to prepare its future budgets, and that any information provided under this Section will not be used by the Institute for the purpose of restricting the School's enrollment or otherwise inhibiting the growth of the School.

8.6 TABOR Reserve. The School's ending fund balance will comply with the emergency reserve requirements of **Article X, Section 20 of the Colorado Constitution** ("TABOR Reserve"). The School will maintain its TABOR reserve in a revenue bearing account. In addition, the School will maintain a positive fund balance at year end. A material violation of this Section shall constitute a material breach and may result in the Institute initiating remedies described in **Sections 3.5 and 12** of the Contract.

8.7 Non-appropriation of Funds. The parties agree that the funding for the School will constitute a current expenditure of the Institute. The Institute's funding obligations under this Contract will be from year-to-year only and will not constitute a multiple fiscal year direct or indirect debt or other financial obligation of the Institute. The Institute's obligation to fund the School will terminate upon non-appropriation of funds for that purpose by the State Board of Education for any fiscal year, any provision of this Contract to the contrary notwithstanding. The

parties further agree that the Institute has not irrevocably pledged and held for payment sufficient cash reserves for funding the School at or above the current year per pupil allocation or for providing services described herein for the entire term of the Contract. If the Institute learns that funds budgeted for the School will be unavailable as described in the budget, the Institute will notify the School immediately and assist the School in addressing the budget shortfall in order to minimize the impact to the School and the students.

8.8 Contracting. The School shall adhere to all applicable laws and regulations and Institute policies related to procuring and contracting for goods and services, including but not limited to student data privacy laws. The School further agrees to adhere to best practices relating to procuring and contracting for goods and services, including standards related to arms-length transactions and other conflicts of interest. The School will not extend the faith and credit of the Institute to any third person or entity. The School acknowledges that it has no authority to enter into a contract that would bind the Institute, and the School's authority to contract is limited by the same provisions of law that apply to the Institute, including restrictions on multi-year obligations under TABOR.

A. **Contents.** Unless otherwise agreed in writing by the Institute, or unless the contract is an adhesion over which the School has no ability to alter the terms or otherwise add a rider/amendment complying with this Section 8.8(A), each Contract or legal relationship entered into by the School (or by the Tribe on the School's behalf) shall include the following provisions in addition to all other legally-required provisions:

i. The contractor acknowledges that the School is not an agent of the Institute, and accordingly the contractor expressly releases the Institute from any and all liability under this agreement; and

ii. Any financial obligations of the School arising out of the agreement are subject to annual appropriation by the School Board and the Institute.

B. **School Board Policies and Procedures.** The School shall adopt policies and procedures related to the procurement and contracting of goods and services in alignment with applicable state and federal requirements, Institute policies, and best practices.

8.9 Financial Reporting. The School shall establish, maintain, publish, and retain appropriate financial records in accordance with Institute policy and all applicable federal, state, and local laws, rules, and regulations. The School shall make such records available to the Institute upon request or as required by Institute policy, or by federal or state laws, rules, or regulations. Financial records shall be posted in accordance with the state Financial Transparency Act, unless waived, and reconciled at least monthly. All records shall be maintained at the School and shall be open to inspection, consistent with applicable law, during reasonable business hours. The School shall assist the Institute in accessing or reviewing any records as part of its oversight responsibility or to address its compliance requirements.

A. **Annual Audit and Financial Data Pipeline File.** The School shall undergo an independent financial audit conducted in accordance with all applicable governmental accounting standards and performed by an independent certified public accountant each fiscal year. The audit shall include a balance sheet and statement of revenues, expenditures, and changes in fund balances which shall use the modified accrual basis of accounting. As supplementary information, the audit shall include a budgetary comparison schedule for the General Fund. The audit shall also include any such additional schedules as are necessary, in the Institute's sole discretion, to allow the Institute to accredit each school authorized by the Institute. The results of the final audit will be provided to the Institute in accordance with the CSI online compliance calendar (or its replacement). The School will pay for the audit. In addition, the School will transmit the Financial Data Pipeline File, in a format provided by the Institute, to the Institute using the CDE chart of accounts in accordance with the CSI online compliance calendar (or its replacement). If such audit and Financial Data Pipeline file is not received in accordance with the CSI online compliance calendar (or its replacement), such failure will be considered a material breach of Contract, and action will be initiated as necessary and in accordance with the procedures described in the Institute's school compliance policy and CSI rules.

B. **Public School Finance Audits.** Pursuant to **1 CCR 301-39, Rule 8.00** *et seq.*, the School shall be subject to audit by the CDE for any monies received by the School pursuant to the Public School Finance Act of 1994. Consequently, the School agrees to retain complete documentation supporting any certification made to CDE or any other data given to the CDE pursuant to the Public School Finance Act of 1994 until audited by CDE or until five years from the certification due date, whichever comes first.

i. If CDE determines that the School has received payment of funds greater than the amount to which the School is entitled, the School shall be responsible for repayment to CDE within thirty (30) days from the date of said determination. Should the School be unable or refuse to pay the determined repayment amount, the School agrees that it may have its current payments or reimbursements withheld until the full amount of the repayment, plus applicable interest, is recovered.

ii. Should the School leave the Institute by changing authorizers or by conversion into any other kind of public or private school, then the School's obligation to repay shall (pursuant to **Section 11.6** of this Contract) survive the termination or expiration of this Contract and shall be enforceable by CSI for up to five years after the transfer or conversion of the School.

C. **Quarterly Reporting.** The School will prepare quarterly financial reports for the Institute in compliance with **C.R.S. 22-45-102(1)(b)** and Institute policy. Quarterly financial reports shall be submitted to the Institute in accordance with the Institute online compliance calendar (or its replacement).

D. **Non-Authorized Commingling.** Except as specifically set forth in the School's Application and/or official approval by resolution by the School Board, assets,

funds, liabilities, and financial records of the School shall be kept separate from assets, funds, liabilities, and financial records of the Tribe or any other tribal governmental entity of the Tribe, person, entity, or organization.

E. **Loans.** No loans may be made by the School to any person or entity (other than an affiliated entity) for any purpose without prior Institute approval, except that the Head of School and Board Chair may approve advances of up to one month's salary in cases of documented hardship.

8.10. Timing. Subject to all other provisions of this Contract, funds to be passed through the Institute to the School shall be forwarded to the School within thirty (30) days of receipt by the Institute.

SECTION 9: PERSONNEL

9.1 Employee Status. The Tribe shall employ such personnel as are required for the efficient and effective operation of the School. All employees hired by the Tribe shall be employees or independent contractors of the School and shall under no circumstances be considered an employee of the Institute.

9.2 Personnel Policies. The Tribe shall adopt and implement personnel policies in accordance with applicable state and federal law to address, among other topics, hiring and termination of personnel, terms of employment, and compensation. All employee discipline decisions will be made by the Tribe. Terms of the employment relationship are described in the Employee Handbook submitted in accordance with the CSI online compliance calendar (or its replacement). The Handbook may be amended or revised at the discretion of the Tribe, with a copy of the amended or revised Handbook provided to the Institute.

9.3 Employee Qualifications. The Tribe shall employ or otherwise utilize in instructional positions only those individuals who are qualified in accordance with applicable Tribal, federal, and state law, rules and regulations (unless waived), including the federal Every Student Succeeds Act or its equivalent. Paraprofessionals employed by the Tribe shall meet all credentialing requirements imposed by applicable federal and state law, rules and regulations (unless waived).

9.4. Background Checks; Fingerprinting. The Tribe shall establish and implement procedures for conducting background checks, including criminal history checks, substantially similar to those required by **C.R.S. 22-30.5-110.5** and **C.R.S. 22-30.5-110.7, as set forth in any replacement plan for a waiver thereof approved by the State Board of Education.** No teacher or administrator with a criminal record that would ordinarily preclude them from obtaining a teacher license or from public school employment pursuant to **C.R.S. 22-32-109.8(6.5)** will be employed at the School, regardless of waivers that may have been granted to the Tribe. For purposes of this **Section 9.4**, the parties shall construe **C.R.S. 22-32-109.8(6.5)(a)(I)(G)** to include Tribal offenses. Independent contractors and outside companies that place employees in the school shall also complete the required background checks and provide evidence of such checks to the School.

SECTION 10: FACILITIES

10.1 Facility. The School facility shall be located at the address or addresses identified in the Application or subsequently identified pursuant to the Milestones attached hereto as **Exhibit D**.

The School or its associated building corporation may not add a location, change a location or geographic district, or enter into any financing, leasing or other arrangements in connection with a location change without providing advance written notification to the Institute in accordance with Institute policy. The School shall provide the Institute copies of any lease, purchase agreement, financing arrangements and/or other such facility agreements and such certificates and permissions as are necessary to operate the School in the Facility. The school shall comply with all applicable Tribal laws, regulations and building codes including but not limited to **C.R.S. 22-30.5-507(10)** and **C.R.S. 22-32-124**, and shall obtain all requisite use permits and certificates of occupancy. The School shall be responsible for the construction and maintenance of any facilities owned or leased by it. Subject to Tribal laws with respect to entry onto the Reservation, the Institute shall have access at all reasonable times to any facility owned, leased or utilized in any way by the School for purposes of inspection and review of the School's operation and to monitor the School's compliance with this Contract.

SECTION 11: RENEWAL, REVOCATION, AND SCHOOL-INITIATED CLOSURE

11.1 Renewal Process. Pursuant to **C.R.S. 22-30.5-511**, this Contract may be renewed for succeeding periods of at least one (1) academic year and not more than five (5) academic years. The Parties may extend the length of the charter contract beyond five academic years for the purpose of enhancing the terms of any lease or financial obligation, pursuant to **C.R.S. 22-30.5-511(1)(b)**.

A. **Timeline and Process.** The Tribe will submit its Renewal Application in accordance with renewal timelines promulgated by the Institute in the year before the Tribe's Contract expires. The Institute Board will act on the Renewal Application (in accordance with renewal timelines promulgated by the Institute in the year before the Tribe's Contract expires) following a public hearing where the School will have the opportunity to address the Institute Board. If the Institute Board decides not to renew the Contract, it will detail the reasons in its resolution.

B. **Renewal Application Contents.** In addition to contents required by law, the Renewal Application shall include additional information requested by the Institute Renewal Application regarding progress toward meeting the Institute's accreditation indicators. The Institute may modify this format without prior notice to the Tribe.

11.2 Criteria for Non-Renewal or Revocation. The Institute may terminate, revoke, or deny renewal of the Contract for any of the grounds listed in **C.R.S. 22-30.5-511(3), (4) and (4.5)** and **1 CCR 302-1** as they now exist or may be amended, including for a material breach of this Contract. The Institute will annually provide feedback about the School's progress toward

meeting the Institute's accreditation requirements and other goals and objectives, in accordance with the CSI Annual Review of Schools (or its replacement). Grounds for termination, revocation, or denial will be in alignment with statute, CSI rule, and the CSI Annual Review of Schools (or its replacement). In addition, the School may be non-renewed if:

A. Pursuant to **C.R.S. 22-11-210(1)(d)**, the School is accredited with a priority improvement plan or turnaround plan for a combined total of five (5) consecutive years or any lesser number of years established by the State Board after which closure or restructuring is required; or

B. The School is accredited with a turnaround plan and does not attain a higher accreditation rating at its next performance review in accordance with **C.R.S. 22-11-406(3)**.

11.3 Tribe-initiated Termination. Should the Tribe choose to terminate this Contract before the end of the Contract term, it must do so in accordance with Institute rules and the procedures set forth in **1 CCR 302-1** as they now exist or may be amended, including providing notice to the Institute of the desired termination at least 10 months prior to the proposed effective date of termination. The Tribe and Institute may waive the prior notice period by mutual agreement.

11.4 Dissolution. In the event the School ceases operations for whatever reason, including the non-renewal or revocation of this Contract, the School shall continue to operate its education program until the end of the school year or another mutually agreed upon date. The Institute will supervise and have authority to conduct the winding down of the business and affairs for the School; provided, however, that in doing so, the Institute does not assume any liability incurred by the School beyond the funds allocated to it by the Institute under this Contract. School personnel and the School Board shall cooperate fully with the winding down of the affairs of the School, including convening meetings with parents at the Institute's request and counseling with students to facilitate appropriate reassignment.

As required by **C.R.S. 22-30.5-513(6)(b)**, upon dissolution of the School, any moneys remaining after paying the School's debts and obligations incurred in connection with activities authorized by this Contract, and not requiring return or transfer to donors or grantors, will become the property of the Institute (or another charter school within the Institute, as determined by the Institute and the Tribe in advance of dissolution). The School (or the Tribe on the School's behalf) will execute all necessary documents required to convey such items. At the time of donation, any moneys requiring return or transfer to the donor or grantor shall be clearly documented. The School shall not commingle such funds with public moneys during the School's operations or wind down. Upon dissolution, all such documentation shall be provided to the Institute. In the event of a conflict between the dissolution provisions set forth in this Contract and those in the School's bylaws or charter, this Contract provision shall control.

11.5 Return of Property. In the event of termination or dissolution, all assets or property owned by the School that were purchased in whole or in part with funding provided by the Institute (including but not limited to real property, personal property, and financial assets) or that were purchased with federal grant funds through the Institute acting in its role as a fiscal

agent, will be returned to and will remain the property of the Institute (or another charter school within the Institute) or will otherwise be distributed pursuant to law. The School (or the Tribe on the School's behalf) will execute all necessary documents required to convey such items. Notwithstanding the above, the Institute will not have the right to retain assets or property leased by the School, unless the Institute chooses to comply with the terms of that lease. All non-consumable grants, gifts, and donations from non-public sources, as well as assets or property purchased by the School from non-public funds, will be considered the property of the School unless otherwise identified by the donor in writing and may be disposed of per the School's charter or by mutual agreement with the Institute. Such assets or property shall be clearly marked and properly inventoried at the time of acquisition, and such documentation shall be provided to the Institute upon dissolution. Assets or property purchased exclusively with tuition paid by parents for a preschool program operated by or in conjunction with the School will not be subject to this paragraph. Assets or property not otherwise described in this **Section 11.5** may be disposed of per the School's charter or by mutual agreement with the Institute. In the event of a conflict between the return of property provisions set forth in this Contract and those in the School's bylaws or charter, this Contract provision shall control.

11.6 Termination and Appeal Procedures. In accordance with **1 CCR 302-1**, the Institute shall provide the Tribe written notice of the grounds for termination and the date of the termination hearing before the Institute Board. Prior to providing this notice, or in connection therewith, the Institute shall, in accordance with Institute rules, send the Tribe a Notice of Breach. Termination shall not take effect until the Tribe has exhausted or waived its opportunity to appeal such decision to the State Board.

11.7 Survival of Certain Contract Terms. Any provision of this Contract that imposes an obligation on a Party after termination or expiration of the Contract shall survive the termination or expiration of the Contract and shall be enforceable by the other Party.

SECTION 12: GENERAL PROVISIONS

12.1 Order of Precedence. In the event of any disagreement or conflict concerning the interpretation of Tribal, state, or federal laws, regulations, or requirements; this Contract; the Application; or Institute policies, it is agreed that the order of precedence is as follows: Tribal, state, and federal laws, regulations, and requirements; the Contract and Institute policies; followed by the Application.

12.2 Amendments. No amendment to this Contract will be valid unless ratified in writing by the Institute Board and the Tribe and executed by authorized representatives of the parties.

12.3 Merger. This Contract, together with the Application and with the attachments and exhibits thereto, contains all terms, conditions, and provisions hereof and the entire understandings and all representations of understandings and discussions of the parties relating thereto. All prior representations, understandings, and discussions are merged herein and superseded and canceled by this Contract.

12.4 Non-assignment. Neither party to this Contract will assign or attempt to assign any rights, benefits, or obligations accruing to the party under this Contract unless the other party agrees in writing to any such assignment. Such consent will not be unreasonably withheld, conditioned, or delayed.

12.5 Governing Law and Enforceability. This Contract will be governed and construed according to the Constitution and laws of the State of Colorado, and the Constitution and By-Laws of the Tribe. If any provision of this Contract or any application of this Contract to the School is found contrary to law, such provision or application will have effect only to the extent permitted by law. Either party may revoke this Contract if a material provision is declared unlawful or unenforceable by any court of competent jurisdiction and the parties do not successfully negotiate a replacement provision. The parties agree to meet and discuss in good faith any material changes in law that may significantly impact their relationship as set forth in the Contract.

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

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

12.8 Notice. Unless otherwise specifically provided herein, any notice required or permitted under this Contract must be in writing and will be effective upon personal delivery or email delivery where an email address has been provided (subject to verification of service or acknowledgement of receipt), or three days after mailing when sent by certified mail, postage prepaid by the sender, using the addresses listed below. Either party may change the address for notice by giving written notice to the other party pursuant to this **Section 12.8**. Either party may from time to time designate in writing the persons to whom notice shall be sent.

If to Institute:

Colorado Charter School Institute
1600 Broadway, Suite 1250
Denver, CO 80202

If to School:

Head of School
Kwiyagat Community Academy
Ute Mountain Ute Tribe
P.O. Box 18
Towaoc, Colorado 81334

With a copy to:

Tribal Council Secretary/Custodian
Ute Mountain Ute Tribe
P.O. Box 248
Towaoc, Colorado 81334

And

General Counsel
Ute Mountain Ute TRibe
P.O. Box 128
Towaoc, Colorado 81334

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

12.10 Conflict with Exhibits. In the event of conflicts or inconsistencies between this Contract and its exhibits or attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority: first, the terms and provisions of this Contract; second, the Original Application; and then the remaining exhibits.

12.11 Counterparts; Signature by Facsimile. This Contract may be signed in counterparts, which shall together constitute the original Contract. Signatures received by facsimile or electronic mail by either of the parties shall have the same effect as original signatures.

12.12 Business Days. As used in this Contract, “business day” means any day other than a Saturday or Sunday or a day on which government institutions in the State of Colorado are closed in recognition of established holidays.

IN WITNESS WHEREOF, the parties have executed this Contract as of the date first above written.

<u>SCHOOL</u> KWIYAGAT COMMUNITY ACADEMY	<u>INSTITUTE</u> STATE CHARTER SCHOOL INSTITUTE
By: _____ Chair, Ute Mountain Ute Tribal Council	By: <u><i>Julie Anschutz</i></u> Board Chair, Colorado Charter School Institute Board of Directors
Date: _____	Date: <u>01 / 21 / 2021</u>
Attest: _____ Secretary, Ute Mountain Ute Tribal Council	<u>LEGAL REVIEW</u> Philip J. Weiser, Attorney General
Date: _____	By: <u><i>Joseph A Peters</i></u> Assistant Attorney General
	Date: <u>01 / 21 / 2021</u>

IN WITNESS WHEREOF, the parties have executed this Contract as of the date first above written.

<p style="text-align: center;"><u>SCHOOL</u> [SCHOOL]</p> <p>By: <u>Manual Heart</u> Chair, Ute Mountain Ute Tribal Council</p> <p>Date: <u>1-28-21</u></p> <p>Attest: <u>[Signature]</u> Secretary, Ute Mountain Ute Tribal Council</p> <p>Date: <u>1-28-21</u></p>	<p style="text-align: center;"><u>INSTITUTE</u> STATE CHARTER SCHOOL INSTITUTE</p> <p>By: _____ Board Chair, Colorado Charter School Institute Board of Directors</p> <p>Date: _____</p> <p style="text-align: center;"><u>LEGAL REVIEW</u> Philip J. Weiser, Attorney General</p> <p>By: _____ Assistant Attorney General</p> <p>Date: _____</p>
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EXHIBIT A: RESOLUTION TO APPROVE THE CHARTER APPLICATION

Agenda Item VII.a.iii. Kwiayat Community Academy New School Application RESOLUTION 2032

RESOLUTION 2032

CONCERNING THE APPLICATION TO THE COLORADO CHARTER SCHOOL INSTITUTE FROM KWIYAGAT COMMUNITY ACADEMY

WHEREAS, on August 3, 2020, the COLORADO CHARTER SCHOOL INSTITUTE (“CSI”) received a new school application from KWIYAGAT COMMUNITY ACADEMY (“KCA” or “the Applicant”) in Towaoc, Colorado;

WHEREAS, the Applicant proposes to locate within the geographic boundaries of Montezuma-Cortez School District RE-1, which does retain Exclusive Chartering Authority;

WHEREAS, on January 21, 2020 the Montezuma-Cortez Board of Education approved the Applicant’s request for release to apply to CSI;

WHEREAS, the application was reviewed in accordance with Colorado law C.R.S. § 22-30.5-509, et seq., as amended;

WHEREAS, the application was examined in accordance with national best practices for charter school application review which included, but was not limited to, CSI staff and external expert review of the submitted application using a standards-based review rubric, and a virtual applicant interview;

WHEREAS, the CSI Review Team reviewed the application and requested additional information from the Applicant, which was supplied by the Applicant and examined by the reviewers;

WHEREAS, on September 3, 2020, representatives of the Applicant Team held a geographic meeting virtually, which CSI attended, to receive public input on the application;

WHEREAS, on September 8, 2020, the CSI Performance Management Committee held a public hearing during which the Applicant provided information to the Board and answered questions about the application;

WHEREAS, on October 20, 2020, CSI staff presented its recommendation to the CSI Board of Directors Performance Management Committee;

WHEREAS, the Applicant had an opportunity to provide feedback on the Staff Recommendation in advance of the October 20, 2020 meeting;

WHEREAS, the New School Application Recommendation Report was forwarded for consideration at the October 27, 2020 CSI Board Meeting; and

WHEREAS, the CSI Board has fully considered the CSI Review Team’s New School Application Recommendation (attached), the recommendation from the CSI Board of Directors

Performance Management Committee, and additional information shared by CSI Staff and the Applicant;

WHEREAS, CSI staff and KCA representatives have collaboratively reviewed the proposed milestones and conditions;

NOW, THEREFORE, BE IT RESOLVED by the Institute Board that the application from KCA is hereby APPROVED, with the following conditions for an initial term of THREE years with a possible automatic TWO-YEAR CONTRACT EXTENSION should the School meet the following benchmarks:

1. The School attains and maintains a Performance rating on the Colorado Department of Education School Performance Framework (“SPF”) and the CSI Annual Review of Schools (“CARS”) for the 2021-22 and 2022-23 school years, as applicable;
2. The School demonstrates financial viability as evidenced by meeting TABOR reserve requirements, meeting enrollment projections (with a reasonable variance allowed), and gradually increasing enrollment in accordance with the charter application, for the 2021-22 and 2022-23 school years; and
3. The School demonstrates a pattern of compliance with federal and state laws and regulations, the charter contract, and Institute requirements. This will be based on a review of any Notices of Concern or Breach received during the initial three-year contract term and the nature and severity of such Notices.

BE IT FURTHER RESOLVED that the Institute Board directs Staff to incorporate into the contract the following conditions, which are subject to the review and approval of the Institute and the School and which may be adjusted as needed to ensure the greatest likelihood of a success:

1. Submit the schools updated waiver request and replacement plan. (For reference, see CSI’s guidance on waivers.)
2. Submit evidence that the process has been initiated for establishing the school as a Tribally operated entity, known as a Tribal Charter, replacing the typical Articles of Incorporation of a Colorado Non-Profit, with its own by-laws and policy and procedures

BE IT FURTHER RESOLVED that the Institute Board directs Staff to incorporate into the contract the following milestones, which are subject to the review and approval of the Institute and the School and which may be adjusted as needed to ensure the greatest likelihood of a success:

Within 5 business Days of Contract Execution

1. open a bank account with at least 2 authorized Ute Mountain Ute Tribe representatives, of which at least 1 must be a member of the Ute Mountain Ute Tribal Council, at an approved PDPA bank. Register the PDPA custodian. Send bank account information to CSI within seven business days of contract execution.

Ongoing Upon Contract Execution

1. Submit the school's bank statements, check registers, payroll detail, and updated cash flow forecast with actuals that tie to the bank statement from the prior month by the 5th business day of each month.
2. Submit the following year-to-date financial reports for the school for the prior month by the 15th business day of each month: Balance Sheet, Profit and Loss statement.
3. School leadership must participate in the CSI Year 0, New School Leaders Orientation, Year 1 Leaders Cohort, and CSI Meetings (including board trainings) throughout the 2021-2022 school year.
4. All members of the governing board and, if not already represented on the school board, at least 1 member of the Tribal Council involved in school oversight, must participate in a CSI New School Board Orientation to be scheduled at a mutually-agreeable time and review the recorded Orientation for New Board Members modules. At least 2 members of the school's Board of Directors and if not already represented on the school board, at least 1 member of the Tribal Council involved in school oversight, must participate in live Board Meeting Trainings for both Year 0 and Year 1.
5. Submit interim assessment data following fall, winter, and spring assessments annually as detailed in the contract.

January

6. Submit the school's Tribal Council-approved school bylaws. **Due January 15, 2021**
 - If not included in the bylaws, submit your board background check, code of conduct and conflict of interest policies.
 - In addition, submit the board member agreement that will be signed by board members on an annual basis. (For reference, See CSI's Do's and Don'ts of Board Bylaws and School Board Template Toolkit.)
7. Submit Tribal Council-approved and adopted school financial policies and procedures in alignment with CSI's Financial Policies and Procedures guidance. **Due January 15, 2021.**
8. Consult with the Legal and Policy Team regarding your proposed school enrollment process and submit your final enrollment policy/procedures. (For reference, see CSI's guidance on Enrollment Policies and Practices.) **Due January 15, 2021.**
9. Consult with CSI Legal & Policy Team regarding your draft student registration process and registration paperwork and submit final documents. **Due January 15, 2021.**

February

10. Consult with CSI Chief of Staff on establishing Indian Policies and Procedures as required per Impact Aid. **Due February 1, 2021.**
11. Consult with CSI Chief of Staff on student information system and plans management system needs and considerations. **Due February 1, 2021.**
12. Submit Tribal Council-approved and adopted FY 2020-21 budget. **Due February 1, 2021.**
13. Submit your draft discipline policies for review by the Legal and Policy Team and revise as appropriate/required. (For reference, see CSI's guidance on student discipline). **Due February 15, 2021.**

14. Submit your final Parent/Family and Employee Grievance Policies to CSI. **Due February 15, 2021.**

March

15. Provide a schedule of professional development and Year 0 training for both school leadership, governing board members, and Tribal Members involved in school oversight (Evidence of professional development completion should be submitted as they are completed and, at a minimum, during regular Year 0 Check-Ins.) **Due March 1, 2021.**
16. Consult with the CSI Evaluation & Assessment Team to discuss accountability and set targets for Year 1 and relevant progress monitoring. Submit finalized targets and progress monitoring plan. **Due March 1, 2021.**
17. Consult with the CSI Evaluation & Assessment Team to finalize the assessment plan for Year 1. Submit finalized plan. **Due March 1, 2021.**
18. If changes have been made, submit final evaluation rubric for the head of school. If changes have not been made, please confirm in writing. **Due March 15, 2021.**
19. Submit an explanation of the steps taken in developing the School's Emergency Response Plan, including proposed timeline for completion of the plan, specifics about the staff training that will be conducted on emergency response protocols (including dates for training), and the external resources that have been utilized in developing the Plan. **Due March 15, 2021.**
20. Establish Board of Directors. Submit member legal name, role, term length, and email address for each member. **Due March 31, 2020.**

April

21. Submit an update on actual enrollment following the lottery demonstrating at least 75% of Year 1 enrollment, which is 23 funded pupil count. Securely submit student name, date of birth, and grade level. **Due April 19, 2021.**
22. Submit evidence that the required data system(s) that align with state reporting requirements have been purchased. Include the timeline for system setup and staff training to ensure a functioning system that is usable by staff prior to the first day of school. **Due April 30, 2021.**

May

23. Submit working FY 22 budget. **Due May 3, 2021.**
24. Consult with CSI Student Services Team regarding the development of Program Plans for Special Education, Section 504, Health, Gifted and Talented students, and English Language Learners and submit plans. **Due May 3, 2021.**
25. Consult with Legal and Policy regarding your process for developing a Parent/Student Handbook and Employee handbook and submit the following for review: Attendance Policy, Student Fees Policy, Family Engagement Policy, FERPA Annual Notification of Rights, and Parent's Right to Know. **Due May 28, 2021.**

June

26. Submit Program Plans for Special Education, Section 504, Health, Gifted and Talented students, and English Language Learners and submit plans. **Due June 15, 2021.**

27. Submit a Tribal Council-approved and adopted FY22 budget. **Due June 30, 2021.**

July

28. Submit evidence that all diagnostic and interim assessments have been purchased. Include the timeline for staff training on diagnostic and interim assessment administration and final assessment schedule including the WIDA Screener, school readiness assessment, READ Act assessment, and any additional school-selected interim assessments. **Due July 1, 2021.**
29. Provide assurance that a continuum of services will be available for students with special needs, including evidence that special education staff with appropriate qualifications has been hired to provide special education services and/or evidence that appropriate arrangements have been made for contracted services. Please submit these contracts. **Due July 1, 2021.**
30. Submit evidence that full Year 1 staffing is in place. **Due July 1, 2021.**
31. Submit verification of actual enrollment of at least 100% Year 1 enrollment, which is 30 funded pupil count, ideally through data in the student information system. **Due July 1, 2021.**

August

32. Submit written verification that staff has been trained in Emergency Response Protocols. **Due August 13, 2021.**
33. Submit Certificate of Occupancy. **Due August 13, 2021.**

November

34. Demonstrate that student enrollment reflects the target student demographics identified in the application. If the school fails to meet the targets as of October Count, submit a clear plan that offers realistic strategies to achieve the projected targets for the coming school year, if applicable. **Due November 15, 2021.**
35. If enrollment is less than 90% of projected enrollment, or differs materially from projected enrollment by grade level based on data submitted for Pupil Count Day, submit a new viable and sustainable budget, as determined by CSI, reflecting the reduction in revenues and corresponding expenditures. **Due November 15, 2021.**

BE IT FURTHER RESOLVED that the CSI Board directs staff, in conjunction with legal counsel when appropriate, to negotiate the contract with the School;

BE IT FURTHER RESOLVED that this decision, along with the attached New School Application Recommendation report, be communicated to the applicant as soon as practicable.

Adopted this 27th day of October, 2020.

COLORADO CHARTER SCHOOL INSTITUTE

By: 
Jill Anschutz (Nov 6, 2020 16:41 MST)
Chair, Board of Directors

Agenda Item VII.a.iii. Kwiyyagat Community Academy New School Application RESOLUTION 2032

I certify that the foregoing Resolution No. 2032 was adopted by the CSI Board of Directors at a regular Board meeting upon notice as required by law on October 27, 2020, by a roll-call vote of Aye , Nay , and Abstention .

By: 
Eric S. Lerum (Nov 6, 2020 17:11 MST)
Secretary, Board of Directors

Agenda Item VII.a.iii. Kwiyaqat Community Academy New School Application RESOLUTION 2032

Final Audit Report

2020-11-07

Created:	2020-11-06
By:	Amanda Oberg (amandaoberg@csi.state.co.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAA_1yyyfA6ZTTI15vJQ_boGbr_MINV6_v

"Agenda Item VII.a.iii. Kwiyaqat Community Academy New School Application RESOLUTION 2032" History









-  Document created by Amanda Oberg (amandaoberg@csi.state.co.us)
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EXHIBIT B: CHARTER AND BYLAWS

DATE: November 18 2020



RESOLUTION No. 2020-183

**RESOLUTION OF THE UTE MOUNTAIN UTE TRIBAL COUNCIL
REFERENCE: APPROVAL OF CHARTER FOR KWIYAGAT COMMUNITY
ACADEMY**

WHEREAS, the Constitution and By-Laws of the Ute Mountain Ute Tribe, approved June 6, 1940, and subsequently amended, provides in Article III that the governing body of the Ute Mountain Ute Tribe ("Tribe") is the Ute Mountain Ute Tribal Council and sets forth in Article V the powers of the Tribal Council exercised in this Resolution;

WHEREAS, the Tribal Council has the duty to protect the health and welfare of the Tribal youth and all youth who enter the reservation;

WHEREAS, in order to ensure that school-aged youth who desire an education in Ute culture, language, and traditions that is culturally sensitive and appropriate, the Tribe's K through 12 Education Department has worked with NACA Inspired Schools Network and Dr. Richard Fulton to apply to the Charter School Institute with the state of Colorado for the formation and accreditation of an Institute Charter School, named the Kwiyyagat Community Academy;


WHEREAS, according to the attached Charter, the Kwiyyagat Community Academy will take on the responsibility of ensuring that youth at the Academy receive an education rich in Ute culture, traditions, and language and the Tribe assumes the responsibility to manage the personnel and funds for the Academy; and

WHEREAS, the action taken by this Resolution is in the best interests of the Tribe.

NOW THEREFORE BE IT RESOLVED that the Tribal Council hereby adopts the attached Charter establishing the Kwiyyagat Community Academy; and

BE IT FINALLY RESOLVED that the Ute Mountain Tribal Council authorizes the Chairman to sign this Resolution and further authorizes him to take such action as may be necessary to carry out the intent of this Resolution.

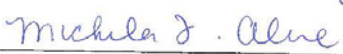
The foregoing Resolution was duly adopted this 18th day of November, 2020.



Manuel Heart, Chairman
Ute Mountain Tribal Council

CERTIFICATION

This is to certify that there was a quorum of 5 Tribal Council members present at a regular meeting of the Ute Mountain Ute Tribal Council held on November 18, 2020, that 4 voted for and 0 opposed this resolution and that this resolution was duly adopted.



Michela F. Alire, Recording Secretary
Ute Mountain Tribal Council

CHARTER
OF THE
KWIYAGAT COMMUNITY
ACADEMY

A Tribally-Chartered Entity
Of The
UTE MOUNTAIN UTE TRIBE

The Ute Mountain Ute Kwiyyagat Community Academy was originally established by this Charter by the Ute Mountain Ute Tribal Council on November 18, 2020, by Resolution Number 2020-183.

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Charter of the Kwiyyagat Community Academy

The Ute Mountain Ute Tribe, a federally recognized Indian tribe of the United States, acting under the authority of Article V, Section 1(b),(d),(j),(n),(o) and (p) of the *Constitution and By-Laws of the Ute Mountain Ute Tribe*, hereby issues this Charter for the Kwiyyagat Community Academy, a Colorado institute charter school and agency of the Tribe.

ARTICLE I. AUTHORITY, SCOPE, AND SOVEREIGN IMMUNITY

1. Authority

The powers exercised in the establishment of the Kwiyyagat Community Academy (“Academy”) through this Charter are contained in Article V, Section 1(b),(d),(j),(n),(o), and (p) of the Ute Mountain Ute *Constitution and By-Laws*.

2. Scope

This Charter establishes the Kwiyyagat Community Academy as a branch of the Tribal government with all the powers, authority, and protections granted to it consistent with this Charter.

This Charter only relates to the Academy and does not purport to create any entity that is beyond the limits contained in this Charter, the School Board By-Laws, and the contract with the Charter School Institute.

3. Sovereign Immunity

Nothing in this Charter creates or constitutes to any degree a waiver of the sovereign immunity of the Ute Mountain Ute Tribe or any of its agents, departments, programs, enterprises, or any other entity entitled to the sovereign protections of the Tribe. The Academy may not assume any obligation that may incur a legal liability of the Academy, the Tribe, or the Charter School Institute without the expressed consent of the Tribal Council.

4. Charter School Institute

This Charter and its accompanying organizational documents are to be interpreted and construed as consistently as possible with the applicable regulations of a Colorado institute charter school, the contract with the Charter School Institute, and Colorado and federal laws applicable to institute charter schools regardless of whether the laws apply to Indian tribes.

5. Tribal Roles and Responsibilities

The Academy Board of Directors have specific responsibilities as set forth in the By-Laws for the Academy, and the Tribe, through its administrative staff and regulations, will assume the responsibility for all other obligations necessary to allow the Academy to conduct business, such as, but not limited to, financial management and oversight, personnel management

Charter of the Kwiyaqat Community Academy

and oversight (hiring, firing, and discipline of all Academy employees), property management (maintenance costs may be borne by the Academy), and legal services.

6. Amendment

This Charter and the School Board By-Laws are subject to amendment or rescission at any time by the Tribal Council.

ARTICLE II. PURPOSE, POWERS, AND LIMITATIONS

1. Purpose

The purpose for which the Kwiyaqat Community Academy ("Academy") is established is to create a Colorado institute charter school that will provide a scholastic environment for youth and their families which emphasizes Ute cultural values, practices, beliefs, and traditions while also maintaining excellent educational standards intended to meet and exceed the criteria for accreditation in the state of Colorado.

2. Powers

The Academy authorized to fulfill its purpose through the maintenance of a Colorado state-sanctioned institute charter school, and, in pursuit of fulfilling the purpose of this Charter, the Academy has the following additional powers:

- a. Consistent with Tribal procurement policies and the Academy By-Laws, acquire and maintain facilities, assets, and equipment appropriate to fulfill the Academy's purpose;
- b. In coordination with the Tribe's Finance Department, apply for, receive, and manage grants and other funds suitable for use by the Academy;
- c. Establish rules and procedures necessary for fulfilling its purpose which are not inconsistent with currently established Tribal rules and procedures;
- d. Cooperate with the Tribe in securing and training staff relevant and suitable for the Academy, applying the expertise of staff allocated to the Academy and the Members of the Board; and
- d. Assume any other responsibility necessary to fulfill the purposes of the Academy that are not inconsistent with this Charter, School Board By-Laws, Tribal laws and procedures, and applicable state and federal laws.

3. Limitations

Unless further authorized by the Tribal Council, the Academy may not:

Charter of the Kwiyyagat Community Academy

- a. Cause a waiver of the Tribe's sovereign immunity to any degree;
- b. Commit to any loan, note, or other debt obligation;
- c. Acquire any asset in its own name separate and apart from the Tribe; nor
- d. Allow any violation of this Charter, School Board By-Laws, Tribal law and applicable state or federal laws.

ARTICLE III. DEFINITIONS

1. Definitions

When used in this Charter, the following terms have the following meanings unless indicated otherwise:

"Academy" refers to the Kwiyyagat Community Academy.

"Charter School Institute" refers to the Colorado state institution authorized to oversee and maintain Colorado institute charter schools.

"*Constitution*" or "*Constitution and By-Laws*" refers to the organizational document of the Ute Mountain Ute Tribe, as amended, originally established on June 6, 1940, as subsequently amended.

"Institute Charter School" refers to the same term as used in Colorado state law.

"Personnel, Policies, and Procedures Manual" refers to the rules and regulations of the Tribe regarding personnel, as amended.

"School Board" refers to the entity authorized by this Charter and the School Board By-Laws to oversee the operations of the Academy as set forth in the By-Laws.

"Tribal Council" refers to the governing body of the Ute Mountain Ute Tribal Council.

"Tribal law" refers to the laws of the Ute Mountain Ute Tribe.

"Tribe" refers to the Ute Mountain Ute Tribe.

Charter of the Kwiyyagat Community Academy

ARTICLE IV. CHARACTERISTICS

1. Name

The name of the Tribally-chartered entity created by this Charter is the "Kwiyyagat Community Academy".

2. Address

The Academy is located on the Ute Mountain Ute Reservation with the following mailing address and physical location:

Mailing Address:

Kwiyyagat Community Academy
P.O. Box 18
Towaoc, Colorado 81334

Physical address:

450 Sunset Boulevard
Towaoc, Colorado

3. Registered Agent

The registered agent for the Academy is the Secretary of the Tribal Council whose mailing and physical addresses are:

Mailing:

Secretary
Ute Mountain Ute Tribal Council
P.O. Box JJ
Towaoc, Colorado 81334

Physical:

124 Mike Wash Road
Towaoc, Colorado

4. Principal

The principal officer of the Academy is the Head of School who is hired by the Tribe to manage and supervise the operations of the Academy as set forth in this Charter and applicable position descriptions which are subject to amendment at any time.

Charter of the Kwiayat Community Academy

5. School Board

The School Board for the Academy is authorized to exercise the powers consistent with the purpose of the Academy and as set forth in this Charter and the School Board By-Laws. The Board will be appointed by the Tribal Council and will have the authority to, among other things, ensure the operations and management of the Academy comply with all applicable laws, policies, and procedures, report to the Tribal Council, assist in the selection of the Head of School, and manage its own budget in conjunction with the Tribe's Finance Department, if there is a budget assigned to the School Board. The School Board is regulated by the Tribe's ethics rules that apply to elected and appointed Tribal officials.

6. Wholly-Owned by Tribe

The Academy and, unless agreed to otherwise with a third party, its assets are wholly-owned by the Tribe whose governing body is the Tribal Council. No individual Tribal Member or any other entity has any ownership interest in the Academy. No other entity may acquire an ownership interest in the Academy without the expressed written consent of the Tribal Council.

7. Employees

Employees of the Academy are employees of the Tribe, are regulated by the Tribe's personnel policies, and are entitled to all benefits that are provided to Tribal employees, including, but not limited to, health, retirement, and dental.

8. Dissolution

The Academy may only be dissolved upon the expressed written consent of the Tribal Council terminating this Charter, and, upon dissolution, all assets of the Academy will be returned to their owners, which may include the Charter School Institute.

9. Immunities

The Academy and the School Board are endowed with all immunities from suit and from federal, state, and local taxation, licensing, and regulation. The Academy is entitled to the sovereign protections of the Tribe. No action by the Academy may be deemed a waiver of these immunities unless the waiver is specifically authorized by official resolution of the Tribal Council.

10. Essential Government Functions

The Tribal Council reserves the sovereign right to determine the governmental functions that are essential to the long term success of the Tribe and the Academy. All Academy activities inure to the sole benefit of the Tribe (its sole shareholder) and all dividends and benefits generated by the Academy are for the public purposes of the Tribe. The Tribe considers the generation of revenue for public purposes to be an essential governmental function. The Tribe also considers economic development, education, employment, tribal training, and preservation

Charter of the Kwiyyagat Community Academy

of Ute culture and language to serve essential government functions of the Tribe and the Academy is authorized to participate in providing these essential governmental functions.

ARTICLE V. ACTIONS BY THE TRIBE AS OWNER

1. **No Stock**

The Academy may not issue any stock. The Tribe, as the sole shareholder, will exercise its ownership rights exclusively through the Tribal Council in accordance with this Charter and Tribal law. No individual Tribal Council Member, Tribal Member, or any other persons, officials, bodies, or entities, other than the Tribal Council, may be recognized as exercising any shareholder rights on behalf of the Tribe.

2. **Meetings of the Sole Shareholder**

The Tribe will exercise its rights, duties, and prerogatives as owner of the Academy via resolution of the Tribal Council adopted at official Tribal Council meetings.

3. **Annual Meeting of the Sole Shareholder**

The Tribal Council, acting on behalf of the Tribe as sole shareholder, will meet annually for the purpose of electing, reappointing, or replacing members of the School Board, and approving the budget of the Academy and the School Board. The date, time, and location of the annual meeting of the sole shareholder will be determined by the Tribal Council and notice will be provided in the agenda for the meeting. The Tribe reserves the right to appoint and replace School Board Members at any time as set forth in the By-Laws for the School Board.

4. **Notice of Council Action**

The Secretary of the Tribal Council, the Executive Director, or any other person designated to provide notice of meetings of the Tribal Council will notify the Head of School and the Chair of the School Board when any action is expected to be taken by the Tribal Council which may affect the operations of the Academy upon procedures established by the Tribal Council for such purposes. Any official action taken by the Tribal Council in regards to the Academy or the School Board will be contained in an official resolution approved by the Tribal Council and will be delivered to the Head of School and the Chair of the School Board in a manner approved by the Tribal Council or by standard protocol.

Charter of the Kwiyyagat Community Academy

ARTICLE VI. AUTHORIZED ACTIVITIES AND POWERS

1. Initial Organization

The Academy is organized for the purposes of providing education to youth in a culturally-sensitive environment with a curriculum that promotes Ute history and culture. The Academy is authorized to pursue the purposes for which it was organized within the limits of applicable law and this Charter.

2. Additional Authorizations

The Academy may engage in any other activity consistent with this Charter, subject to approval by the Tribal Council as the sole shareholder. The Academy may identify, evaluate, and propose additional activities to the Tribal Council that may not be covered by this Charter.

3. Academy Goals

In engaging in Authorized Activities, the Academy must diligently endeavor to achieve the following overall goals:

- a. Provide a safe atmosphere for pupils that encourages scholastic engagement and success;
- b. Establish a curriculum that promotes Ute culture, traditions, and beliefs while also providing a high level of standardized education;
- c. Promote future stability through the acquisition of funds through grants, partnerships, federal contracts, or any other reasonably available source;
- d. Communicate regularly with the communities of Towaoe and White Mesa in order to ensure the Academy reflects the values and priorities of the Tribal Members; and
- e. Implement measures to gauge the success of the Academy, highlight and expand upon successes and address areas that need improvement.

4. General Powers

Subject to all the limitation contained in this Charter and applicable law, when engaging in authorized activities, the Academy will have the following powers in addition to those already enumerated:

- a. The Academy has all the powers delegated to it by the Tribal Council through this Charter and any other applicable rules and policies, such as, but not limited to, the power to acquire goods, services, and assets as set forth in the Tribe's procurement policies.

Charter of the Kwiyat Community Academy

- b. Enter into contracts and other commitments subject to the approval of the Tribal Council as necessary;
- c. Retain consultants and make recommendations to the Tribe for hiring of personnel;
- d. Ensure compliance with all applicable laws;
- e. Establish curriculum and modify as needed;
- f. Communicate and coordinate with Tribal and non-Tribal partners as necessary to promote the purposes of the Academy; and
- g. Exercise all other authority necessary to pursue the purposes of the Academy consistent with this Charter and applicable laws, subject to the authority of the Tribal Council.

5. Limitations

Nothing contained in this Charter or applicable laws allows the Academy to perform any of the following activities or assume the following authorities:

- a. Waive to any degree the sovereign immunity of the Ute Mountain Ute Tribe;
- b. Assume any note or indebtedness without the expressed consent of the Tribal Council;
- c. Discipline, hire, or fire employees without the consent of the Tribe as established by the chain of command for the Academy; or
- c. Expend funds or utilize assets in any manner or for any purpose which is not authorized by the Tribe or the funding agency.

ARTICLE VII. SCHOOL BOARD

1. School Board Established

The business and affairs of the Academy will be managed by the School Board as set forth in this provision. The School Board will also be regulated by the School Board By-Laws and the Tribe's regulations for elected and appointed Tribal officials.

Charter of the Kwiyyagat Community Academy

2. Number, Term, and Qualifications

The numbers of Members for the School Board and their terms are set forth in the School Board By-Laws. Members will be appointed by the Tribal Council. It is recommended that the School Board be comprised of individual who individually or jointly meet the following criteria:

- a. At least one member may be from the Tribal Council;
- b. At least two Members must be Tribal Members;
- c. Among the Members, the following skills and expertise is valued:
 - i. Knowledge of Ute culture and traditional practices;
 - ii. Knowledge of the management and regulation of a school; and
 - iii. Knowledge of partnerships that can assist in developing and improving the Academy.

3. Character Evaluation

Before assuming the position of a Member of the School Board, all presumptive candidates must undergo a character investigation as described in the Tribe's *Child Protection Character Investigation Act* and meet any criteria established by the state of Colorado for persons working with children, if not already included in the Tribal law.

4. Other Criteria

The School Board By-Laws establish all other criteria for the functioning of the School Board, such as, but not limited to, selection of officers, resignation, removal, and appointment, quorum, records, reporting, compensation, and indemnity.

ARTICLE VIII. OPERATIONAL MATTERS

1. Fiscal Year

The Academy will operate on a fiscal year basis, from October 1 to September 30.

2. Deposit and Management of Funds

The Academy will utilize the Tribe's Finance Department for the management of funds and will deposit all funds with the Tribe. The Tribe will manage the funds through an account at a bank compliant with the Public Deposit Protection Act as required by the Tribe's contract with the state Charter School Institute. The Tribe will be responsible for managing the accounts of the Academy and paying the debts of the Academy, including payroll, taxes, and insurance.

Charter of the Kwiyyagat Community Academy

The Academy must review financial reports at least monthly to ensure the funds are being utilized properly and towards the purposes of the Academy. If it appears that any accounts or use of funds is improper or not approved, the Academy must inform the Tribe immediately and seek a correction.

3. Conflicts of Interest

All employees and volunteers of the Academy are bound by the confidentiality provisions of the Tribe's personnel policies and all appointed individuals associated with the Academy, such as School Board Members, must adhere to the confidentiality provisions of the Tribe's ethics rules for elected and appointed Tribal officials.

4. Audits

Audits will be done annually by audit firms hired by the Tribe. Audits must meet the criteria for audits established by the Tribe, grantors, and the Charter School Institute.

5. Tribal Preference

Management of Academy employees will adhere to the Tribal preference rule established by the Tribal Council for hiring, firing, lay-offs, and promotions.

ARTICLE IX. OWNERSHIP, RESERVES, AND REVENUES

1. Ownership

All assets acquired by the Academy belong to the Tribe unless the entity providing the funds to acquire the asset requires the asset to be owned by the entity or another entity, in which case ownership will be as defined by the funding entity.

2. Revenues

Revenues generated by the Academy, whether by grant, gift, or otherwise, must be used for the benefit of the Academy, unless designated otherwise by the funding source. Funds must be used for the purpose for which they are provided. If funds are received that have no restriction on use, then the funds may be utilized at the discretion of the Tribe and the School Board consistent with this section.

3. Dissolution

Upon dissolution of the Academy, for whatever reason, the funds and assets that have been acquired by the Academy are to be distributed as required by the funding source, or, if there is no guidance as to the distribution of funds upon dissolution, then the funds must be contributed to the Tribe.

Charter of the Kwiyaqat Community Academy

X. COMPLIANCE

1. Generally

The Academy, the School Board, and all employees, volunteers, agents, and all other persons supervised by, managed, or funded by the Academy must adhere to the guidelines contained in this Charter and Tribal laws.

XI. BY-LAWS AND AMEMDMENT

1. By-Laws

The Tribal Council will designate By-Laws for the School Board. The By-Laws may be amended from time to time at the discretion of the Tribal Council. No amendment proposed or enacted by the School Board is effective until approved by the Tribal Council. If the By-Laws contain provisions that are inconsistent with this Charter or applicable law, then this Charter and the applicable law will supersede the By-Laws.

XII. CONTROLLING LAW

1. Laws Applicable

This Charter must be interpreted consistent with applicable federal, Tribal, and state law, in that order of precedent. To the extent any provision of the Tribe's laws are inconsistent with applicable federal law, the federal law will apply.

2. Charter Regulations

To the extent any provision of this Charter is inconsistent with federal or Tribal law, the federal or Tribal law will supersede the terms of this Charter.

XIII. AUTHORIZING RESOLUTION AND EFFECTIVE DATE

1. Resolution

This Charter was adopted and endorsed by the Ute Mountain Ute Tribal Council on November 18, 2020, by Resolution Number 2020-183.

2. Effective Date

The effective date of the establishment of the Academy is the date the Tribal Council resolution adopting and endorsing this Charter is approved by the Tribal Council.

END.

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DATE: November 18, 2020



RESOLUTION No. 2020-184

**RESOLUTION OF THE UTE MOUNTAIN UTE TRIBAL COUNCIL
REFERENCE: APPROVAL OF BY-LAWS FOR THE KWIYAGAT COMMUNITY
ACADEMY SCHOOL BOARD**

WHEREAS, the Constitution and By-Laws of the Ute Mountain Ute Tribe, approved June 6, 1940, and subsequently amended, provides in Article III that the governing body of the Ute Mountain Ute Tribe ("Tribe") is the Ute Mountain Ute Tribal Council and sets forth in Article V the powers of the Tribal Council exercised in this Resolution;

WHEREAS, the Tribal Council has the duty to protect the health and welfare of the Tribal youth and all youth who enter the reservation;

WHEREAS, in order to ensure that school-aged youth who desire an education in Ute culture, language, and traditions that is culturally sensitive and appropriate, the Tribe's K through 12 Education Department has worked with NACA Inspired Schools Network and Dr. Richard Fulton to apply to the Charter School Institute with the state of Colorado for the formation and accreditation of an Institute Charter School, named the Kwiyaqat Community Academy;

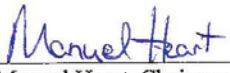
WHEREAS, according to the attached By-Laws, the School Board for the Academy will assume specific responsibilities related to oversight of the Academy and reporting to the Tribal Council; and

WHEREAS, the action taken by this Resolution is in the best interests of the Tribe.

NOW THEREFORE BE IT RESOLVED that the Tribal Council hereby adopts the attached By-Laws establishing the Kwiyaqat Community Academy School Board; and

BE IT FINALLY RESOLVED that the Ute Mountain Tribal Council authorizes the Chairman to sign this Resolution and further authorizes him to take such action as may be necessary to carry out the intent of this Resolution.


The foregoing Resolution was duly adopted this 18th day of November, 2020.



Manuel Heart, Chairman
Ute Mountain Tribal Council

CERTIFICATION

This is to certify that there was a quorum of 6 Tribal Council members present at a regular meeting of the Ute Mountain Ute Tribal Council held on November 18, 2020, that 5 voted for and 0 opposed this resolution and that this resolution was duly adopted.



Michela F. Alire, Recording Secretary
Ute Mountain Tribal Council

BY-LAWS
OF THE
SCHOOL BOARD
OF THE
KWIYAGAT COMMUNITY
ACADEMY

The By-Laws for the School Board of the Kwiyyagat Community Academy was approved by the Ute Mountain Ute Tribal Council on November 18, 2020, by Resolution Number 2020-184.

BY-LAWS OF SCHOOL BOARD OF THE KWIYAGAT COMMUNITY ACADEMY

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BY-LAWS OF SCHOOL BOARD OF THE KWIYAGAT COMMUNITY ACADEMY

I. AUTHORITY, SCOPE, AND SOVEREIGN IMMUNITY

1. Authority

The powers exercised in the adoption of the By-Laws for the School Board of the Kwiyaqat Community Academy ("Academy") are contained in Article V, Section 1(b),(d),(j),(n),(o), and (p) of the Ute Mountain Ute Tribe's *Constitution and By-Laws*.

2. Scope

These By-Laws regulate the School Board of the Academy as a branch of the Tribal government with all the powers, authority, and protections granted to it consistent with its Charter.

3. Sovereign Immunity

Nothing in these By-Laws create or constitute to any degree a waiver of the sovereign immunity of the Ute Mountain Ute Tribe or any of its agents, departments, programs, enterprises, or any other entity entitled to the sovereign protections of the Tribe. The School Board may not assume any obligation that may incur a legal liability of the Academy, the School Board, the Tribe, or the Charter School Institute without the expressed consent of the Tribal Council.

4. Charter School Institute

These By-Laws and their accompanying organizational documents are to be interpreted and construed as consistently as possible with the applicable regulations of a Colorado institute charter school, the contract with the Charter School Institute, and Colorado and federal laws applicable to institute charter schools regardless of whether the laws apply to Indian tribes.

5. Amendment

These By-Laws are subject to amendment or rescission at any time by the Tribal Council.

BY-LAWS OF SCHOOL BOARD OF THE KWIYAGAT COMMUNITY ACADEMY

II. PRINCIPAL OFFICE AND REGISTERED AGENT

1. Principal Office

The address of the Principal Office of the School Board is the address of the Academy, to wit:

Mailing address:

Kwiyagat Community Academy School Board
P.O. Box 18
Towaoc, Colorado 81334

Physical address:

450 Sunset Boulevard
Towaoc, Colorado

2. Registered Agent

For purposes of service of process and agency action, the registered agent for the Academy is the Secretary/Custodian of the Ute Mountain Ute Tribal Council, who may be contacted at the following:

Mailing address:

Tribal Council Secretary
Ute Mountain Ute Tribal Council
P.O. Box 248
Towaoc, Colorado 81334

Physical address:

124 Mike Wash Road
Towaoc, Colorado

BY-LAWS OF SCHOOL BOARD OF THE KWIYAGAT COMMUNITY ACADEMY

III. PURPOSE, POWERS, AND LIMITATIONS

1. Purpose

The purpose of the School Board is to monitor activities at the Academy, to provide guidance as set forth in these By-Laws and the Academy Charter, to ensure the Academy is complying with all applicable laws and policies, and to report to the Tribal Council on matters relevant to the functioning of the Academy.

2. Powers

The School Board has the following powers which must be exercised consistent with these By-Laws, the Academy Charter, the contract with the Colorado Charter School Institute, and applicable Tribal, federal, and state laws:

- a. To manage the funds of the Academy consistent with regulations established by the funding source:
- b. To oversee the operations of the Academy within the limits set forth in these By-Laws and to report regularly to the Tribal Council regarding all matters relevant to the Academy;
- c. To recommend additional policies for the Academy, including amendments to these By-Laws and the Academy Charter;
- d. Upon a vacancy of the Head of School, to perform initial searches for a replacement and make recommendations to the Tribe through the Tribe's personnel policies and procedures;
- e. To participate in the preparation of and recommend to the Tribal Council a budget for the operations of the Academy, which must include the budget for the School Board;
- f. Respond to inquiries and complaints about the Academy from interested parties; and
- g. Perform any other function necessary for the efficient and effective operations of the Academy no inconsistent with these By-Laws.

BY-LAWS OF SCHOOL BOARD OF THE KWIYAGAT COMMUNITY ACADEMY

3. Limitations

The School Board may not perform any of the following activities or assume the following functions:

- a. Cause to any degree a waiver of the sovereign immunity of the Tribe;
- b. Hire, fire, contract, or discipline staff, employees, contractors, or any other person employed or retained by the Academy;
- c. Expend funds or permit the expenditure of funds in any manner that is not in the best interest of the Academy, that violates and Tribal fiscal policy or protocol, violates any applicable Tribal, federal, or state law, or is inconsistent or prohibited by rules established by the funding source;
- d. Amend these By-Laws without the consent of the Tribal Council; or
- e. Any other act which is inconsistent with these By-Laws, the Academy Charter, or violates any applicable Tribal, federal, or state law.

4. Members

As a chartered organization, there are no members of the Academy.

5. Compensation

Members of the School Board will not be compensated unless a budget is approved which includes compensation. Board Members who are employees of the Tribe may not be paid salary for their employment and compensation for being on the School Board unless the employee is not "on the clock" during the Board meeting, in which case the employee may be compensated by the Board with all other necessary conditions for compensation being met as set forth in this provision.

6. Confidentiality

Members of the School Board will acquire information in the course of business that is confidential, sensitive, or private and must ensure that such information is not disclosed to the general public unless the information is already so exposed. Confidential information may also include sensitive cultural practices and places, traditional customs and beliefs, religious practices, and Tribal histories, among other things. The Board also must adhere to the provisions of the *Family Educational Rights and Privacy Act*, 20 USC 1232g, in addition to any Tribal rules.

BY-LAWS OF SCHOOL BOARD OF THE KWIYAGAT COMMUNITY ACADEMY

IV. COMPOSITON, SELECTION, AND REMOVAL

1. Numbers of Members

The School Board may have 5, 7 or 9 Members. Members will be assigned and selected by the Tribal Council.

One Member of the School Board may be from the Tribal Council, but at least two Members must be Members of the Tribe.

No employee of the Academy may serve on the School Board while employed by the Academy.

2. Selection

Members of the School Board will be selected upon procedures established by the Tribal Council, including the submission of letters of interest and selection by vote. No person who has a conflict of interest with the Academy or the School Board may be selected for the School Board, including issues related to nepotism with the Head of School or other Members of the School Board.

3. Qualifications

It is recommended, but not required, that Members of the School Board possess the following qualifications and expertise, either individually or jointly:

- a. Knowledge of Ute culture and traditional practices;
- b.. Knowledge of the management and regulation of a school; and
- c. Knowledge of partnerships that can assist in developing and improving the Academy.

4. Resignation

Any Member of the School Board may resign at any time for any reason upon 30 days' written notice to the Tribal Council. Resignation may be immediate if conditions require.

5. Removal

Any Member of the School Board may be removed by the Tribal Council for any reason upon written notice to the Member and the Board Chair, and such removal may be immediate.

A Member may be removed by a unanimous vote of the remaining Members of the School Board for any reason so long as written notice has been provided to the Member that they are about to be removed and they are given the opportunity to address the School Board before

BY-LAWS OF SCHOOL BOARD OF THE KWIYAGAT COMMUNITY ACADEMY

the removal. A Member is deemed to have been given an opportunity to address the School Board if they are provided written notice of the time and place to address the School Board, a quorum of the School Board appears at such time and place, and an opportunity is given for the Member to address the School Board for a reasonable period of time. The meeting with the School Board must be held confidential and is not open to the public, though attorneys may be present if invited by the School Board or the Member.

6. Replacement

Vacancies on the School Board that result in the numbers of Members being 4 or less must be filled as soon as possible by the Tribal Council. Members being appointed to replace a removed or resigning Member will be appointed for three-year terms or a lesser period as determined by the Tribal Council at its discretion.

7. Terms and Limits

The Members of the School Board may serve for three years and may serve as many consecutive terms as the Tribal Council determines is proper and acceptable. The initial terms of the Board may be of lesser periods of time as the Tribal Council determines.

8. Training

The Members of the School Board must receive training at least once per year that focuses specifically on Ute culture and traditions that are relevant towards the purposes and goals of the Academy. Members who do not attend the training are subject to removal from the School Board.

V. OFFICERS AND DUTIES

1. Officers

The Officers of the School Board will be a Chair, a Vice Chair, a Treasurer, and a Secretary, each with the duties set forth below. The Officers must be selected from among the Members of the School Board and will be selected annually during the October meeting of the School Board and at any other time deemed necessary by a majority of the School Board. If Officers are to be selected at a meeting other than the October meeting, notice that an election will be held to select Officers must be provided to the public and the Members of the School Board at least 30 days before the election, unless an emergency exists in which case the election of temporary officers may occur at any meeting where a quorum of Members is present. A selection made during an emergency meeting may only last so long as is needed until an election can be held with proper notice.

BY-LAWS OF SCHOOL BOARD OF THE KWIYAGAT COMMUNITY ACADEMY

2. Chair

The Chair of the School Board is responsible for setting the agenda of meetings, calling and conducting meetings, signing documents on behalf of the School Board, representing the School Board at official functions and before the Tribal Council, and performing other functions designated to the Chair by the School Board or the Tribal Council that do not violate any terms of these By-Laws or the Charter. The Chairman may vote on any action before the Board.

3. Vice Chairman

The Vice Chair will have all the authority and responsibilities of the Chair when the Chair is unable to reasonably perform the duties of the Chair.

4. Treasurer

The Treasurer is responsible for all fiscal matters of the School Board and the Academy that are not assumed by the Tribe, including, but not limited to, preparation and monitoring the Academy budget (which includes the School Board budget), monitoring accounts, expenditures, and revenues, coordinating with the Tribe's Finance Department to ensure accurate and timely reporting, and ensuring audits are timely and accurate.

The Treasurer must report the financial status of the School Board and the Academy at all meetings of the School Board and bi-annually to the Tribal Council.

5. Secretary

The Secretary will maintain all the records of the Academy and the School Board and will coordinate with the Tribal Council Secretary in the preparation and maintenance of forms and records of the Academy and the School Board. The Secretary must ensure that all meetings of the School Board are memorialized in writing and approved by the School Board. Meetings may be recorded aurally.

6. Staff Support

The School Board may hire and retain as many staff members as it deems necessary to conduct its business, but only so long as the position is supported by a budget approved by the Tribal Council and the selection of employees, volunteers, and contractors is consistent with Tribal policies, including Tribal preference in hiring.

7. Budget

In coordination with the Head of School, the School Board must prepare the budget for the Academy and the School Board and present the budget to the Tribal Council for approval upon procedures established by the Tribal Council. No funds may be expended by the Academy or the School Board that are not part of an approved budget.

BY-LAWS OF SCHOOL BOARD OF THE KWIYAGAT COMMUNITY ACADEMY

VI. MEETINGS, AND VOTING

1. Calling of Meetings and Notice

All business of the School Board may only be done by a majority vote of a quorum present at a meeting of the Board, unless specified otherwise in these By-Laws. Any Member of the School Board may call a Special Meeting upon notice required for Special Meetings.

Notice of Regular Meetings must be posted as soon as possible, but in no even less than 7 calendar days before the meeting. The draft agenda must be posted with the notice, and a final agenda must be posted upon completing.

Notices must be placed in at least one conspicuous place in Towaoc and one conspicuous place in White Mesa that are each accessible by the public. Notice must also be placed on the Academy's website and on the School Board's website, if it is separate from the Academy's..

2. Regular Meetings

The School Board must hold a regular meeting at least once per month at a time and place designated by the Board. At least one meeting per year must be in White Mesa, Utah. If at least one resident of Utah is attending the Academy, then the meetings in White Mesa must be at least twice per year.

Meetings must be open to the public, except for Executive Session. No official action may be taken during Executive Session. Only matters which are confidential, sensitive, or proprietary may be held in Executive Session and a general description of the matter must be placed on the agenda, if known.

3. Special Meetings

Any Member of the School Board may request a Special Meeting. Notice of Special Meetings must be posted as required for Regular Meetings, but notice may be as little as 48 hours.

4. Emergency Meetings

Emergency Meetings of the School Board may be called by two or More Board Members. Notice must be the same as for Regular Meetings, however the period of notice may be as little as 2 hours.

BY-LAWS OF SCHOOL BOARD OF THE KWIYAGAT COMMUNITY ACADEMY

5. Public participation

Members of the public are allowed to attend any meeting of the School Board but may be excluded during Executive Session. Members of the public attending Board meetings must adhere to the rules for decorum during meetings.

Members of the public may request that certain matters be placed on the agenda of a School Board meeting. Requests must be in writing delivered to the Chair of the Board at any time before the meeting begins. Informal requests not in writing may be made during the meeting, if allowed by the Chair.

6. Quorum and Voting

A quorum of the Members of the School Board must be present in order to conduct business and every action taken by the Board is not official unless supported by a majority of the quorum present.

Each Member of the Board who is present during a meeting is allowed one vote per action. The Chair may vote as any other Member may vote. Tie votes do not constitute approval of an action.

Each action taken may only be upon motion and second and the action taken must be recorded in writing.

Abstentions are permitted, but only when the abstaining Member has a conflict of interest in the decision or does not have sufficient information to render a decision.

7. Proxies

Proxies are not allowed.

8. Virtual Meetings

The School Board need not be physically present in order to attend a meeting of the School Board. Meetings may be held in any manner acceptable to the Chair of the Board so long as proper notice is provided of the alternative means.

9. Record of Meetings

All meetings of the School Board must be recorded either in writing or aurally, or both. Minutes of meetings must be prepared by the Secretary and, after being approved by the Board, promptly posted publicly and on the websites of the Academy and the School Board.

BY-LAWS OF SCHOOL BOARD OF THE KWIYAGAT COMMUNITY ACADEMY

10. Conduct and Demeanor

All persons attending meetings of the School Board are expected to behave respectfully and in a manner conducive to public discussion. Persons attending the meeting may request to be placed on the agenda, and, if acceptable to the Chair of the Board, may present their agenda item in the time allotted.

The public may address the Board during the public discussion portion of the meeting agenda, but may be restricted in time by the Chair of the Board. All persons requesting time before the Board will be given the same amount of time, unless a greater period of time is requested and approved.

11. Media

Members of the press or the media may be excluded from meetings of the School Board at the discretion of the Board Chair. Photographs and videos may not be made during the meetings unless authorized by the Board Chair.

VII. INDEMNITY

1. Indemnity

The Tribe will indemnify and hold harmless each Member of the School Board from and against any claim by any person or entity that results from the action of the Tribe or the Academy to the extent the claim is not based upon the unauthorized or illegal action of the Member.

2. Immunity from Liability

No School Board Member who reasonably conducts business in good faith reliance upon the representations of the Board, the Academy, or the Tribe is liable for damages caused by such good faith reliance.

BY-LAWS OF SCHOOL BOARD OF THE KWIYAGAT COMMUNITY ACADEMY

VIII. CONDUCT OF BUSINESS

1. Checks, Drafts, and Other Instruments

The Chair of the School Board is authorized to sign checks and other indebtedness of the Board so long as the expenditure is part of an approved budget and does not exceed \$5,000. All checks and indebtedness exceeding \$5,000 are not valid unless also endorsed by the Tribe's Chief Financial Officer.

The School Board does not have the authority to waive the Tribe's sovereign immunity or sign any document that causes the same.

2. Loans and Indebtedness

The School Board may not obligate itself to any grant, loan, or indebtedness without the consent of the Tribal Council provided by official resolution.

3. Budget Restrictions

No expenditure may be paid by the School Board and no commitment made in any contract or agreement unless such expenditure is contained in a budget approved by the Tribal Council or, if not contained in a budget, is part of a budget modification approved by the Tribe's Chief Financial Officer.

4. Audits

It is ultimately the responsibility of the Academy and the Treasurer of the School Board to ensure that all audits needed in order to comply with grants, contracts, Tribal and federal law, or other commitments are conducted on time and, the results of which, are reported to the Tribe's Chief Financial Officer and Tribal Council Treasurer.

5. Reports to Tribal Council

The School Board must report to the Tribal Council at least twice per year and upon request of the Tribal Council. Reports must be in writing and must provide sufficient information to the Tribal Council to fully inform the Council of all matters relevant to the operation of the Academy, including, but not limited to:

- a. The financial status of the Academy, including the status of audits, budget compliance, and indebtedness;
- b. The numbers of pupils enrolled, the types of classes offered, the effort to promote Ute culture and tradition, and staffing; and
- c. Status of future operations with current successes and failures.

BY-LAWS OF SCHOOL BOARD OF THE KWIYAGAT COMMUNITY ACADEMY

6. Suspicious Activity

School Board Members who suspect that any suspicious activity is occurring at the Academy or the Board must notify the Tribe's General Counsel, and, if relevant, law enforcement or Tribal Social Services:

Suspicious activities and those that must be reported to law enforcement or Tribal Social Services include, but are not limited to:

- a. Child abuse in any form (report to law enforcement or Tribal Social Services);
- b. Theft or misuse of funds or Tribal assets (report to law enforcement and General Counsel);
- c. Illegal criminal activity (report to law enforcement and General Counsel);
- d. Human trafficking, kidnapping, or abduction (report to law enforcement and Tribal Social Services); and
- e. Slander and libel (report to the General Counsel).

7. Conflict of Interest

Unless request to do so by the Chair of the School Board with knowledge of the conflict, no Member of the School Board may participate in any discussion which involves a matter to which the Member, or a member of the Member's immediate family or household, or business partner, has a unique interest in the matter to the extent the Member's decision could be significantly affected by the interest. A "unique interest" is one that is not possessed in virtue of belonging to a class of individuals (such as Tribal Members discussing per capita distributions) but is one that affects the Member.

By way of demonstration, conflicts of interest include, but are not limited to:

- a. Business dealings with the Academy as contractor;
- b. Decisions regarding the Member's child as pupil; and
- c. Personnel matters affecting a member of the Member's family.

BY-LAWS OF SCHOOL BOARD OF THE KWIYAGAT COMMUNITY ACADEMY

IX. COMMITTEES

1. Authority to Establish Committees

Subject to the ultimate authority of the Tribal Council, the School Board is authorized to form committee for the purposes of carrying out its duties. The Board may appoint and remove members to the committees, designate their responsibilities and areas of focus, and set forth procedures for their operations and reporting.

2. Committee Meetings and Notice

Committees may meet as often as prescribed by the Board. Notice of Committee meetings is to be made in the same way notices of School Board meetings are noticed, including special and emergency meetings, if necessary.

3. Limitations

The Committees have the same limitation as the School Board and may not assume any responsibility or right, or perform any act which is not set forth in these By-Laws for the Board. The Board may assign Committees to perform certain functions of the Board, but, ultimately, the Board is responsible for the actions of the Committees it establishes.

END.

EXHIBIT C: REQUESTED WAIVERS

G_WaiverRequest

Note on Tribal immunity and limitations on state and Tribal jurisdiction:

As a general principle, the Tribe and its Members are immune from state regulations, and, as an agency of the Tribe that operates on the Ute Mountain Ute reservation, the Kwiyyagat Community Academy is similarly immune. Additionally, the Tribe depends on the United States for essential governmental services, such as law enforcement, emergency, and judicial services, and, therefore, is limited in the extent in can conform those services to the typical design implemented by the state. Likewise, the United States, by way of congressional regulation and judicial interpretation, has limited the reach of states to enforce certain state regulations against tribes, tribal members, and other Indians. Therefore, in the waivers below, when either the Tribe or the state is unable to comply with or enforce a law that typically applies to state institute charter schools, the Tribe endeavors to provide, at a minimum, the same rights and services for Academy students, parents, and employees as would be available in a state institute charter school by codifying and implementing rules and protocols that serve the same essential functions as the state regulations being requested to waive. The Tribe anticipates this will be a work-in-progress and rules and regulations may have to be amended from time to time when improvements can be made.

The Kwiyyagat Community Academy requests waivers of the following state laws:

Automatic Waivers	
State Statute Citation	Description
C.R.S. § 22-32-109(1)(f)	Local board duties concerning selection of staff and pay
C.R.S. § 22-32-109(1)(t)	Determine educational program and prescribe textbooks
C.R.S. § 22-32-110(1)(h)	Local board powers-Terminate employment of personnel
C.R.S. § 22-32-110(1)(i)	Local board duties-Reimburse employees for expenses
C.R.S. § 22-32-110(1)(j)	Local board powers-Procure life, health, or accident insurance
C.R.S. § 22-32-110(1)(k)	Local board powers-Policies relating the in-service training and official conduct
C.R.S. § 22-32-110(1)(ee)	Local board powers-Employ teachers' aides and other non-certificated personnel
C.R.S. § 22-32-126	Employment and authority of principals
C.R.S. § 22-33-104(4)	Compulsory school attendance-Attendance policies and excused absences
C.R.S. § 22-63-301	Teacher Employment Act- Grounds for dismissal
C.R.S. § 22-63-302	Teacher Employment Act-Procedures for dismissal of teachers
C.R.S. § 22-63-401	Teacher Employment Act-Teachers subject to adopted salary schedule
C.R.S. § 22-63-402	Teacher Employment Act-Certificate required to pay teachers
C.R.S. § 22-63-403	Teacher Employment Act-Describes payment of salaries
C.R.S. § 22-1-112	School Year-National Holidays

Non-Automatic Waivers: Statute Description and Rationale and Replacement Plan
1. POLICY FOR MANAGEMENT OF STUDENT POSSESSION AND STAFF ADMINISTRATION OF PRESCRIPTION MEDICAL MARIJUANA: CRS § 22-1-119.3 including (3)(d) through (f), 1 CCR 301-68:7.00 (7.06) and 1 CCR 301-68:8.00
Rationale: 1) The Academy will be located on the Ute Mountain Ute Reservation, which is federal land held in trust for the Tribe and falls under the criminal jurisdiction of the United States. 2) Marijuana use and possession is prohibited by federal law and is, therefore, not allowed on the Reservation. 3) The Indian Health Service provides health services to persons on the Reservation and with provides services directly to individuals, or contracts with the Tribe for such services through the Indian Self Determination and Education Assistance Act. (Attachment A)
Replacement Plan: The Tribe will not be able to implement protocols that will allow the administration of marijuana or substances containing more than 0.3% THC. Other medications will be administered under rules set forth by the Indian Health Services and the Academy's Student and Parent Handbook which is included with this waiver request.
Duration of Waivers: For the term of the contract.
Financial Impact: No costs of enforcement by the Tribe or the state. Costs of enforcement will be borne by the Bureau of Indian Affairs in criminal enforcement.
How the Impact of the Waivers Will be Evaluated: Incidents of student marijuana possession will be recorded in student discipline data.
Expected Outcome: Students will not be able to possess or use prescription marijuana; school staff will not be permitted to administer prescription marijuana.

Non-Automatic Waivers: Statute Description and Rationale and Replacement Plan
2. NON-PROFIT STATUS AND IMMUNITY FROM LIABILITY: C.R.S. § 22-30.5-507(4)(a) (second sentence)
Rationale: 1) The Tribe has issued a Charter for the Kwiyyagat Community Academy under the Tribe's sovereign authority, just as it has done for its enterprises on the Reservation. 2) The Charter serves the same function as Articles of Incorporation, setting forth significant corporate functions such as notice, management authority, and board structure. 3) The Academy will be immune from liability just as the Tribe and its other chartered enterprises are and is not subject to the orders of any court unless the charter allows. Ultra Vires suits are permissible against tribal entities. 4) The Tribal Council has also adopted the By-Laws for the School Board of the Academy.
Replacement Plan: The Tribe issued a Charter for the Academy on November 18, 2020, by Tribal Council Resolution Number 2020-183, a Tribal law.(Attachment B)
Duration of Waivers: The waiver will extend for the duration of the contract.
Financial Impact: Same as using Articles of Incorporation.
How the Impact of the Waivers Will be Evaluated: Measure the effectiveness of the governing structure established by the Charter and amend as needed to provide the proper authorities and guidelines.
Expected Outcome: The Academy will be a chartered, nonprofit entity of the Tribe with all the sovereign protections of the Tribe.

Non-Automatic Waivers: Statute Description and Rationale and Replacement Plan
3. CODE ENFORCEMENT AND CERTIFICATION OF INSPECTORS FOR PUBLIC SCHOOLS, CHARTER SCHOOLS AND JUNIOR COLLEGES – ENFORCEMENT and APPEALS C.R.S. § 22-32-124(1)(c)
Rationale: 1) State agencies have no jurisdiction over Tribal and federal operations on the Ute Mountain Ute Reservation and the Tribe is not subject to enforcement by the Division. 2) Pursuant to operation of federal law and the lack of consent by the Tribe, the state agents may not enter the Reservation for school inspections (see 25 USCA §231 and 25 CFR §237.172).
Replacement Plan: In most cases, the Tribe utilizes grant funds for the construction and maintenance of the Academy school structures and the grants prescribe the codes which will apply in those operations. When Tribal funds, as opposed to grant funds, are used, the Tribe utilizes licensed construction companies for construction work and trained mechanics and engineers in its Public Works Department for maintenance and inspections. Similarly, the Indian Health Service conducts inspections utilizing, in part, the Tribe's Fire Department applying federal standards.
Duration of Waivers: For the term of the contract.
Financial Impact: All costs will be borne by the Tribe and the United States.
How the Impact of the Waivers Will be Evaluated: The construction and maintenance of school buildings can be monitored for compliance with requisite standards.
Expected Outcome: Buildings will be constructed and maintained per guidelines established by the Tribe and the United States.

Non-Automatic Waivers: Statute Description and Rationale and Replacement Plan
4. FREE EXPRESSION: C.R.S. §22-1-120
Rationale: 1) Ute cultural traditions and customs understand that some topics can be expressed in specific times of the year or the day.
Replacement Plan: Kwiyyagat Community Academy will offer professional development for all staff members so their practices are responsive to Ute cultural traditions and customs.
Duration of Waivers: For the term of the contract.
Financial Impact: Costs will be unchanged.
How the Impact of the Waivers Will be Evaluated: Monitor student communications for compliance with Ute standards.
Expected Outcome: Students will learn the most suitable means of communication and content in the context of Ute cultural values and practices.

Non-Automatic Waivers: Statute Description and Rationale and Replacement Plan

**5. REQUIREMENT FOR CERTIFICATION OF PUBLIC SCHOOL ATHLETIC COACHES IN CPR:
C.R.S. §22-1-125.5**

Rationale:

- 1) Many of the recreational opportunities offered by the Academy and the coaches involved will require unique skill sets that are not common and the selection of individuals to lead the recreation as coaches is limited and will be made more difficult by the imposition of the certification required by this law.
- 2) The Tribe's Recreation Center where some activities will occur is managed by staff trained in CPR and other life-saving techniques.

Replacement Plan: The Academy and the Tribe will utilize current personnel policies and procurement policies for determining the best persons to be trained in CPR and the best persons and entities to serve as coaches with Academy pupils.

Duration of Waivers: For the term of the contract.

Financial Impact: Costs will be reduced.

How the Impact of the Waivers Will be Evaluated: Monitor student engagement with coaches, etc., who ensure proper medical services are available.

Expected Outcome: Students will have the opportunity to participate in culturally significant recreation.

Non-Automatic Waivers: Statute Description and Rationale and Replacement Plan

**6. LOCAL BOARDS OF EDUCATION – DUTIES – PERFORMANCE EVALUATION SYSTEM -
COMPLIANCE: C.R.S. §22-9-106**

Rationale:

- 1) In conjunction with Academy supervisory staff, the Tribe will select, hire, and retain employees of the Academy and will regulate their behavior under the regulations contained in the Tribe's *Personnel Policies and Procedures* manual.
- 2) The manual sets forth criteria for evaluation of Tribal employees and allows each department of the Tribe, such as the Academy, to set evaluation criteria relevant for their unique operations and services.

Replacement Plan: The performance evaluation system at Kwiyyagat Community Academy will follow the Tribe's *Personnel Policies and Procedures Manual*, which is included with the application in Appendix H, for employment-related matters.

The Head of School evaluation plan is included in Appendix G. The staff evaluation plan is included in Appendix C.

Employment contracts, should they be used, may also include additional requirements for performance evaluation.

Duration of Waivers: For the term of the contract.

Financial Impact: Costs will be incurred by the Academy that may have been borne by the district.

How the Impact of the Waivers Will be Evaluated: Monitor the suitability of the Tribe's policies and amend when needed.

Expected Outcome: Academy employees will receive employment regulations that are substantively similar to any regulations that may be promulgated by this provision.

Non-Automatic Waivers: Statute Description and Rationale and Replacement Plan
7. FALSE REPORTS - MISDEMEANOR: C.R.S. §22-12-105
Rationale: 1) State criminal laws do not apply to crimes by or against Indians on Indian Reservations. Therefore, the Tribe is seeking a waiver of this provision to the extent it presumes to apply to Indians on the Reservation or, more precisely, to the extent it is presumed the Tribe consents to the state regulations by not seeking this waiver. 2) The Tribe has no objection to the application of this statute to non-Indians on the Reservation.
Replacement Plan: The United States and the Tribe will enforce false reporting laws violated by Native Americans on the Reservation as their relevant jurisdictions apply, and the United States will prosecute false reporting laws when the victim of the crime is a Native American.
Duration of Waivers: For the term of the contract.
Financial Impact: Enforcement costs will be borne by the Tribe or the United States.
How the Impact of the Waivers Will be Evaluated: Monitor the occurrence of false reporting and the subsequent enforcement effort. If the response is inadequate, amend or develop suitable Tribal laws.
Expected Outcome: False reporting will not be allowed and will be addressed per Tribal and federal law.

Non-Automatic Waivers: Statute Description and Rationale and Replacement Plan
8. LOCAL EDUCATION PROVIDER – DATA COLLECTION – DATA SECURITY POLICY: C.R.S. 22-16-107(1)(b)
Rationale: 1) Most of the contracts the Tribe enters into are public in nature and would be suitable for publication. However, for various reasons, numerous contracts are confidential and the Tribe may not be able to publish the contracts. Therefore, this request is limited to waiving the provisions requiring the publication of contracts and the Tribe is not seeking to waive protections for student privacy and public awareness.
Replacement Plan: The Tribe will publish contracts to the extent the publication is not prohibited by the terms of the contract or applicable law.
Duration of Waivers: For the term of the Contract.
Financial Impact: No additional funds will be expended due to waiver.
How the Impact of the Waivers Will be Evaluated: Measure compliance with approved internal procedures.
Expected Outcome: The Kwiyaqat Community Academy will establish policies for gathering and sharing information that will substantially comply with C.R.S. 22-16-107

Non-Automatic Waivers: Statute Description and Rationale and Replacement Plan
9. INSTITUTE CHARTER SCHOOLS – EMPLOYEE RETIREMENT FUNDS: C.R.S. §22-30.5-512
Rationale: 1) Employees of the Tribe, which include employees of the Kwiyyagat Community Academy, are eligible to participate in the Tribe’s 401(k) program.
Replacement Plan: The Tribe allows all employees to participate in its retirement plan. (See Attachment C for general description of rogram.)
Duration of Waivers: For the term of the Contract.
Financial Impact: The Tribe will incur costs for contributions to employee’s retirement plans, but it is not known whether this would cost more or less than contributing to the public employee’s retirement fund.
How the Impact of the Waivers Will be Evaluated: Periodically assess whether employees of the Academy are denied employment rights or access to the Tribe’s retirement benefits.
Expected Outcome: Employees of the Academy will have as many rights and benefits, if not more, than they would be able to acquire or enforce through unionization, and each will have access to the Tribe’s 401(k) benefits package.

Non-Automatic Waivers: Statute Description and Rationale and Replacement Plan
10. BOARD OF EDUCATION – SPECIFIC DUTIES – COMPETITIVE BIDDING C.R.S. §22-32-109(1)(b)
Rationale: 1) The Tribe utilizes its own procurement policies which are designed to comply with federal, state, and private grant requirements.
Replacement Plan: The Tribe will follow Tribal procurement procedures that call for competitive bidding procedures. (See Attachment D.)
Duration of Waivers: For the term of the contract.
Financial Impact: The costs should be about the same, and less when a Tribal entity can provide the services.
How the Impact of the Waivers Will be Evaluated: Monitor competitive bidding for compliance with standards and requirements established by the entity providing the funds.
Expected Outcome: There should be no substantive differences in implementation that would occur if the provision were in effect.

Non-Automatic Waivers: Statute Description and Rationale and Replacement Plan
11. BOARD OF EDUCATION – SPECIFIC DUTIES – TOBACCO: C.R.S. §22-32-109(1)(bb)
Rationale: 1) Certain forms of tobacco are used in Ute traditional ceremonies and pupils at the Kwiyyagat Community Academy will receive instruction in the proper use and respect of these tobaccos. 2) The use of cigarettes and other tobacco on campus will be governed by Tribal and Federal law and school policy
Replacement Plan: The curriculum at Kwiyyagat Community Academy will teach the proper use and respect of tobacco during important traditional Ute ceremonies. School policy, which conforms with Tribal and Federal law, addresses the possession and use of cigarettes and other tobacco products by students and staff on campus. The Kwiyyagat Community Academy’s policy on student possession of drugs, alcohol and tobacco are in the Student and Parent Handbook, which is included with this waiver request. (See Attachment A)
Duration of Waivers: For the term of the contract.
Financial Impact: The costs will be increased slightly for teaching an otherwise exempt practice.
How the Impact of the Waivers Will be Evaluated: Monitor pupil use of tobacco to ensure compliance with Academy standards.
Expected Outcome: Pupils will learn the proper way to utilize tobacco in traditional Ute ceremonies.

Non-Automatic Waivers: Statute Description and Rationale and Replacement Plan
12. BOARD OF EDUCATION – SPECIFIC DUTIES – PSYCHOTROPIC DRUGS: C.R.S. §22-32-109(1)(ee)
Rationale: 1) Peyote is listed as a controlled substance under federal law due to its psychotropic qualities. 2) Native Americans are entitled to possess peyote as a matter of federal law because peyote is considered sacred to some tribes and is used in significant traditional ceremonies. See American Indian Religious Freedom Act Amendments of 1994, 42 USCA §1996a(b) 3) Some of the Members of the Ute Mountain Ute Tribe utilize peyote in traditional ceremonies and it is anticipated that pupils at the Kwiyyagat Community Academy will be taught in the proper use of and respect for peyote, at least in an historical context. 4) The possession and use of other psychotropic drugs is governed by Tribal and Federal law and school policy.
Replacement Plan: The curriculum at Kwiyyagat Community Academy will teach the proper use and respect of peyote during important traditional Ute ceremonies and according to traditional protocols. School policy, which conforms with Tribal and Federal law, addresses the possession and use of other psychotropic drugs by students and staff on campus. The Kwiyyagat Community Academy’s policy on student possession of drugs, alcohol and tobacco are in the KCA Student and Parent Handbook, which is included with this waiver request. (See Attachment A.)
Duration of Waivers: For the term of the contract.
Financial Impact: Unknown whether the cost of enforcement required by the provision would cost more than teaching the curriculum.
How the Impact of the Waivers Will be Evaluated: Monitor compliance with the curriculum and prohibit possession of peyote in all other circumstances.
Expected Outcome: Pupils at the Academy will be taught the proper use and respect for peyote in the context of traditional Ute practices and values.
AG’s Comment: CSI has no legal objection to this waiver request.

Non-Automatic Waivers: Statute Description and Rationale and Replacement Plan
13. COMPULSORY SCHOOL ATTENDANCE – DISTRICT ATTORNEY PROSECUTES VIOLATIONS C.R.S. §22-33-104
Rationale:
<p>1) This waiver request is limited to non-Indian school-aged children present on the reservation. Due to the limitations of Tribe’s ability to regulate the conduct of non-members off the reservation and the state’s inability to regulate the conduct of Tribal Members on the reservation, the Tribe cannot assert its authority over children who are not present on the reservation. Therefore, the Tribe is not seeking a waiver of this law for children attending the Kwiyaqat Community Academy who are not present on the reservation, but is seeking a waiver with regard to non-Indian children present on the reservation.</p> <p>2) Pursuant to operation of federal law and the lack of consent by the Tribe, the state cannot assert compulsory school attendance laws against Indians on the reservation (see 25 USCA §231 and 25 CFR §237.172).</p>
Replacement Plan: The Tribe adopted and enforces a <i>Truancy Ordinance</i> that applies compulsory school attendance laws which are not inconsistent with the state’s laws to all school-aged children on the Reservation and their parents or guardians. All students at the Kwiyaqat Community Academy will comply with the Tribe’s <i>Truancy Ordinance</i> (Attachment E) and policies in KCA Student and Parent Handbook, which are included with this waiver request (Attachment A).
Duration of Waivers: For the term of the contract.
Financial Impact: Costs that would have been borne by the District Attorney now be borne by the Tribe and the United States.
How the Impact of the Waivers Will be Evaluated: Monitor student achievement and enforcement by the Tribe.
Expected Outcome: Pupils at the Academy will be required to attend school as they would if they were in any other school within the district.

Non-Automatic Waivers: Statute Description and Rationale and Replacement Plan
14. SUSPENSION, EXPULSION, AND DENIAL OF ADMISSION: C.R.S. §22-33-105 AND C.R.S. §22-33-106(4)
Rationale: 1) One of the main incentives for establishing the Kwayagat Community Academy is to respond to parents of students in the district who are dissatisfied with the suspension and expulsion policies and protocols of the district and the Academy intends to implement policies and protocols that utilize traditional dispute resolution practices that are sensitive to the unique needs of Native American students.
Replacement Plan: Kwayagat Community Academy will use discipline policies and protocols that are informed by traditional dispute resolution practices and are sensitive to the unique needs of Native American students. These policies and protocols govern suspension, expulsion and denial, of admission, including guidance for readmission and access to school where the victim is present. The School Discipline Policy is in the KCA Student and Parent Handbook, which is included with this waiver request, and conforms with Tribal and Federal law and policy. (See Attachment A.)
Duration of Waivers: For the term of the contract.
Financial Impact: Costs that would have been borne by the district will now be borne by the Tribe, the United States, and the Institute.
How the Impact of the Waivers Will be Evaluated: Monitor student compliance with Academy rules and regulations and enforcement while maintaining sensitivity to the unique experiences of Native American families with school-aged children.
Expected Outcome: Pupils at the Academy will be disciplined in a manner that not only reflects the values of the Tribe and its Members, but results in greater compliance, fewer disciplinary actions, and successful academic progress.

Non-Automatic Waivers: Statute Description and Rationale and Replacement Plan
15. PUBLIC SCHOOL FINANCIAL TRANSPARENCY ACT – ON-LINE ACCESS TO INFORMATION C.R.S. § 22-44-304
Rationale: 1) The Tribe has a process for providing information to third parties, which requires a written request to the Tribal Council Secretary with a description of the materials requested. The Secretary may either grant the request, deny it, or provide a summary of the requested document. The Tribe can also post a description of this process on the Academy's website. 2) The Tribe does not make its financial information generally available to the public, regardless of the department or Tribal agency involved. The information is regarded as confidential. Also, the Tribe and its Members are often scrutinized unfairly and the Tribe believes that putting out certain financial information exposes the Tribe and its Members to improper bias, prejudice, and innuendo. 3) The Tribe will work with the Institute to ensure adequate transparency while protecting the Tribe and its Members.
Replacement Plan: The Tribe will utilize the process it currently practices in providing information to those who request it.
Duration of Waivers: The waiver will extend for the duration of the contract.
Financial Impact: The financial impact will be borne by the Tribe.
How the Impact of the Waivers Will be Evaluated: The Tribe and the Institute will periodically review the status of requests and ensure transparency is adequate.
Expected Outcome: Persons seeking information about the Academy's finances will be able to request the information, but it will not be openly published on the Academy's website.

Non-Automatic Waivers: Statute Description and Rationale and Replacement Plan
16. DISCRIMINATION IN EMPLOYMENT PROHIBITED: C.R.S. §22-61-102
Rationale: 1) The Kwiaygat Community Academy intends to provide to its pupils a strong education of Native American culture, language and traditions and it is important that those persons instructing the students in these practices and values understand the various religious practices of Native Americans, including practices of the Native American Church, as well as, specific Ute and Ute Mountain Ute language and cultural concepts. Therefore, when selecting and hiring individuals to teach about these customs and traditions, it is important for the Academy to ask whether the applicant has experience with the Church and other relevant religious affiliations. It is not required that the individual be a member of any particular religious group, but it will be common for members of the Academy hiring team to ask about the groups. Furthermore, the Tribe's Personnel Policies and Procedures Manual requires that Ute Mountain Ute tribal members have hiring preference, then other Native American Tribal Members and then general population.
Replacement Plan: The Kwiaygat Community Academy will follow the Ute Mountain Ute Tribe's <i>Personnel Policies and Procedures Manual</i> , which is included as Appendix H of this application.
Duration of Waivers: For the term of the contract.
Financial Impact: Costs may be increased by the time and effort to make such inquiries.
How the Impact of the Waivers Will be Evaluated: None.
Expected Outcome: Applicants to the Academy may be asked about their knowledge and understanding of certain Native American religions, language fluency and cultural protocols.

Non-Automatic Waivers: Statute Description and Rationale and Replacement Plan
17. OATHS, AFFIRMATIONS, OR PLEDGES AND PENALTY: C.R.S. §22-61-104 and C.R.S. §22-61-105
Rationale: 1) The Colorado State <i>Constitution</i> does not apply on the Ute Mountain Reservation and oaths should not be required to refer to it, however, employees will follow the United States <i>Constitution</i> as well as the Ute Mountain Ute Tribal <i>Constitution</i> . 2) Because the statute on oaths, affirmations and pledges is waived, the related penalty should also be waived. 3) Teachers licensed by the state will be required to take an oath to the Colorado <i>Constitution</i> under C.R.S. 22-61-102.
Replacement Plan: Kwiaygat Community Academy will expect its employees to adhere to the Ute Mountain Ute Tribal <i>Constitution</i> and the United States <i>Constitution</i> .
Duration of Waivers: For the term of the contract.
Financial Impact: Costs should be the same.
How the Impact of the Waivers Will be Evaluated: Monitor whether a failure to take an oath to the state <i>Constitution</i> has an impact on the Kwiaygat Community Academy's effectiveness.
Expected Outcome: Employees of the Academy will understand they must adhere to the Tribe's <i>Constitution</i> .

Non-Automatic Waivers: Statute Description and Rationale and Replacement Plan
18. TEACHER EMPLOYMENT, COMPENSATION AND DISMISSAL: C.R.S. §22-63-201, 202, 203, 203.5, 204, 205, 206, 301, 302, 401, 402, 403.
Rationale: 1) The Tribe and Kwiyyagat Community Academy will follow Tribal Employment Policy and school policy to establish the rights, qualifications and conditions of its teachers.
Replacement Plan: The rights and responsibilities for teacher employment, compensation and dismissal are described in Tribal and school policy, including the Tribe's <i>Personnel Policies and Procedures Manual</i> , which is included in this application in Appendix H.
Duration of Waivers: For the term of the contract.
Financial Impact: Costs should be the same.
How the Impact of the Waivers Will be Evaluated: Monitor the effectiveness of the Tribe's contracting protocols and amend as necessary.
Expected Outcome: Persons retained by the Tribe will be hired under contracts that meet the Tribe's requirements, as well as those of the state and the United States.

EXHIBIT D: MILESTONES

Within 5 business Days of Contract Execution

1. open a bank account with at least 2 authorized Ute Mountain Ute Tribe representatives, of which at least 1 must be a member of the Ute Mountain Ute Tribal Council, at an approved PDPA bank. Register the PDPA custodian. Send bank account information to CSI within seven business days of contract execution.

Ongoing Upon Contract Execution

2. Submit the school's bank statements, check registers, payroll detail, and updated cash flow forecast with actuals that tie to the bank statement from the prior month by the 5th business day of each month.
3. Submit the following year-to-date financial reports for the school for the prior month by the 15th business day of each month: Balance Sheet, Profit and Loss statement.
4. School leadership must participate in the CSI Year 0, New School Leaders Orientation, Year 1 Leaders Cohort, and CSI Meetings (including board trainings) throughout the 2021-2022 school year.
5. All members of the governing board and, if not already represented on the school board, at least 1 member of the Tribal Council involved in school oversight, must participate in a CSI New School Board Orientation to be scheduled at a mutually-agreeable time and review the recorded Orientation for New Board Members modules. At least 2 members of the school's Board of Directors and if not already represented on the school board, at least 1 member of the Tribal Council involved in school oversight, must participate in live Board Meeting Trainings for both Year 0 and Year 1.
6. Submit interim assessment data following fall, winter, and spring assessments annually as detailed in the contract.

January

7. Submit the school's Tribal Council-approved school bylaws. **Due January 15, 2021**
 - If not included in the bylaws, submit your board background check, code of conduct and conflict of interest policies.
 - In addition, submit the board member agreement that will be signed by board members on an annual basis. (For reference, See CSI's Do's and Don'ts of Board Bylaws and School Board Template Toolkit.)
8. Submit Tribal Council-approved and adopted school financial policies and procedures in alignment with CSI's Financial Policies and Procedures guidance. **Due January 15, 2021.**
9. Consult with the Legal and Policy Team regarding your proposed school enrollment process and submit your final enrollment policy/procedures. (For reference, see CSI's guidance on Enrollment Policies and Practices.) **Due January 15, 2021.**
10. Consult with CSI Legal & Policy Team regarding your draft student registration process and registration paperwork and submit final documents. **Due January 15, 2021.**

February

11. Consult with CSI Chief of Staff on establishing Indian Policies and Procedures as required per Impact Aid. **Due February 1, 2021.**

12. Consult with CSI Chief of Staff on student information system and plans management system needs and considerations. **Due February 1, 2021.**
13. Submit Tribal Council-approved and adopted FY 2020-21 budget. **Due February 1, 2021.**
14. Submit your draft discipline policies for review by the Legal and Policy Team and revise as appropriate/required. (For reference, see CSI's guidance on student discipline). **Due February 15, 2021.**
15. Submit your final Parent/Family and Employee Grievance Policies to CSI. **Due February 15, 2021.**

March

16. Provide a schedule of professional development and Year 0 training for both school leadership, governing board members, and Tribal Members involved in school oversight (Evidence of professional development completion should be submitted as they are completed and, at a minimum, during regular Year 0 Check-Ins.) **Due March 1, 2021.**
17. Consult with the CSI Evaluation & Assessment Team to discuss accountability and set targets for Year 1 and relevant progress monitoring. Submit finalized targets and progress monitoring plan. **Due March 1, 2021.**
18. Consult with the CSI Evaluation & Assessment Team to finalize the assessment plan for Year 1. Submit finalized plan. **Due March 1, 2021.**
19. If changes have been made, submit final evaluation rubric for the head of school. If changes have not been made, please confirm in writing. **Due March 15, 2021.**
20. Submit an explanation of the steps taken in developing the School's Emergency Response Plan, including proposed timeline for completion of the plan, specifics about the staff training that will be conducted on emergency response protocols (including dates for training), and the external resources that have been utilized in developing the Plan. **Due March 15, 2021.**
21. Establish Board of Directors. Submit member legal name, role, term length, and email address for each member. **Due March 31, 2020.**

April

22. Submit an update on actual enrollment following the lottery demonstrating at least 75% of Year 1 enrollment, which is 23 funded pupil count. Securely submit student name, date of birth, and grade level. **Due April 19, 2021.**
23. Submit evidence that the required data system(s) that align with state reporting requirements have been purchased. Include the timeline for system setup and staff training to ensure a functioning system that is usable by staff prior to the first day of school. **Due April 30, 2021.**

May

24. Submit working FY 22 budget. **Due May 3, 2021.**
25. Consult with CSI Student Services Team regarding the development of Program Plans for Special Education, Section 504, Health, Gifted and Talented students, and English Language Learners and submit plans. **Due May 3, 2021.**
26. Consult with Legal and Policy regarding your process for developing a Parent/Student Handbook and Employee handbook and submit the following for review: Attendance

Policy, Student Fees Policy, Family Engagement Policy, FERPA Annual Notification of Rights, and Parent's Right to Know. **Due May 28, 2021.**

June

27. Submit Program Plans for Special Education, Section 504, Health, Gifted and Talented students, and English Language Learners and submit plans. **Due June 15, 2021.**
28. Submit a Tribal Council-approved and adopted FY22 budget. **Due June 30, 2021.**

July

29. Submit evidence that all diagnostic and interim assessments have been purchased. Include the timeline for staff training on diagnostic and interim assessment administration and final assessment schedule including the WIDA Screener, school readiness assessment, READ Act assessment, and any additional school-selected interim assessments. **Due July 1, 2021.**
30. Provide assurance that a continuum of services will be available for students with special needs, including evidence that special education staff with appropriate qualifications has been hired to provide special education services and/or evidence that appropriate arrangements have been made for contracted services. Please submit these contracts. **Due July 1, 2021.**
31. Submit evidence that full Year 1 staffing is in place. **Due July 1, 2021.**
32. Submit verification of actual enrollment of at least 100% Year 1 enrollment, which is 30 funded pupil count, ideally through data in the student information system. **Due July 1, 2021.**
33. Submit a Remote Learning Plan if the school anticipates a need to implement remote learning in the 2021-22 school year. **Due July 15, 2021.**

August

34. Submit written verification that staff has been trained in Emergency Response Protocols. **Due August 13, 2021.**
35. Submit Certificate of Occupancy. **Due August 13, 2021.**

November

36. Demonstrate that student enrollment reflects the target student demographics identified in the application. If the school fails to meet the targets as of October Count, submit a clear plan that offers realistic strategies to achieve the projected targets for the coming school year, if applicable. **Due November 15, 2021.**
37. If enrollment is less than 90% of projected enrollment, or differs materially from projected enrollment by grade level based on data submitted for Pupil Count Day, submit a new viable and sustainable budget, as determined by CSI, reflecting the reduction in revenues and corresponding expenditures. **Due November 15, 2021.**

EXHIBIT E: ENROLLMENT PROCEDURES



Enrollment Policy and Procedures Kwiyagat Community Academy (revised 11.7.20)

Non -Discriminatory Student Recruitment and Enrollment

Kwiyagat Community Academy (KCA) encourages all students of age for grade levels that are open to enrollment to apply. All students who enroll will have an equal chance of gaining a seat in our lottery based on the preferences and procedures outlined below. Student recruitment and enrollment decisions shall be made in a nondiscriminatory manner. In all cases, student recruitment and enrollment decisions shall be without regard to race, color, creed, national origin, sex, religion, ancestry, sexual orientation, disability or need for special education services.

Enrollment Preferences. Enrollment preferences will be given to the following students and not exceed 20% of the total student population:

1. Children of school founders, and if slots remain;
2. Children of staff members who place their children in the annual lottery. Staff members are defined as any individual that is employed full-time or part-time at Kwiyagat Community Academy at the time of the lottery. Staff members' children are eligible for enrollment preference based on availability, and if slots remain, and then;
3. Siblings of students currently enrolled, or offered an available slot in the lottery, will be given preference according to space availability after registering in the annual lottery.

Enrollment Outreach.

Students and families will be notified of the lottery and enrollment process through a variety of targeted advertising. Enrollment and lottery dates, forms and processes will be announced at least one prospective parent information night at the school or via Zoom. In addition, enrollment information will be present on the school's website, on flyers sent to Ute Mountain Ute Head Start and other departments and other regional Head Start and childcare centers, on web and print advertising in *The Journal* (regional newspaper) and the Ute Mountain Ute Cable Channel 99 as well as on other Cortez and Montezuma County cable stations, and in radio ads broadcasted and placed on the websites of local radio stations. Posters will also be created and placed in public locations, such as libraries and recreation centers.

Selection Method. When the number of applicants exceeds the number of spaces available, students will be selected by a random lottery, taking into consideration the enrollment preferences described above. At least two of the KCA Board of Directors and Head of School (if available) will hold an open community meeting at the Towaoc Community Center or at the School to announce the names of the students selected for enrollment. The location will be advertised at least two weeks in advance. Parents will be notified of a number by which their child is associated prior to the lottery event. The lottery process will start by placing numbers which are associated with the names of prospective students on 3"x 5" index cards into a container and drawn randomly by a designated Board member and recorded by another Board member or designee until the number of slots available are reached. The numbers associated by student names will continue to be drawn from the container after the number of slots (15 per grade level) are reached and this list will determine the waiting list, recorded in the order of which the student's name was drawn from the container. If additional spaces become available after the initial selection, students will be offered enrollment based on their order on the waiting list. Parents or guardians of students selected will have four days from when a school representative contacts them to confirm their enrollment. A student is considered "confirmed" by stating a verbal confirmation and returning proper enrollment forms. The verbal commitment is needed after four days and the returned enrollment forms is needed 10 days after the original confirmation is offered. If a selected student's parents or guardians does not verbally confirm their student's enrollment after four days, then the slot will be offered to the next student on the waitlist. If the parent or guardian does not return enrollment forms after 10 days, the next student on the waitlist will be offered the slot. Any spaces available after all students on the waiting list have been offered enrollment will be filled on a first-come, first-served basis. Waiting lists are not carried over from year to year. Students on the waiting list who are not offered enrollment and wish to be considered for enrollment the following year must enroll the next year.

Enrollment Timeline and Procedures. KCA enrollment timeline and procedures are subject to the following conditions:

- A. Prior to submitting an application for enrollment, parents and students will be encouraged to attend an informational session to fully understand the school values, methodology, curriculum and expectations.
- B. Kwiyyagat Community Academy will begin publicizing the application dates at least two months prior to the date of the lottery, typically in the middle of February.
- C. Parent/guardians can complete application forms that will be offered either as paper forms available at the school or by downloading the form off the KCA website.
- D. Application forms can be delivered in person to the school office, mailed to the school, or emailed to the school's email address.
- E. The Lottery will be held on the second Wednesday of April. (In years when Spring Break falls during said Lottery, that date will be moved exactly one week later.)
- F. Based on space availability, the KCA will continue to accept students from the waiting list and, once the waitlist is exhausted, on a first-come-first-served basis up until fully enrolled. The School may accept students after October 1 upon available space.

Enrollment Procedures for Students with Disabilities

For all students, the KCA reserves the right to review each student's educational records and ensure the student is eligible for enrollment pursuant to state and federal law. Enrollment in KCA shall be open to any child who resides within the state; except that KCA shall not be required to make alterations in the structure of the facility or to make alterations to the arrangement or function of rooms within the facility, except as may be required by state or federal law. C.R.S. 22-30.5-507(3).

To ensure that the needs of students with disabilities are met, the following procedures must be followed:

1. Enrollment materials will ensure that families know that the KCA serves students with disabilities. Any pre-enrollment materials shall not ask whether a student has a disability.
2. Following admission, KCA shall require that the student provide the most recent IEP (including eligibility IEP) or Section 504 Plan, if available.
3. A review team consisting of the KCA Principal or designee, the School Special Education teacher or coordinator, and the Institute Special Education Director or designee shall review the IEP or 504 plan and determine whether KCA will be the least restrictive environment appropriate for the student.
 - a. If the team finds that the IEP (or LRE setting) or 504 plan requires a significant change of placement* or raises other concerns about the student's ability to access a Free and Appropriate Public Education (FAPE), the School shall convene a complete IEP team to determine the appropriate placement. The IEP team meeting shall include the Institute Director of Special Education or designee. In addition, the IEP team must include the following people: not less than one regular education teacher; not less than one special education teacher, or where appropriate, not less than one special education provider; and, an individual who can interpret the instructional implications of evaluation results, and a language interpreter, when necessary. The student's parents and legal guardian must be afforded the opportunity to participate, as must the student when appropriate.
 - b. If the team determines that KCA is the appropriate placement for the student, the student shall be placed directly in a program that meets the requirements of the student's existing IEP or Section 504 Plan, unless and until KCA convenes an IEP meeting or 504 meeting is held and the IEP or Section 504 Plan is changed.
4. If the IEP team determines the IEP or 504 Plan requires a significant change of placement*, then the IEP team will refer the student to the Institute Director of Special Education or designee. If a significant change of placement is required, the Director of Special Education of the student's administrative unit of residence (school district or BOCES) must be invited to the IEP meeting. It is also recommended that KCA invite representatives from the student's prior school to participate in the IEP Team meeting at the charter school. The Institute Director of Special Education or designee will confer with the student and family regarding placement opportunities available in accordance with the placement determination made by the IEP team and assist the family in making proper application(s) for the placement setting.

*Significant Change of Placement:

A significant change of placement occurs where:

- The administrative unit places or refers a student to a private school or approved facility school;
- The addition or termination of an instructional or related service or any change which would result in:
 - The child having different opportunities to participate in nonacademic and extracurricular services;
 - The new placement option is a change in the educational environment categories required for reporting data to the Secretary of the U.S. Department of Education pursuant to Section 618 of the IDEA; or
 - The child transfers from a brick and mortar school to an online program or vice versa.

If a significant change of placement is required, the IEP team must first consider the need for a reevaluation by reviewing the listed information and determining whether additional information is necessary to determine the student's eligibility for special education, the student's educational needs, and any necessary additions or modifications to the special education and related services. If the team (including a request by the parent), determines that additional evaluative information is necessary, the Institute shall reevaluate the student in accordance with the IDEA and ECEA rules.

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Sent for signature to Jill Anschutz (janschutz.csi@gmail.com), Joe Peters (joe.peters@coag.gov) and Manuel Heart (manuel.heart@utemountain.org) from amandaoberg@csi.state.co.us
IP: 165.127.85.4



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00:40:12 UTC

Viewed by Jill Anschutz (janschutz.csi@gmail.com)
IP: 71.237.5.239



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Signed by Jill Anschutz (janschutz.csi@gmail.com)
IP: 71.237.5.239



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IP: 165.127.21.245



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Signed by Joe Peters (joe.peters@coag.gov)
IP: 165.127.21.245



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