

AMENDED PERFORMANCE AGREEMENT BETWEEN ECTOR COUNTY ISD AND ODESSA FAMILY YMCA

This Amended Performance Agreement ("Amended Agreement" or "Agreement") is made and entered into on August 20, 2024 and effective as of July 1, 2024 (the "Renewal Date") by and between ECTOR COUNTY ISD (the "District"), a public independent school district and political subdivision of the State of Texas, and Odessa Family YMCA ("Operating Partner" or "OP") (together, the "Parties") to continue operating the Odessa YMCA Learning Center (the "School"), located at 1111 Pagewood Ave., Odessa, TX 79761.

ARTICLE I.

RECITALS

- 1.01 Independent School District. The District is an independent school district created within the laws of Texas.
- 1.02 Authority to Contract. The Board of Trustees of the District is empowered by Texas Education Code, Sections 11.157 and 11.174, to contract with a public or private entity for that entity to provide educational services for the District.
- 1.03 Non-Profit Organization. The Operating Partner is an organization that is exempt from taxation under Section 501(c)(3), Internal Revenue Code of 1986 (26 U.S.C. Section 501(c)(3)), awarded a charter granted under TEC Subchapter C, Chapter 12 and is eligible under TEC 12.101(a).
- 1.04 Charter Granted and Term of Charter. Effective as of July 1, 2021, and as provided by District Board Policy and TEC 12.0522, the District has contracted to partner with OP, and the District has granted OP a campus charter under TEC Chapter 12, Subchapter C, for the operation of the School under the terms and conditions herein provided. The campus charter hereby granted became effective on July 1, 2021.
- 1.05 The Parties initially entered into a performance agreement on March 23, 2021 with a Commencement Date of July 1, 2021 (the "Initial Agreement"). The Initial Agreement included an option to renew automatically for up to another five-year term if all of the specified academic and financial performance goals set forth in Addendum 3 or successor documents are met. On December 12, 2023, the District's Board of Trustees voted to renew the SB1882 partnership between the District and OP. The Parties now desire to update and amend certain provisions of the Initial Agreement and to formalize the renewal term.

- 1.06 Consultation. The District has consulted with campus personnel employed by the District and OP has consulted with campus personnel employed by the OP regarding provisions to be included in this Agreement. The District and OP recognize that all rights and protections afforded by current employment contracts or agreements may not be affected by this Agreement.
- 1.07 Consideration. In consideration of the mutual agreements set forth in this Agreement, and for other good and valuable consideration, the Parties agree as follows:

ARTICLE II.

PURPOSE OF AGREEMENT

- 2.01 Contract for Services. This Agreement constitutes a contract for services.
- 2.02 Premise of Agreement. This Agreement is predicated on understanding that students benefit when decisions regarding educational programs, operations, and student services are made at the school level and that autonomy and accountability are mutually reinforcing principles.
- 2.03 Student Achievement. The primary purpose of this Agreement is to provide an innovative approach to expand Pre-Kindergarten ("Pre-K" or "PK") opportunities by authorizing OP to operate the School as an autonomous campus subject to transparent accountability requirements. The provisions of this Agreement shall be construed and applied to achieve this purpose.
- 2.04 Continuation of Agreement for the Benefit of Students. The Parties intend that this Amended Agreement shall continue in effect for the entirety of the renewal five-year term. This Agreement may renew automatically for up to another five-year term if all of the specified academic and financial performance goals set forth in Addendum 3 or successor documents are met. Both the initial term and any subsequent renewal term are subject to the conditions of Article XVII. The District may not extend this Agreement if the school fails to achieve the student outcome goals specified in Addendum 3, attached, without a public hearing at least 30 days prior to any district action to extend or renew the contract.

ARTICLE III.

DEFINED TERMS

- 3.01 School. School has the meaning assigned in the Texas Administrative Code §97.1051(3) and includes all components of the operation of the campus, including, without limitation, the grade levels served, the courses taught, the instructional materials, staffing, budgetary allocations,

scheduling, transportation and other services, and the other responsibilities associated with school operation.

- 3.02 Facilities. Facilities are defined as a building and related equipment, furnishings, and property improvements, including any athletic fields and related improvements, and the land on which the building and related improvements are located as more fully defined in Article XI. The physical location of the Facility is 1111 Pagewood Ave., Odessa, TX 79761

- 3.03. Material Breach. A "material breach" of this Agreement shall include the failure of a Party to comply with or fulfill any material obligation, condition, term, representation, warranty, provision, or covenant contained in this Agreement, including without limitation any failure by OP to meet generally accepted fiscal management and government accounting principles, comply with Applicable Law, state agency rule, or meet the student outcome goals required by this Agreement.

ARTICLE IV.

RELATIONSHIP OF The PARTIES

- 4.01 Nature of Relationship. The relationship between the Parties hereto shall be that of contracting parties. OP will operate as an independent contractor to the District and will be responsible for delivering the services required by this Agreement. The relationship between and among the Parties was developed and entered into through arms-length negotiations and is based solely on the terms of this Agreement and such contracts and agreements as may be created in the future from time to time between the Parties and reduced to writing.
- 4.02 No Agency. Neither Party will be the agent of another except to the extent otherwise specifically provided by this Agreement. Neither Party has the express or implied authority or will in any case represent to third parties, and will whenever needed disclaim to such parties, any ability to bind the other Party to any duty imposed by contract, other than this Agreement, unless the Party on which such duty is to be inferred has specifically authorized such action at a meeting of that Party's governing board held in accordance with the Texas Open Meetings Act (appearing in minutes of such meeting) and as agreed in writing by that Party.
- 4.03 No Common Control. Neither Party is a division, subsidiary, affiliate, or any part of the other Party or has the right or authority to exercise any common control of any other Party. Nothing herein will be construed to create a partnership or joint venture by or between The District and OP.
- 4.04 Assurance of Independence. The OP governing body shall remain independent of the independent school district. This governing body is not and shall not be comprised of any

members of the independent school district's board of trustees or staff.

ARTICLE V.

APPLICABLE LAWS

- 5.01. Scope of Applicable Law. The Parties agree that certain laws and regulations that apply to other schools within The District may not apply to the School or its operation as a consequence of the grant of a campus charter under Texas Education Code, Chapter 12. The Parties further agree that, except as provided in this Agreement required by Applicable Law, no provision of Texas law otherwise applicable to a governing body or school, or rule or guideline, shall apply to the School or its operation.
- 5.02. Compliance with Applicable Law. The Parties shall perform their respective obligations under this Agreement in compliance with all laws and regulations that do apply to the School or its operation (collectively, "Applicable Law"), as may be amended from time to time. The Parties stipulate that Applicable Law includes, but is not limited to, Title VI of the Civil Rights Act of 1964, as amended; Title VII of the Civil Rights Act; Title IX of the Education Amendments of 1974; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; the Americans with Disabilities Act; the Individuals with Disabilities in Education Act; the Family Educational Rights and Privacy Act of 1974 ("FERPA"); the Every Student Succeeds Act to the extent specified in the Act; the Texas Education Code to the extent the School is not exempt; record retention laws and conflicts of interest laws under the Texas Local Government Code and Texas Government Code; the Texas Local Government Code and Texas Government Code, to the extent it applies to school districts; the Texas Open Meetings Act and Texas Public Information Act under the Texas Government Code; and any amendments, interpretations, and reauthorizations of the foregoing.

ARTICLE VI.

GOVERNING POLICIES

- 6.01. Limitation on Authority. An educational or administrative service necessary for operation of the School not specifically reserved for provision by The District under this agreement shall be provided and solely managed by OP insofar as such delegation is permitted by state and federal law. A service is provided by OP if OP performs the service, contracts for its performance, or otherwise ensures and oversees provision of the service.

- 6.02. Policy Election. OP elects to operate in accordance with The District Charter Policies specified in Addendum A1, attached to this agreement.
- 6.03. Adoption and Publication of School Policies. The governing board of OP will adopt policies addressing matters specified in Addendum A2, attached to this agreement at a public meeting held in conformance with requirements of the Texas Open Meetings Law, Chapter 551, Texas Government Code. OP will provide proposed policies or proposed amendments to policies currently in effect in draft form to The District for review and comment no later than 30 days prior to the meeting at which the policies are to be considered for adoption or amendment. OP will publish adopted policies and The District Board Policies applicable by law or by election under this agreement on the School's Internet website.
- 6.04. Future Waivers and Exemptions. The Parties will collaborate in applying for waivers from any restrictions imposed by Applicable Law when it is jointly determined that such waiver would expand opportunities for students enrolled in the School. If the District is relieved from compliance from certain state or federal law or regulation through a waiver, adoption or amendment of a local innovation plan under Chapter 12A, Texas Education Code, the School is automatically relieved from compliance regardless of whether such relief is addressed in this Agreement. Further, if a waiver from a local policy, procedure, protocol or other requirement is granted to another school in the District that serves students in the same grade levels offered at the School, and the policy is not waived by this Agreement, the waiver applies to the School unless The District notifies the School otherwise in writing within 60days of the waiver's application to the other school,

ARTICLE VII.

PERFORMANCE REQUIREMENTS

- 7.01 Student Outcome Goals. The primary responsibility of OP under this Agreement is to ensure that the annual student outcome goals specified in Addendum 3, or as amended, are achieved. OP agrees to take reasonable measures to provide student performance data necessary for the District to evaluate the School based on metrics that may include, but not be limited to, student proficiency and academic growth, provided that such evaluations shall have no bearing on OP's rights under this agreement.
- 7.02 Performance Measurement, Methods, and Timeline. The Parties agree that achievement of annual student academic and financial performance targets agreed upon by the Parties and specified in Addendum 3 will be determined using the methods, indicators, and timelines specified in that Addendum.

- 7.03 Performance Consequences. The Parties agree to specific, material consequences in the event that the operating party does or does not meet the annual academic or financial performance expectations and goals described in Addendum 3.
- 7.04 Responsibilities of OP Governing Board. The governing board of OP agrees that it is responsible for ensuring that OP achieves performance goals specified in Addendum 3 and is obliged to oversee management of the School and intervene as required to ensure that performance goals are achieved.

ARTICLE VIII.

SCHOOL OPERATIONS

801. Operational Autonomy. OP shall have full and sole autonomy with respect to School operations. Domains of autonomy specified in this Agreement are intended as illustrative and do not represent an exhaustive listing.
802. Governing Structure. Subject to the terms of this Agreement, the governing board of OP will serve as the governing board of the School, will oversee management of the School, and has sole authority to hire and manage the School leader and to set the terms and conditions of the School leader's employment.
803. Governing Board OP represents that a true and accurate list of its current directors ("Directors") is attached to this Agreement as Addendum 4. If there is any change to the Directors during the Term of this Agreement, OP shall provide notice to The District of the change within 30 days.
804. Budgetary Authority of OP. OP has sole authority to approve or amend the budget for the School.
805. Grade Levels. The School will serve students in grade level Pre-K-3 year olds.
806. Attendance Area. The School's attendance area ("Attendance Area") shall be defined as the area designated in Addendum 5 to this agreement subject to TEC §12.065.
807. Enrollment Policies. Any student who resides in the Attendance Zone of the School, as defined in Addendum 5, may not be refused enrollment. If there are additional spots remaining, then they shall be filled by the students who reside in the District and then filled by students who reside outside the school district. The Parties will collaborate and agree on a process for enrollment of students into the School. In addition to the agreed-upon admission policies, the following applies:

8.07.01 *Discrimination.* OP is prohibited from discriminatory admission, suspension, or expulsion of a student on the basis of a student's national origin, ethnicity, race, religion, disability, gender, or academic achievement. OP is further prohibited from requiring that students take a placement exam or other exam as a condition of admission.

8.07.02 *Eligibility.* To be eligible for free tuition in the Pre-K 3 program described in this Agreement, a child must reside in Ector County, be 3 years of age on or before September 1st of the school year the child wishes to enroll in the School, and meet at least one of the following eligibility criteria: is unable to speak and comprehend the English language; is educationally disadvantaged (which means a student who is eligible to participate in the national free or reduced-price lunch program; is homeless; is the child of an active duty member of the armed forces of the United States; is the child of a member of the armed forces who was injured or killed while on active duty; is or ever has been in the conservatorship of the Department of Family and Protective Services (foster care) following an adversary hearing held as provided by Section 262.201, Texas Family Code; or is the child of a person eligible for the Star of Texas Award as a peace officer under Section 3106.002, Texas Government Code, a firefighter under Section 3106.003, Texas Government Code, or an emergency medical first responder under Section 3106.004, Texas Government Code. ECISD and OP will give priority to students who meet the eligibility qualifications for a Pre-K-3 program. Ineligible students will be placed on a waitlist as their application is received. ECISD and OP will review space availability and will offer a tuition-based Pre-K-3 program to ineligible students. While subject to change, the school year 2024-25 tuition rate for ineligible students is as follows: half day = \$10/day; \$200/month; \$1,800/year (Sept - May).

8.07.03 *District Enrollment.* All students attending the School shall be enrolled in the District.

8.08 Discipline and Expulsion Policies. OP elects to adopt the ECISD Student Code of Conduct currently in effect, as well as all related discipline and expulsion Board policies, exhibits, and ECISD administrative regulations. OP agrees to abide by all applicable laws concerning due process and the discipline of students with disabilities applicable to a Subchapter C charter school. A student enrolled at the School may appeal a disciplinary decision only to the OP school leader, OP Board of Directors, or any other designated OP employee. (waiting for OP to decide about FO and other policies)

- 8.09 Schedule. OP will have sole authority in determining the school day, school year, bell schedule, schedule for before and after-school services and for extra-curricular activities. OP agrees to provide this information to The District no later than 45 days before start of school and to confer with The District prior to altering.
- 8.10 District Meetings, Initiatives, and Training. School staff will not be required to participate in The District's training events or other meetings unless directed by OP. OP agrees that all School staff will comply with training requirements under Applicable Law. OP will have sole authority to determine professional development activities or programs for School staff.
- 8.11 Contractor Criminal History Background Checks. OP will require criminal history background checks on all vendor and contractor personnel who enter the School or any District campus or building.
- 8.12 Technology Infrastructure: Network Services. The District shall be responsible for providing, repairing, and maintaining network infrastructure and services at the School to the extent reasonably necessary to permit OP to establish its own internet and phone service at the School of a standard reasonably comparable to other District schools. OP shall provide The District with a list of equipment purchased and collaborate for consistency between the standard equipment and needs of the School. OP shall maintain a student technology device (1:1) program in the same manner employed by other District PK campuses. District technology services will procure, inventory, image, distribute, repair, and collect 1:1 devices, and work related thereto will be charged to the OP as a District-provided service. The District shall provide OP faculty and staff with the opportunity to participate in the District's instructional staff laptop computer distribution program in the same manner as District employees.
- 8.13 Media Requests. The Parties agree to collaborate regarding any media requests or press releases related to the School, prior to responding to any media request or making a press release, and further agree that any statement made will have prior approval by each Party. This requirement does not apply to general communications regarding OP or The District that may include references to the School.
- 8.14 Communications with Parents. The Parties agree to jointly approve a protocol for both general and urgent communications with parents within 60 days of the execution of this Agreement.

ARTICLE IX.

STAFFING

- 9.01 Employment Status.** Faculty and staff of the School, including, but not limited to, the School Leader, other administrators, teachers, and teaching assistants, are employees of OP and not of The District. The Parties acknowledge and understand that employees of OP are not subject to The District personnel policies and that OP has sole authority over hiring, assignment, evaluation, development, advancement, compensation, continuation, other terms of employment with respect to School staff. OP will employ all necessary teachers and staff for the School. All teachers shall be Texas School Ready (TSR) teachers and shall be employed at a 1:11 ratio. In order to serve all enrolled bilingual students, the OP shall employ the appropriate number of TSR teachers to provide the services at a 1:11 ratio. Additionally, OP will employ all campus administrators, known as Director(s) of Early Childhood Education. After consultation with OP, the District may provide certain other District employees, including additional teachers, to regularly work at the School. The assignment of any such employees shall be subject to the approval of OP, and will be charged to the campus, thereby reducing the revenue that flows to the campus. The District will grant any requests from the OP to rescind the assignment of any district employee or district contractor from the campus within 20 business days of receiving the request from the OP. OP shall work in good faith to supply the District with documentation of OP's reasons for the rescission and shall cooperate in any employment actions that may be taken by the District in connection with the employee.
- 9.02 Criminal History Background Checks.** OP shall perform all criminal history background checks required by Applicable Law, including without limitation those required for School personnel, applicants, vendors, contractors, and volunteers and shall take action required by law upon completing the background check.
- 9.03 Certified Personnel.** The School's personnel shall at a minimum have the qualifications required by Applicable Law for the assigned role except to the extent a requirement has been lawfully waived or the individual is subject a lawful exemption. The District's personnel assigned to the School shall be certified for the position for which they are assigned unless OP selects a District employee who is not certified for an assignment and The District agrees to the assignment. OP may directly employ an uncertified person for an assignment.
- 9.04 Employment Records.** OP is responsible for maintaining the employment records for all School Personnel and all employment records of OP employees are the property of OP except that OP agrees to make records of affected staff members available to The District should The District become employer of those staff members.
- 9.05 Employee Complaints and Grievances.** The Parties agree that employee complaints and grievances will be governed by the applicable policy of his or her employer. Complaints and grievances from the OP will be heard by the OP. Complaints and grievances from District

employees at the School will be heard initially by OP in accordance with its published policies. If the District employee is not satisfied with the resolution proposed by OP, the employee may present the complaint or grievance to the District in accordance with processes defined by the District. Complaints and grievances from OP employees at the School will be heard by the OP in accordance with its published policies and resolved by the OP according to OP published policies. The Parties shall work together to ensure complaints and grievances of District employees are adequately addressed.

- 9.06 Non-Solicitation. OP agrees it will not solicit or hire any of The District employees without first conducting a reference check with the employee's current supervisor (or HR department. If preferred by supervisor), and unless and until it receives written confirmation from The District that the employee 'has been released from any contractual obligations with The District. The District agrees it will not solicit or hire any employee of OP during any school year, Summer school, or after July 1 of any year. For lateral hires, both Parties agree to make a good faith effort to hire any staff members making a lateral (same/similar position) transfer across organizations within a mutually agreed upon transfer window, which may extend into the current year. This window will be set together annually for the coming school year before June 30th. If a lateral transfer opportunity falls outside of the transfer window and while the employee is under current contractual obligations to its current employer, then the current employer must determine whether to release the employee's contractual obligation. Such release shall not be unreasonably withheld. For promotions, both Parties agree to make every good faith effort to hire staff applying for a promotion across organizations within the mutually agreed upon transfer window. If a promotion opportunity falls outside of the transfer window, both organizations agree to work together to ensure that the transition does not unnecessarily negatively affect student learning. Nothing in this Agreement alters the nature of OP employees or changes the employment relationship between any employee and his/her employer.

ARTICLE X.

ACADEMIC PLAN

- 10.01 Curriculum and Program. OP will have sole authority to approve all curriculum decisions beyond the minimum requirements outlined in 19 Texas Administrative Code §74.2 (relating to Description of a Required Elementary Curriculum) or §74.3 of this title (relating to Description of a Required Secondary Curriculum), lesson plans, instructional strategies, and instructional materials, as defined in TEC, §31.002(1), to be used at that campus. This authority includes sole authority over educational programs for specific, identified student groups, such as gifted and talented students, special education students, students of limited English proficiency, students at risk of dropping out of school, and other statutorily defined populations

- 10.02 Educational Plan or Academic Model. OP will implement the education plan or academic model described in its proposal to operate the School, attached as Addendum 6. The OP will include in the plan or model the vision for the School, including its culture, curriculum, assessment program, instructional strategies, talent recruitment and management strategies, professional development activities or programs, evidence that the aforementioned strategies and programs can be effective with the student population served at the School, and the management routines and practices to be implemented by the OP in managing the staff and academic programs at the School. OP will ensure that curriculum satisfies the minimum requirements outlined in 19 TAC §74.2 of this title (relating to Description of a Required Elementary Curriculum) or §74.3 of this title (relating to Description of a Required Secondary Curriculum.) OP agrees to notify The District of any significant alteration of this plan within 10 days.
- 10.03 Selection of Instructional Materials. OP has sole authority to select instructional materials (as defined in TEC, §31.002(1)) for the School and represents that selected materials will align with the TEKS, or its successor, and any other standards that may be required under Applicable Law.
- 10.04 Assessments. OP has sole authority over the selection and administration of student assessments not required by state or federal law.
- 10.05 Extracurricular Programming and Participation. Students enrolled at the School may join any extra-curricular activity offered to District students to the same extent as other students so long as participation does not interfere with the School's schedule, tutorials, or other parts of the Program as determined by the OP school leader.
- 10.06 Student Behavior. Students enrolled at the School will be required to follow the District's Student Code of Conduct as explained in Section 8.08 of this OP. OP agrees that a student shall not be suspended or expelled from the School for attendance or academic performance reasons.
- 10.07 Due Process. OP will cooperate with The District to ensure that due process is afforded with respect to student removals and expulsions.

ARTICLE XI.

FACILITIES

- 11.01 Facilities. The OP agrees to provide facilities, in the form of classrooms, office furniture, equipment, and storage areas for the School at no cost and provide utilities in accordance with Facility Plan attached as Addendum 7. OP may elect to collaborate with the District to purchase necessary furnishings similar to those in use at other District schools at additional cost.
- 11.02 Ownership. The Parties acknowledge that all Facilities, other than those procured with District funds for use in the School as described in Section 11.04, are owned by the OP.
- 11.03 (This paragraph intentionally deleted.)
- 11.04 Furniture and Equipment for Classrooms and Instructional Areas. OP shall furnish furniture, fixtures, and equipment, at OP's cost and expense, as OP determines what is needed to implement the Program. The title to all furniture and equipment purchased with federal, state, or local funds for use by OP at the School remains vested in the District. The title to all furniture and equipment provided by OP with funds other than funds received from this Agreement remains vested in OP. OP and the District shall tag and identify their respective property so that ownership is clear. Each Party shall maintain an inventory list of all of its assets located at the School.
- 11.05 (This paragraph intentionally deleted.)
- 11.06 Janitorial Services. The OP shall provide all janitorial services for the facility in the same manner and at the same level as for other District facilities.
- 11.07 Maintenance. OP shall be responsible for routine maintenance and major repairs of the School including, upgrades, HVAC equipment, roof repairs, and parking lot repairs. OP shall maintain all other portions of the School in a neat and orderly manner. Both Parties shall comply with the Applicable Laws regarding standards of safety and health of students.
- 11.08 Insurance Coverage. Each Party, at its own expense, will maintain its own insurance throughout the Term of this Agreement. The insurance required under this Agreement shall be as follows:
- a) Comprehensive or commercial general liability insurance for not less than \$1,000,000 (combined single limit for bodily injury and property damage per occurrence and in the aggregate.) Each Party may elect to carry what other insurance that Party decides is necessary or advisable for its obligations under this Contract. Such insurance will be written to cover claims incurred, discovered, manifested, or made during or after the Term;
 - b) Automobile insurance to cover losses for motor vehicles accidents by that Party; and

- c) Comparable Occupational Accident Policy as approved by district.
- d) The District will obtain and maintain property insurance for School as it deems necessary and advisable to carry. Each Party may elect to carry insurance to insure its own personal property located at the School.

Neither Party will be responsible for the negligence or liability of the other Party. Each Party will be responsible for the management and supervision of claims relating to its own operations.

ARTICLE XII.

RESPONSIBILITIES

12.01 OP Responsibilities. The OP shall have the sole authority over matters involving academic curriculum and the instructional program. In accordance with Paragraph 9.01, OP shall have sole authority to select, reassign at the School, or request removal by the District of District employees who are assigned to the School. OP shall have sole authority to hire or terminate OP's employees. OP must employ at least one employee with responsibility for oversight of the School.

12.01.01 *Administration.* OP shall have authority over the selection, supervision, assignment, evaluation, development, advancement and compensation of the School's Director(§ of Early Childhood Education and any other role designated as an administrator of the School, whether that person is employed by the District or OP. The OP has the initial and final non-delegable authority to hire, supervise, manage, assign, evaluate, develop, advance, compensate within the allotted campus budget, continue employment, and establish any other terms of employment for its employees.

12.01.02 *Teaching Staff.* OP shall have initial and final non-delegable authority to select, supervise, manage, assign, evaluate, develop, advance, compensate, and establish any other terms of employment of the School's teachers, teaching assistants, paraprofessionals, curriculum specialists, program coordinators, and any persons assigned to the School, whether employed or contracted by the District or OP. The OP has the initial and final non-delegable authority to hire, supervise, manage, assign, evaluate, develop, advance, compensate within the allotted campus budget, continue employment, and establish any other terms of employment for its employees. OP authority over compensation includes authority to independently apply for and allocate funds available through the Teacher Incentive Allotment in the manner and to the extent permitted by the Texas Education Agency.

- 12.01.03 *Staffing Plan*. OP shall have initial and final non-delegable authority to determine the staffing plan and positions at the school, provided funds subject to OP's control (inclusive of funds allocated for compensation of School staff) under the terms of this Agreement are sufficient to discharge all obligations associated with the staffing plan and positions. OP shall have initial and final non-delegable authority to select, supervise, manage, assign, evaluate, develop, advance, compensate and establish any other terms of employment of any staff, including the School's guidance counselors, extracurricular activity instructors, physical education instructors, and any other personnel assigned to the School.
- 12.01.04 *Special Education*. OP shall have sole authority over and responsibility concerning education programs for students with disabilities as established by the Admission, Review and Dismissal Committee (ARD). As a service provided to OP at an additional cost, the District will provide a certified administrator to facilitate all ARD meetings during the first year of this Agreement's Term. Additionally, the District will provide diagnosticians, speech pathologists, and any other professionals required to appropriately deliver special education services at the School. OP will ensure that the School's special education program and Section 504 plans comply with state and federal laws, including but not limited to the Individuals with Disabilities Education Act ("IDEA") and Section 504 of the Rehabilitation Act of 1973. As the Local Education Agency ("LEA") chiefly responsible for identifying and serving students with disabilities, the District shall retain final authority in Special Education litigation matters, but the OP, subject to 19 TAC§ 97.1075(c)(2)(B) and to each child's IEP, shall have final authority regarding the day-to-day learning environment, services, and expectations for students who receive Special Education services.
- 12.02 District Responsibilities. The District shall maintain control of and shall be responsible for all District staff and personnel not assigned to the School who provide service directly to the campus, as well as the specific matters defined in this section. The amount the District charges for these services may not exceed the District average cost per student for similar services rendered.
- 12.02.01 *Record Keeping*. The District and OP will coordinate record keeping and compliance with state law. OP will use the District's record keeping Student Information System (SIS) required by the Texas Education Agency's Public Education Information Management System (PEIMS) data reporting. OP will also work with District to develop a mutually agreeable method by which OP will share all relevant and required student performance data, including data related to Addendum A3, and all information required by PEIMS and other data collections.
- 12.02.02 *Data Sharing*. The Parties shall enter into a data sharing agreement that complies with all applicable requirements of FERPA.

- 12.02.03 *Transportation.* The District shall provide all necessary transportation to and from the School for purposes of regular school attendance. Any transportation needs outside of the District's regular schedule, including, but not limited to, field trips and regular attendance days at the School that are not regular attendance days for other District schools, shall be contracted back to the District and paid for by OP. District, at their sole discretion, reserves the right to deny transportation services to the OP in the event of inclement weather.
- 12.02.04 *Food Services.* The District will provide food services to the School. The District shall have the right to operate the following programs, as applicable, at the School: National School Lunch Program, School Breakfast Program (including Breakfast in the Classroom and Universal Breakfast), After-school Care Program, Summer Food Service Program, Child and Adult Care Food Program, 'a la Carte, adult meals, contract meals, concessions, and disaster feeding. The District will be responsible for complying with state and federal regulations regarding the delivery of such programs. This service will be provided at no charge to the OP in the first year of this Agreement. For every year thereafter, the costs vs revenue will be analyzed for the prior year to determine if charges need to be assessed to the OP in order for the District to provide the service without incurring a loss.
- 12.02.05 *Security.* The District shall provide all security and police operations to the school which includes, but is not limited to, electronic badge access, security cameras, and internal phone systems.
- 12.02.06 *Substitute Teachers.* The District shall be responsible for employing substitute teachers and providing them to the School in the event that an employed teacher of the District is absent, in the same manner that it provides substitute teachers to other District schools as one of the services provided in consideration for the funds retained by the District. However, substitutes requested for the purposes of professional development outside of regularly calendared District professional development days will be charged to OP in accordance with District practice.
- 12.02.07 *Payroll Services.* The District shall be responsible for payroll services and health benefits of employees designated as district employees for the campus. The payroll and health benefits will be deducted from the per pupil funding designated for the campus.

ARTICLE XIII.

FINANCIAL MATTERS

13.01 Determination of Funding Allocation. Compensation to OP for eligible students is based primarily on the weighted average-daily-attendance (WADA) allocation received by The District for students enrolled in the School and actual weighted student attendance. OP shall receive funding according to the base student allotment designed by the State for The District *considering enrollment, attendance*, applicable weights for early education, compensatory education, special education, and bilingual (English Language Learners), per school year based on a 180-day school year. The following estimated allotment is based on 150 enrolled students with a 90% attendance rate with 80% LEP students and 80% economically disadvantaged populations. Weighted funding for Pre-K students is at one half the rate of a student in K-12. The 2024-25 estimate for gross general fund revenue (Tier I, Tier II and 1882) is \$4,937 per enrolled student, or approximately \$27 each school day.

OP shall additionally participate in other allotments received by the District (including the instructional materials allotment only if there is an applicable adoption or purchase for the grade levels served by School during that year) in proportion to the number of students enrolled at the School. The budget is an estimated financial plan which is available prior to the beginning of the school year. The actual amounts earned, and expenditures charged are not fully known until December of the year following the school year and settle ups will be handled by December 15 of the year following the applicable school year. The OP budget for the first year of operation of the School is included as Addendum 8.

13.02. Distribution of Funding Allocation. The estimated allotment (minus any funds retained for incurred charges that the District pays on behalf of the OP, or retains for administrative and support fees, or direct charges for payroll for employees such as teachers, educational specialists, nurses, or services the OP elects to purchase from the district) shall be paid in monthly installments on the 15th day of each of ten (10) months during each year of the term, commencing on July 15 and continuing through April 15. Payments shall be issued on an average monthly basis. The estimated enrollments and attendance and weights will be adjusted to actual data for purposes of determining the earned allocations and settle up will occur by December 15 following the previous school year. In the event that the 15th shall fall on a Saturday, Sunday or holiday, payment shall be made no later than the following Monday. Alternatively, the District can Issue payment 15 days after receipt of the monthly invoice from the OP.

13.03 Limitations. In no case shall The District be obligated to pay any amount for students not included in the District's eligible ADA count to the Texas Education Agency (TEA). Notwithstanding any terms hereinto the contrary, The District's obligation to compensate OP is expressly subject to the receipt, adjustment or modification of funds by The District from

the State of Texas specifically allocated for those eligible students in attendance at OP. In the event that such funding is not received or reduced by the TEA, The District shall not be obligated to OP in any amount, and OP may terminate this Agreement. Any prior payments made by The District shall be retained by OP in consideration of and as payment for educational services provided (if earned) to the date of such termination. This section shall not be construed to relieve The District of any responsibility or obligation to OP if The District fails to receive funding as a result of a failure by The District or its agents or contractors to fulfill requirements necessary for securing funding from the State of Texas.

- 13.04 Enrollment Projections. OP shall submit its projected enrollment for the upcoming school year to The District at a mutually agreed upon date, which shall be considered in the budget estimate for the next year. For the second year of School's operation, enrollment and attendance rates shall be re-calculated based on actual data from the current year PEIMS snapshot data.
- 13.05. Refund upon Termination or End of Agreement Term. In the event of termination or fulfillment of this Agreement, OP agrees to refund to The District within ninety (90) days of the date of conclusion all advanced but unearned funds, as well as advanced funds not yet used to further the goals described by Article II and/or Addendum 3 of this Agreement. In the event the School will no longer operate as a TEA-approved Pre-K campus, any remaining funds not spent on Pre-K students at the School shall be returned to the District.
- 13.06 Federal and State Grants. In addition to the funding described above, OP may also be eligible for Federal entitlement grants, such as Title I, as approved by the Federal granting agencies and the State. The allocation will be based on enrollment less applicable indirect costs based on the District's approved indirect cost rate. OP must follow the District procedures and all applicable internal controls concerning the use of federal and state funds. Such funding will be retained at the District and must be spent through the District as approved and designated by Federal and State agencies and local policy. OP admits knowledge of and agrees that The District's obligation hereunder for payment of Federal and/or State grants is limited to and expressly subject to receipt of any funds from the Texas Education Agency. In the event The District is ever required to refund any funds received from TEA specifically designated for any Federal or State grant program, then it is understood and agreed that OP shall be liable for and shall refund such amounts received.
- 13.07 Contracting, Purchasing and Procurement. OP may choose to purchase via a District purchase order. OP may establish school-level systems for obtaining, contracting with, and paying its vendors for goods it acquires and services it provides under this Agreement. OP will ensure compliance with applicable state and federal contracting and payment. OP reserves the right to contract for any services it deems beneficial in operation of the School.

- 13.08 Accounting and Audits. OP shall comply with generally accepted fiscal management and accounting principles. All payments must be supported by appropriate supporting documentation. In addition to any audits required by Applicable Law, OP shall submit to The District within 180 days following the end of each fiscal year during the Term of this Agreement financial statements audited by an independent certified public accountant. OP agrees to comply with all rules, regulations, ordinances, statutes, and other laws, whether local, state or federal, including, but not limited to, all audit and other requirements of the Single Audit Act of 1984. In the event an audit occurs and any expenditures relating to this Agreement are disallowed, OP agrees to reimburse The District immediately for the full amount of such. The District retains the right to conduct audits by the District's internal auditor.
- 13.09 OP's Acceptance and Use of Private Philanthropic Support. The Parties acknowledge that OP raises private philanthropic funding to support the costs of its organization. The District acknowledges and agrees that any philanthropic support raised by OP to support the School campus will be accepted and used at the OP's sole discretion for the benefit of the students.

ARTICLE XIV.

RECORDS AND REPORTING

- 14.01 Records Management System. OP shall implement a records management system that conforms to the system required of school districts under the Local Government Records Act, Section 201.001 *et seq.*, Local Government Code, and rules adopted thereunder; provided, however, that records subject to audit shall be retained and available for audit for a period of not less than seven (7) years from the latter of the date of termination or renewal of the contract.
- 14.02 State and Federal Reporting. OP shall report timely and accurate information to The District as necessary for The District to comply with all applicable state and federal requirements. OP shall report information in the manner requested by The District and correct any demonstrable errors as requested by The District provided that the manner of reporting or correction requested is not unduly burdensome to the OP.
- 14.03 Lawful Disclosure. To the extent that OP or The District will come into possession of student records and information, and to the extent that OP or The District will be involved in the survey, analysis, or evaluation of students incidental to this Agreement, both parties agree to comply with all requirements of the Family Educational Rights and Privacy Act and the Texas Public Information Act. In the event that The District is required to furnish information or records of the School pursuant to the Texas Public Information Act, OP

shall furnish such information and records to The District, and The District shall have the right to release such information and records. Either OP or The District may object to disclosure of information and records under the Family Educational Rights and Privacy Act or the Texas Public Information Act.

ARTICLE XV.

INTELLECTUAL PROPERTIES

- 15.01 Proprietary Materials. Each of the Parties shall own its own intellectual property including without limitation all trade secrets, know-how, proprietary data, documents, and written materials in any format. Any materials created exclusively by The District for the School shall be owned by The District, and any materials created exclusively by OP for the School shall be OP's proprietary material. The Parties acknowledge and agree that neither has any intellectual property interest nor claims in the other Party's proprietary materials. Notwithstanding the foregoing, materials and work products jointly created by the Parties shall be jointly owned by the Parties and may be used by the individual Party as may be agreed upon by both Parties from time to time.
- 15.02 The Odessa YMCA Learning Center OP owns the intellectual property right and interest to the name "Odessa Family YMCA" and The Odessa YMCA Learning Center, The Parties agree that the name "Odessa Family YMCA" and the Odessa YMCA Learning Center may be used by either Party during the Term of the Agreement. The Parties agree that after the expiration or termination of this Agreement, The District will not use the name "Odessa Family YMCA" for its own individual purposes.

ARTICLE XVI.

INSURANCE

- 16.01 Insurance Coverage. OP shall secure and keep in force during the Term of this Agreement commercial general liability insurance coverage, including contractual coverage, automobile liability insurance coverage, and sexual misconduct and molestation coverage, with minimum liability limits of \$1,000,000 per occurrence, with a \$2,000,000 annual aggregate. The District is to be named as an additional insured under such coverage for any liability arising, directly or indirectly, under or in connection with this Agreement, or with regard to the operations of the School or any event arising therefrom. The District

shall maintain casualty insurance on its personal property and commercial general liability coverage applicable to any services it provides at the School, in substantially the same manner as it maintains such insurance with respect to other District schools. Operator shall also maintain (a) broad form casualty coverage for all personal property located or used at the School, including the Furnishings, which coverage shall be on a full replacement value basis, and (b) worker's compensation insurance to the extent required by the laws of the State of Texas. Any deductible or other similar obligation under OP's insurance policies shall be the sole obligation of OP and shall not exceed \$25,000. Notwithstanding the foregoing requirement regarding insurance coverage, The District shall have the right to self-insure part or all of said insurance coverage in The District's sole discretion. In the event The District elects to self-insure all or any part of any risk that would be insured under the policies and limits described above, and an event occurs where insurance proceeds would have been available but for the election to self-insure, The District shall make funds available to the same extent that they would have been available had such insurance policy been carried.

- 16.02 Form of Policies. All of OP's insurance policies shall be issued by insurance companies qualified to operate in Texas and otherwise reasonably acceptable to The District. Such policies shall name The District, and such other related parties as The District elects, as additional insureds. Evidence of insurance shall be delivered to The District on or before the Commencement Date, and thereafter within thirty (30) days prior to the expiration of the term of each such policy, or immediately upon OP's obtaining a new policy. Such coverage may be maintained under a blanket insurance policy of OP.
- 16.03 Indemnification. Subject to the policy limits of the insurance coverage required by this Agreement, OP will protect, defend, indemnify, and save harmless The District from and against all claims and suits, including court costs, attorneys' fees, and other expenses, caused by the acts or omissions of OP, its employees, officers, directors, trustees, subcontractors or agents in relation to the School or the performance of its obligations under this Agreement. Subject to the policy limits of the insurance coverage required by this Agreement, The District will protect, defend, indemnify, and save harmless Operator from and against all claims and suits, including court costs, attorneys' fees, and other expenses, caused by the acts or omissions of The District, its employees, officers, directors, trustees, subcontractors or agents in relation to the School or the performance of its obligations under this Agreement. The provisions of this indemnification are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Additionally, nothing herein shall be construed to waive any governmental immunity available to the District or the OP under Texas law.
- 16.04 Evidence of Insurance. Upon request, a Party will furnish a certificate of insurance to the other Party evidencing the required coverage within thirty (30) days after the

Commencement Date of this Agreement and annually thereafter. Each Party will provide to the other Party notice of any cancellation or material adverse change to such insurance within thirty (30) days of such occurrence.

16.05 Cooperation. To the extent that it is reasonably practicable, each Party will comply with any information or reporting requirements required by any of the other Party's insurers.

16.06 Insurance Companies. All insurance coverage described in this Article shall be obtained from companies that are authorized to do business in the State of Texas.

ARTICLE XVII.

TERM AND TERMINATION

17.01 Term. The term of this Amended Agreement shall begin on July 1, 2024 and end on June 30, 2029 ("Renewal Term"). Thereafter, it may automatically renew for another 5-year term, but only if all of the specified academic and financial performance goals set forth in Addendum 3 or successor documents are met. This Agreement is subject to the termination provisions below.

17.02 Termination by Mutual Consent. This Agreement may be terminated at any time by mutual written agreement of OP and The District if termination is effective no sooner than the end of the then current school year.

17.03 Termination Rights of Both Parties. Either Party may immediately terminate this Agreement in the event that the other Party fails to remedy a material breach of this Agreement within 60 days after written notice by the non-breaching Party of such breach; provided, however, that if the breach would affect the safety or well-being of a student or is not reasonably capable of being cured, then no such notice and opportunity to cure shall be required.

17.04 (This paragraph intentionally deleted.)

17.05 Termination Right to a Public Hearing. The District may not terminate this Agreement within the three-year contract period if the school successfully achieves the student outcome goals specified in Addendum 3, attached, without a public hearing at least 30 days prior to any district action to terminate the contract. The District may not extend this Agreement if the school fails to achieve the student outcome goals specified in Addendum 3, attached, without a public hearing at least 30 days prior to any district action to extend or renew the contract.

17.06 Termination Related to Academic or Financial Performance. The District may terminate this Agreement as a result of the OP's failure to meet the academic or financial performance goals defined in Addendum 3, in the manner prescribed by Addendum 3.

17.07 Change in Applicable Law. If any change in Applicable Law that is enacted after the Effective Date could reasonably be expected to have a material adverse effect on the ability of any Party to carry out its obligations under this Contract, the Parties agree to negotiate in good faith to amend this Agreement and resolve the matter. If the Parties cannot reasonably renegotiate the Agreement within 60 days of the change in Applicable Law, then either Party may terminate this Agreement without penalty to either Party.

ARTICLE XVIII.

SERVICE-LEVEL AGREEMENTS

18.01 OP Authority. The OP has sole decision-making authority regarding the delivery of any service related to transportation, food services, janitorial, security, or related support services. OP may, at its sole discretion, choose to purchase one or more services from The District, including student transportation, child nutrition, services for special populations, library, counseling, facilities maintenance, temporary alternative programs, and other services at a cost jointly approved annually. The cost of such services will be agreed upon at a per-enrolled student amount, per-campus amount, or as a percentage of the total district budget for the service as set forth in Addendum 9, attached

18.02 Administrative and Support Services. The Parties agree that The District shall retain 15% of all funds annually for District support and administrative services. The Parties agree to meet annually to review and jointly approve such fees. Itemization and cost of administrative services are set forth in Addendum 9, attached. If the OP decides, as documented in this agreement, to buy services from the District, those services will be provided in the same manner in which the District delivers such services to other District-run schools. In order to recoup the costs associated with the provision of these services, the District will retain the agreed upon amount of the revenue generated from state and local authorities, grant programs, SB 1882 allotments, and any other revenues received by the District in association with the School. In determining the appropriate revenue retention percentage, the District examined previous years' service costs at District campuses and estimated costs for the Term of this Agreement. These cost estimates do not exceed costs incurred by the District to deliver the same or similar services to other District schools. These fees do not include direct payroll charges such as teachers, instructional specialists, nurses.

ARTICLE XIX.

GENERAL AND MISCELLANEOUS

- 19.01 Entire Agreement. This agreement including all referenced attachments and terms incorporated by reference contains the entire agreement of the parties. All prior representations, understandings, and discussions are merged into, superseded by and canceled by this contract.
- 19.02 Severability. If any provision of this contract is determined by a court other tribunal to be unenforceable or invalid for any reason, the remainder of the contract shall remain in full force and effect so as to give effect to the intent of the parties to the extent valid and enforceable.
- 19.03 No Waiver of Breach. No assent, express or implied, to any breach of any of the covenants or agreements herein shall waive any succeeding or other breach.
- 19.04. Venue. Any suit arising under this contract shall be brought in Ector County, Texas.
- 19.05. Governing Law. In any suit arising under this contract, Texas law shall apply.
- 19.06 Assignment. Except as otherwise provided in this Agreement, neither party may assign or delegate any rights or obligations under this Agreement without the prior written consent of the other party.
- 19.07 Amendments. Any future amendments to this Agreement shall be in writing and signed and agreed to by both parties.
- 19.08 Headings and Captions. The headings and captions appearing in this agreement have been included only for convenience and shall not affect or be taken into account in the interpretation of this agreement.
- 19.09 Notice. Any notice or communication required or permitted hereunder shall be given in writing, sent by (a) personal delivery, or (b) expedited delivery service with proof of delivery, (c) United States Mail, postage prepaid, registered, or certified, or (d) via facsimile or email, as follows:

If to OP:

Email:

Facsimile#: _____

If to the District:

Dr. Scott Muri, Superintendent of Schools
Ector County Independent School District
P.O. Box 3912
Odessa, Texas 79760-3912
Email: scott.muri@ectorcountyisd.org
Facsimile#: _____

Entered into this ____ day of _____, 2024
Ector County ISD

By

Odessa Family YMCA

By

ADDENDUMS REFERENCE

Addendum 1: The District Charter Policy - ELA (Local) can be accessed via the following link.

Addendum 2: Board Adopted School Policies

- Local district or operating partner policies and bylaws

Addendum 3: Student Outcome and Financial Performance Goals Includes specific and material performance consequences.

Addendum 4: OP Governing Board

Addendum 5: School Attendance Area

Addendum 6: OP Charter Proposal (Application)

- Includes educational plan/academic model.

Addendum 7: Facility Plan

Addendum 8: First Year Budget

Addendum 9: District Services and Fees

ADDENDUM 1

District's Charter Policy

A copy of Ector County ISD's Charter Policy - ELA (Local) can be accessed via the following link.
<https://pol.tasb.org/PolicyOnline/PolicyDetails?key=421&code=ELA#localTabContent>

ADDENDUM 2

Adopted District Policies

YMCA Odessa will operate in accordance with the following policies of Ector County ISD as they exist on August 20, 2024.

CKE
CNA
CO
COA
COB
CQ
EHBC
ELA
FC
FD
FDA
FEA
FFAC
FFAF
FL
FO
FOA
FOB
FOC
FOCA
FOE
FOF
FP

Board By Laws: Attached

CONSTITUTION AND BYLAWS ODESSA FAMILY YMCA

ARTICLE I

NAME

The name of this organization shall be Odessa Family YMCA, here-after referred to as YMCA The Odessa Family YMCA is a 501(3)(c) charitable non-profit organization.

ARTICLE II

PURPOSE

The Odessa Family YMCA will build strong kids, strong families, and strong communities.

The YMCA will strive to accomplish this purpose by maintaining activities that will improve the physical fitness and mental well being of persons, and train them in Christian principles that will enrich their lives, and those of their community.

The YMCA may hold or dispose of such property, real or personal, as may be given, devised, or bequeathed to it or entrusted to its care and keeping; may purchase, acquire, and dispose of such property as may be necessary to carry out the purposes of the YMCA; and may manage, control, and utilize the same in accordance with the provisions of these Articles.

ARTICLE ID

MEMBERSHIP

Section 1 Members of this YMCA shall consist of those individuals, both male and female, regardless of race or creed, who comply with the provisions of the Constitution and membership regulations as prescribed from time to time by the Board of Directors through their By-Laws or otherwise.

Section 2 - Voting membership, with the right to vote and hold office in this Association, shall be open to any individual, 18 years of age or older, who is a full member in good standing as specified in Section 1.

Section 3 - The responsibilities of voting members of the Association shall be:

- a. To maintain the membership of the Association in proper status;
- b. To nominate and elect the Board of Directors;
- c. To vote and, if eligible and elected, to hold offices;
- d. To represent the Association in the Midwest Field of YMCAs or the YMCA of the USA, I fand when duly authorized under the stated requirements of such representation.

- e. To cooperate actively in achieving the Association's purposes through service on committees or in other ways.
- f To participate financially in forwarding the work of the Association.

ARTICLE N

BOARD OF DIRECTORS **Fifteen(15) to Eighteen(18)**

Section 1 - The government of this association shall be vested in a Board Directors composed of eighteen (18) qualified voting members to be elected by ballot of the voting membership, one-third(1/3) of which shall be elected each year after the first year. In addition, the Board of Directors, upon nomination of the Board Chairman, may elect three(3) qualified members each year for a term of one(1) year to be known as Chairman Directors.

Section 2 - Board members shall be eligible for re-election by the members of the Association for as many terms as the members choose to elect them, provided there is a lapse of at least one year after every second consecutive three-year term.

Section 3 - The Directors shall be responsible to the members of the Association and are charged with the responsibility of determining policies, maintaining equipment and property, providing, expending and accounting for all funds, and employing the Chief Executive officer.

Section 4 - The Board of Directors shall have power to fill all vacancies in all other offices until the next annual election.

Section 5 - The Board shall have power to establish branches or branch facilities.

Section 6 - The Board shall have power to establish By-Laws by a two-thirds (2/3) vote of the Board as may be necessary for the effective functioning of the association. By-Laws may be repealed and amended in the same manner.

Section 7 - The Board may honor one or more of its members or former members from time to time for long and faithful service by electing him an Honorary Board Member for life. An Honorary Board Member may attend all meetings, participate in the discussions, but shall not vote nor hold a Board office. He shall not again be required to stand for election, and his place shall be filled as prescribed in this Constitution.

Section 8 - One-half(1/2) of the regular members of the Board shall constitute a quorum Regular members of the Board are those Directors that have been elected by the Board to fill a vacancy, or members appointed as Chairman Directors and those elected by the members of the Association. Honorary members shall not be counted as regular members.

ARTICLE V

OFFICERS

Section 1 - Officers are elected for two consecutive years by the Board from its own membership at a regular meeting of the Board to be held in January of each year.

Section 2 - Officers shall include a Board Chairman, Board Chairman Elect/Treasurer, Vice-Chairman/Membership, Vice-Chairman Programs, Vice-Chairman Child Care, and Secretary.

Section 3 - The duties of all officers shall be those usually performed by such officers, and the Chairman shall preside over the Board of Directors meeting.

Section 4 - All officers shall serve in their respective capacities until their successors shall have been qualified.

ARTICLE VI

MEETINGS

Section 1 - There will be an Annual Meeting of the YMCA each year, at which time the Board of Directors shall report to the status of the YMCA. Notice of this meeting shall be posted in the lobby of the YMCA fifteen (15) days in advance.

Section 2 - Special meetings of the membership may be called by the Chairman, a majority vote of a quorum of the Directors, or by petition for such a meeting by twenty-five (25) voting members.

Section 3 - Fifty (50) percent of the board of directors present constitutes a quorum at any meeting of the YMCA

ARTICLE VII

ELECTIONS

Section 1 - At a regular meeting of the Board preceding the election, the Board Chairman shall appoint, a five member committee subject to the Board's approval (Three (3) members of the Board, a past Chairman, and the President/CEO, one of whom shall be designated Committee Chairman.) The purpose of this committee shall be to develop a slate for the membership to elect the Board of Directors. Any voting member of the YMCA may present in writing, over his own signature, to the Nominating Committee within ten (10) days after its appointment, the name of any member for nomination, and no person shall be eligible for election as a Director unless his name shall thus have been submitted to, or nominated by, said Nominating Committee. The Nominating Committee will narrow the slate to fill the necessary Board vacancies. The nominations shall be posted for a period of 30 days in a

prominent location in the lobby of the YMCA at the end of which the slate shall be elected unless a reasonable objection is submitted to the Nominating Committee. In the event of an objection it will be at the sole discretion of the Nominating Committee to revise the slate.

ARTICLE VIII

PRESIDENT/CEO

Section 1 - The President/CEO shall be employed by the Board of Directors. He shall serve continuously as long as he retains the confidence of a majority of the Board or until he resigns.

Section 2 - He shall select and employ all other members of the paid staff: subject to the advice of the Executive Committee.

Section 3 - The salaries of the President/CEO and all professional employees shall be set by the Board of Directors upon the recommendation of the Executive Committee. The wages of all other employees shall be set by the President/CEO subject to the limitation of the budget for the year.

Section 4 - The President/CEO shall be responsible for the supervision of the staff and the general program of the entire association. He shall operate at all times within the general policies as determined by the Board and interpreted by the Executive Committee.

ARTICLE IX

FINANCES

Section 1 - The Board of Directors shall be responsible for all financial operation. It shall determine all fees charged for membership. It shall make all investments of capital funds. No officer or employee shall obligate the YMCA for any indebtedness not provided for in the budget without specific authorization by the Board of Directors. It shall review financial reports monthly and make an annual financial report to the members at the Annual Meeting.

Section 2 - This YMCA shall operate on a calendar or fiscal basis with each fiscal year beginning January 1 and ending December 31 of the same year.

ARTICLE X

COMMITTEES

Section 1 - The Board of Directors may delegate responsibilities to committees which shall, at all times, be responsible to the Board.

Section 2 - All major committees of the Board shall be appointed for one year by the Chairman subject to approval of the Board.

Section 3 - All members of committees shall be members in good standing as defined in Article II1, Section 2.

Section 4 - The organizational structure for conducting the business and program of the Association shall be as follows:

A Functioning directly under the Board of Directors will be the

- (1) Executive Committee - The Executive Committee shall consist of the officers of the Association and past Board Chairman. The Executive Committee shall act for the Board of Directors in the interim between Board meetings, but shall not have power or authority to reconsider or reverse any action or policy of the Board and shall have only such power and authority as may be delegated to it by the Board. The Board Chairman or any two members of the Committee may call meetings at any time and four members shall constitute a quorum for committee meetings. The Executive Committee shall review salaries of the staff and shall recommend any changes to the Board of Directors for its consideration. The Executive Committee shall report all its actions to the regular meetings of the Board of Directors which, when approved, shall become the actions of the Board.**
- (2) Foundation Committee - The Foundation Committee shall care for all endowment funds of the YMCA as outlined in the Committee Charter. The Committee shall consist of at least seven (7) members. One member shall be the Chairman of the Board of Directors. His term on the Committee shall run concurrently with his term as Chairman of the Odessa Family YMCA. The remaining members of the Committee shall be appointed by the Board of Directors, one-third (1/3) of which shall be appointed every odd-numbered year. The Board of Directors of the YMCA shall fill all vacancies on the Committee. The Committee members shall hold office until their successors have been appointed and qualified.**
- (3) Other major committees & Ad Hoc Committees to be appointed by the Board Chairman of the Association as deemed necessary.**

Section 5 - It shall be the responsibility of the Board of Directors to coordinate the policies of the various committees to assure that such policies agree with the purpose of the Association as established by Article II of this Constitution and to assure that the policies of the various committees complement each other in serving the entire membership of the association.

ARTICLE XI

AFFILIATION

This Association shall always maintain working relations, with the Midwest Field of YMCAs, the YMCA of the USA and the World Alliance of the Young Men's Christian Association.

ARTICLE XII

DISSOLUTION

Section 1 - This Association may not be dissolved except by two-thirds (2/3) vote of the members present in a meeting called for the purpose of considering its dissolution, provided notice of such meeting shall have been sent to each member and a notice posted in the lobby of all YMCA facilities and in the principal headquarters of the Association at least thirty (30) days prior to such meeting, and provided also, the Executive Midwest Field of YMCAs shall have been notified and invited to be present.

Section 2 - Upon a vote to dissolve the Association, all assets of the Association, after all just debts have been paid, shall be deposited with the Midwest Field of YMCAs to be held in trust until such time as a Young Men's Christian Association shall again be established in the community. Such funds shall be invested by the Field Board and the earnings used to maintain a YMCA program for youth in this community.

ARTICLE XIII

AMENDMENTS

Amendments to this Constitution and By-Laws may be made by two-thirds (2/3) vote of the Board of Directors present and voting at any regular constituted meeting of the Board; provided that notice of such proposed amendment shall have been given to each Board of Director member of the YMCA by mail or in person at least thirty (30) days prior to such meeting.

ADDENDUM 3

YMCA Odessa Performance and Financial Goals:

Academic Performance Goals

Assessment Tool: CIRCLE Progress Monitoring PreK

Odessa Y Learning Center Academic Performance Goals Performance Measure 3 (2024-2029)

I. Academic Excellence. Objective: Academic Performance will meet or exceed local and state standards					
	Goal	Goal	Goal	Goal	Goal
Performance Measure 1 Phonological Awareness	2024-2025	2025-2026	2026-2027	2027-2028	2028-2029
Phonological Awareness (Total Score) at Wave 3 (PK 3)	68%	68%	70%	70%	72%
Performance Measure 2 Mathematics	2024-2025	2025-2026	2026-2027	2027-2028	2028-2029
Math (Total Score) at Wave 3 (PK 3)	68%	68%	70%	70%	72%
Assessment Tools: CIRCLE Progress Monitoring (Phonological Awareness/ Mathematics)					

Family-School Connectedness					
	Goal	Goal	Goal	Goal	Goal
	2024-2025	2025-2026	2026-2027	2027-2028	2028-2029
Family Engagement- The degree to which families become involved with and interact with their child's school.	The Odessa Y will host at least two family engagement events per year	The Odessa Y will host at least two family engagement events per year	The Odessa Y will host at least two family engagement events per year	The Odessa Y will host at least two family engagement events per year	The Odessa Y will host at least two family engagement events per year

Assessment: CIRCLE Progress Monitoring PreK Cut Points

Phonological Awareness - Total Score

Wave	Age as of Sept. 1st							
	3.0-<3.5		3.5-<4.0		4.0-<4.5		4.5 or Above	
	English	Spanish	English	Spanish	English	Spanish	English	Spanish
1	3	1	7	2	8	5	10	7
2	7	5	10	7	12	10	14	12
3	9	7	12	11	15	13	17	15

Math - Total Score

Wave	Age as of Sept. 1st							
	3.0-<3.5		3.5-<4.0		4.0-<4.5		4.5 or Above	
	English	Spanish	English	Spanish	English	Spanish	English	Spanish
1	5	3	7	4	9	6	11	8
2	9	7	10	9	14	13	17	15
3	11	10	13	13	18	17	20	20

Financial Performance Goals

	Unqualified Audit Opinion
Performance Measure#1	<i>Obtain an unqualified audit opinion, in connection with the annual financial report described in this Agreement</i>
Performance Measure#2	Current Ratio: Current Assets divided by Current Liabilities <i>Current ratio is greater than or equal to 1.0.</i>
Performance Measure#3	Unrestricted Days Cash: Unrestricted Cash divided by $(\text{Total Expenses minus Depreciation Expense})/365$ <i>Days cash is greater than or equal to 60 by the end of the 2024-25 school year and maintain that amount thereafter.</i>
Performance Measure#4	Cash Flow: Year 2 Total Cash - Year 1 Total Cash <i>Cash flow is positive.</i>
Performance Measure#5	Current Financial Statements <i>All financial statements reflect positive net asset amounts.</i>

Regular Review & Material Consequences of Failure to Meet Contract Goals

The goal progress measures above will be monitored and presented to the ECISD Board of Trustees at least once per year. Upon reporting, if one or more goal progress measures are not met, the District may require OP to develop and implement an improvement plan which will be publicly reported to the ECISD Board of Trustees.

Termination

As reflected below, the District may terminate this Agreement based on the Academic Performance or Financial Performance of the OP.

Academic Performance

Beginning in the 2024-25 school year, the District may terminate this Agreement for Academic Performance if the OP fails to satisfy at least two of the three performance objectives (identified in the Academic Performance Goals section above) in any year.

Financial Performance

The District may also terminate this Agreement for Financial Performance if at any time the OP does not meet generally accepted accounting standards for fiscal management and fails to remedy the violation or violates applicable law and fails to remedy the violation. Furthermore, the OP must provide an unqualified ("clean") audit report to the district in the manner explained in Section 13.08. If the audit raises any concerns or deficiencies that are not corrected by the OP, the District may terminate this Agreement.

Termination under this section shall be effective no later than the end of the then current school year, so long as written notice of such termination is provided no later than thirty (30) days after the date of determination by the District that the OP has failed to meet the academic or financial performance goals defined above.

ADDENDUM 4

Operating Partner Governing Board:

Odessa Family YMCA Board of Directors

<u>Board Member</u>	<u>Place of Employment</u>	<u>Term Expiration Date</u>
Gerardo Arzate	Hospice	2025
Joe Moya	Wells Fargo	2025
Jonathan Edwards	Permian Basin Metallurgical Laboratories	2026
Paul Girard	Nimbus Water	2026
Ryan George	Odessa Country Club	2025
Alyssa Vega	Chick-fil-A	2028
Scott Winchell	Frost Bank	2026

ADDENDUM 5

School Attendance Area: Odessa YMCA Learning Center will serve as the PK3 campus for students residing in Ector County until the launch of an additional PK center in 2025-26. PK zones will then be established for the expansion of PK3 for the rest of the contract term.

ADDENDUM 6

OP Charter Proposal (Application):

The original charter application can be accessed by clicking on the link below.

YMCA Charter application

ADDENDUM 7

Facility Plan:

Odessa Family YMCA has been approved to operate the Odessa YMCA Learning Center located at 1111 Pagewood Ave., Odessa, TX 79761.

ADDENDUM 8

First Year Budget:

First Year Budget:

<https://drive.google.com/file/d/19DQCynMH9f8tZC5PPcZQQWp10REmmxaf/view?usp=sharing>

ADDENDUM 9

Administrative and Support services

All administrative fees will be charged to the OP by deducting 15% of General Fund Revenue (Tier I, Tier 11, SB 1882) otherwise due to flow to the School for Pre-K administrative and support services provided in an OP owned facility.

These administrative and support services fees include advice and support from the following ECISD departments and divisions provided to the OP for the benefit of enrolled students: ECISD Superintendent, Property Tax appraisal and collection costs, Internal Audit, Development, Literacy, Professional Development, Curriculum & Instruction support, Accountability & School Improvement, Policy, Guidance & Counseling support, Student Assistance Services, Physical Education support, Special Education support, Bilingual Education support, Federal & State Programs, Student Admissions and Transfers, Nursing Services support, Instructional Materials and Records, Communications, Deputy Superintendent support, Human Resources support, Finance, Purchasing, Information Systems, Payroll, Benefits, Risk Management, and any other administrative or support services.

District Individual Service Pricing

In addition to the administrative services identified above, the OP may choose to contract with ECISD for additional, student-specific professional services (e.g. OTPT). For ECISD professional services used, charges will be on a per hour/session basis or per -student enrolled, to be determined by mutual agreement of the Parties. These fees will be evaluated and updated annually.