



**MEMORANDUM OF AGREEMENT
BETWEEN LIBERTY STEAM CHARTER SCHOOL AND THE QUIXOTE
FOUNDATION**

This Memorandum of Agreement ("Agreement") is entered into by Liberty STEAM Charter School ("Liberty STEAM"), a South Carolina nonprofit corporation and public charter school, and the Quixote Foundation ("Quixote"), a South Carolina nonprofit corporation, collectively referred to herein as the "Parties." This Agreement sets forth the understandings of the Parties as to the relationship between the two organizations and their relative responsibilities regarding the construction and upfit of the school facility that will house Liberty STEAM. This Agreement is made effective from the later date of execution by the Parties.

WHEREAS, Liberty STEAM was granted a charter from the South Carolina Public Charter School District ("Sponsor") to organize and operate as a public charter school, as such term is defined in S.C. Code Ann. § 59-40-40(1), pursuant to the South Carolina Charter Schools Act of 1996 (the "Act");

WHEREAS, Quixote Foundation is a nonprofit organization established, in part, to provide support to and further the mission of Liberty STEAM;

WHEREAS, Liberty STEAM acquired the deed to real property located at 15 School Street, Sumter, South Carolina, which included a preexisting and historical school building, to become the home of Liberty STEAM's Primary Academy (the "Property");

WHEREAS, the Property required construction and renovations to comply with current laws and requirements applicable to school facilities and to meet the educational needs of Liberty STEAM's students;

WHEREAS, on or about November 10, 2020, the Liberty STEAM Board of Directors passed a resolution to enter into a partnership with Quixote to obtain financial backing to upfit and renovate the Property;

WHEREAS, Quixote's willingness to provide financial backing to upfit and renovate the Property induced Liberty STEAM to transfer the deed for the Property to Quixote;

WHEREAS, Liberty STEAM entered into a Commercial Lease Agreement with Quixote to rent the Property from Quixote for the purpose of hosting Liberty STEAM's Primary Academy;

WHEREAS, Liberty STEAM has the authority under the South Carolina Nonprofit Corporation Act to make contracts and do all things necessary and convenient to carry out the charter school's affairs;

NOW THEREFORE, in consideration of the mutual promises set forth in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

I. Term.

This Agreement shall commence upon execution by the Parties and continue until July, 1 2042 unless earlier terminated or extended as provided for in this Agreement (the "Term").

II. Duties and Obligations.

In fulfillment of this Agreement, the Parties agree to be bound by and to perform the following duties and obligations as set forth below:

A. School Facility

Quixote shall be obligated to pay the expenses associated with constructing, renovating, and/or upfitting the Property for use as Liberty STEAM's Primary Academy. This obligation serves as consideration for the deed for the Property, which was previously transferred to Quixote from Liberty STEAM. Quixote agrees to indemnify Liberty STEAM from and against all liabilities, costs, and expenses and all damages asserted against and imposed upon it in relation to any claims or actions, including mechanic's liens, arising out of failure to pay costs and expenses related to constructing, renovating, and/or upfitting the Property.

Liberty STEAM shall bear no responsibility for the payment of any costs associated with the construction, renovation, and upfit of the Property except for those specifically enumerated in the Commercial Lease Agreement, entered into previously by the Parties. Liberty STEAM agrees to abide by the terms of the Commercial Lease Agreement as tenant of the Property.

To the extent necessary, the Parties agree to work together in good faith to determine and obtain goods and services necessary to complete the construction, renovation, and upfitting of the Property so as to meet the educational needs of Liberty STEAM students. The Parties shall cooperate in obtaining and executing the documents and reports necessary to be submitted to relevant third parties, including but not limited to the Office of School Facilities, to finalize and acquire use and occupation of the Property.

The Parties mutually agree to share with the other all information necessary to comply with any and all laws and regulations, including but not limited to requirements of the Sponsor, the South

Carolina Department of Education, the Internal Revenue Service, and any and all other state and federal entities with regulatory or administrative jurisdiction over the Parties.

B. General Support

Quixote may also provide support to Liberty STEAM in one or more of the following ways: strategic planning, financial support of campus programming and staffing, and additional resources to further the mission of Liberty STEAM. To facilitate efficient and clear communication between the Parties, Quixote's Foundation Secretary shall be the designated contact person for all matters pertaining to this Agreement. Likewise, the Executive Director of Liberty STEAM shall be the school's designated contact person for all matters pertaining to this Agreement.

In providing general support for Liberty STEAM, it may be necessary for the Parties to enter into written schedules providing details about Quixote's provision of specific services and/or the costs thereof. Such schedules, when executed by both Parties, shall constitute supplements to this Agreement and be deemed to be part of this Agreement. Properly adopted amendments and supplements to any such schedules shall automatically be incorporated into this Agreement as of the respective effective dates thereof.

III. Confidentiality.

During the term of this Agreement, Liberty STEAM may disclose confidential data and information to Quixote and its respective officers, directors, employees and designated agents to the extent permitted by applicable law, including without limitation, the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. §1401 et seq.; 34 C.F.R. 300.610 - 300.626; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794(a), 34 C.F.R. § 104.36; the Act; the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq.; the Health Insurance Portability and Accountability Act ("HIPAA"), 42 U.S.C. § 1320d- 13200d-8; 45 C.F.R. §§ 160, 162 and 164; and social security numbers, as protected by the Federal Privacy Act of 1974, 5 U.S.C. §552(a). Quixote shall maintain proper confidentiality of such records as required by law and the charter, including the provisions of the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g et seq.) ("FERPA"). Quixote and its respective employees and designated agents are hereby authorized to serve as agents of Liberty STEAM to the extent consistent with Quixote's duties and obligations in this Agreement, having a legitimate educational interest in the Program and its students for purposes of the FERPA, such that they are jointly and severally entitled to access educational records for all purposes related to FERPA.

Quixote acknowledges that Liberty STEAM is currently subject to the South Carolina Freedom of Information Act, S.C. Code Ann. § 30-4-10 et seq. ("FOIA"), and consents to Liberty STEAM making such disclosures as may be required by FOIA for so long as Liberty STEAM remains subject to FOIA.

IV. Relationship of the Parties.

Liberty STEAM has a charter to operate a public charter school and has authority to contract with Quixote to lease property and to enter into this Agreement to obtain Services. Neither Party is a division or any party of the other Party. The relationship between the Parties shall be that of independent contractors. Except as expressly described in this Agreement, neither Liberty STEAM nor Quixote has, and neither will represent that it has, the power to bind or legally obligate the other.

V. Representations and Warranties.

Each Party represents and warrants to the other Party that:

- A. it has full power, authority, and legal right to execute and perform this Agreement;
- B. it has taken all necessary legal and corporate action to authorize the execution and performance of this Agreement;
- C. this Agreement constitutes the valid and binding obligations of such Party in accordance with its terms, subject to matters of public policy and to matters in the discretion of a court or administrative agency having jurisdiction; and
- D. it shall act in good faith to give effect to the intent of this Agreement and to take such other reasonable action as may be necessary or convenient to consummate the purpose and subject matter of this Agreement.

Each Party intends to comply in all material respects with the requirements applicable to it arising from South Carolina corporate and tax law, federal tax laws (including without limitation Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and regulations promulgated thereunder), other laws and regulations applicable to it, orders of courts and agencies having jurisdiction over it, and the requirements of contracts binding on it or its property subject thereto.

VI. Termination.

Either Party may terminate its performance of related obligations under this Agreement if the other Party fails to cure a material breach under a portion of this Agreement within thirty (30) days of receipt by the breaching Party of written notice of such breach from the non-breaching Party, or if the nature of the breach could reasonably take more than thirty (30) days to cure, if the breaching Party fails to make reasonable progress toward curing the breach within thirty (30) days. The Parties agree that the failure or termination of any portion or relevant provision of this Agreement will not be a basis for terminating other severable obligations or provisions of this Agreement, unless the failure or breach is such that the entire Agreement loses substantially all of its value to either Party.

This Agreement may also be terminated by mutual agreement of the Parties. The Parties shall in good faith attempt to amend this Agreement if reasonably practical to maintain its material value to the Parties, or alternatively, to terminate this Agreement by mutual agreement before terminating this Agreement under any of the other provisions in this Section.

Any termination of this Agreement shall not absolve the Parties from the obligation to observe the confidentiality measures and other restraints as set forth herein.

No termination shall prejudice any right of the non-breaching Party to obtain legal or equitable relief.

In any termination of this Agreement, the Parties will cooperate in good faith and use their reasonable best efforts to mitigate the impact of such termination on Liberty STEAM's students for the remainder of the then-existing school year, to the extent that the same may be accomplished without imposing an inequitable burden on either Party.

VII. Notices.

Any notice required to be given pursuant to the terms of this Agreement shall be in writing and shall be sent to the parties hereto at the addresses set forth below (and such addresses may be changed upon proper notice to such addressees). Notice may be given by: (1) certified or registered mails, postage prepaid, return receipt requested, (2) email, or (3) personal delivery. Notice will be deemed to have been given two days after mailing or on the date of personal delivery or on the date of transmission of an email is on a business day during normal business hours (or, if not, the first business day thereafter). The address of the parties are:

To: Liberty STEAM Charter School
Attn: Secretary
117 North Main Street
Sumter, SC 29150
Board@Libertysteamcharter.org

To: Quixote Foundation
Attn: Meagan Kuhlman
100 North Main St
Sumter, SC 29150
Mkuhlman@thompsonind.com

VIII. Merger.

This Agreement is the final and complete agreement between Liberty STEAM and Quixote with respect to the services described herein. Specifically, this Agreement supersedes and replaces any and all prior agreements between the Parties with respect to the duties and obligations described herein, which are hereby terminated with neither party thereto owing the other any further obligations.

IX. Counterparts.

This Agreement may be executed in counterparts, each of which will be deemed an original, but both of which will constitute one and the same instrument.

X. Severability.

If a court declares part of this Agreement unenforceable, the remainder of this Agreement is unaffected and enforceable.

XI. No Oral Modification.

Any modification to this Agreement must be in writing and signed by the parties.

XII. Waiver.

No waiver of any provision of this Agreement will be deemed to be or will constitute a waiver of any other provision, nor will such waiver constitute a continuing waiver unless otherwise expressly stated.

XIII. No Third-Party Rights.

This Agreement is made for the sole benefit of Liberty STEAM and Quixote. Except as otherwise expressly provided, nothing in this Agreement will create or be deemed to create a relationship between the Parties, or either of them, and any third person, including a relationship in the nature of a third-party beneficiary or fiduciary.

XIV. Governing Law and Venue.

South Carolina law governs this Agreement. In the event of a legal dispute related to this Agreement, venue shall be in Sumter County, South Carolina.

XV. Assignment and Delegation.

Neither party shall assign rights or delegate duties under this Agreement without the written permission of the other party.

XVI. Survival of Termination.

All representations and warranties made in this Agreement shall survive termination of this Agreement.

XVII. Each Party Participated in Drafting.

Each party participated in drafting this Agreement, and it should not be construed against either party.

XVIII. No Debt of Sponsor.

No indebtedness of any kind incurred by Liberty STEAM shall constitute an indebtedness of the State of the South Carolina Public Charter School District, and no indebtedness of Liberty STEAM shall involve or be secured by the faith, credit, or taxing power of the State or the South Carolina Public Charter School District. Quixote acknowledges that Liberty STEAM is not an agent of the South Carolina Public Charter School District, and accordingly, Quixote expressly releases the South Carolina Public Charter School District from any and all liability under this Agreement. Any financial obligations of Liberty STEAM arising out of this Agreement are subject to annual appropriations by the South Carolina Public Charter School District.

The parties agree to the terms of this Agreement, above.

LIBERTY STEAM CHARTER
SCHOOL

By: 
Ben Griffith, Secretary

Date: 2/11/22

QUIXOTE FOUNDATION

By: 
Gifford Shaw, Board Member

Date: 15 Feb 22