



# SACRAMENTO CITY UNIFIED SCHOOL DISTRICT BOARD OF EDUCATION

Agenda Item# 9.1e

**Meeting Date:** June 18, 2015

**Subject:** Approve Operational MOU, Special Education MOU, and Facilities Use Agreements for Capitol Collegiate Academy and Yav Pem Suab Academy

- Information Item Only
- Approval on Consent Agenda
- Conference (for discussion only)
- Conference/First Reading (Action Anticipated: \_\_\_\_\_)
- Conference/Action
- Action
- Public Hearing

**Department:** Office of the Superintendent

**Recommendation:** Approve Operational Memorandum of Understanding, Special Education Memorandum of Understanding, and the Facilities Use Agreement between Sacramento City Unified School District and the following charter schools: Capitol Collegiate Academy and Yav Pem Suab Academy.

**Background/Rationale:** The District approved the one-year extension of the charter term for Capitol Collegiate Academy and approved the renewal of the charter for Yav Pem Suab Academy for a term of five years. By extending the charter term and approving the renewal of the charter, the District assumed certain oversight responsibilities of the Charter School pursuant to the California Charter Schools Act (Cal. Ed. Code, § 47600 et seq.). To clarify the roles and responsibilities of the parties, the District enters into an Operational MOU and Special Education MOU with each charter school. The Operational MOU outlines responsibilities and expectations between the District and the Charter School regarding the oversight fee paid by the Charter School to the District, the parties' respective fiscal and administrative responsibilities, their legal relationship, and other matters of mutual interest not explicitly addressed or resolved in the terms of each Charter School's charter. The Special Education MOU sets forth the responsibilities of the parties with respect to the delivery and financing of special education services to students enrolled in the Charter School.

Pursuant Education Code Section 47614 ("Proposition 39"), public school facilities should be shared fairly among all public school pupils, including those in Charter Schools. Each school district shall make available, facilities sufficient for the charter school to accommodate all of the charter schools' in-district students in conditions reasonably equivalent to those in other public schools of the district. The Charter

Schools pay the District “Facilities Use Fees” based on a pro rata share facilities cost for the use of District facilities.

**Financial Considerations:** The Charter School shall owe the District a pro-rata share of the District’s unfunded special education costs (encroachment). The District will receive from the Charter Schools the pro rata share of the facilities costs.

**LCAP Goal(s):** Family and Community Engagement

**Documents Attached:**

1. Operational Memorandum of Understanding Between Sacramento City Unified School District and Capitol Collegiate Regarding Capitol Collegiate Academy
2. Operational Memorandum of Understanding Between Sacramento City Unified School District and Urban Charter Schools Collective Regarding Yav Pem Suab Academy
3. Operational Memorandum of Understanding Between Sacramento City Unified School District and Urban Charter Schools Collective Regarding Yav Pem Suab Academy
4. Facilities Use Agreement Between Sacramento City Unified School District and Capitol Collegiate Regarding Capitol Collegiate Academy
5. Facilities Use Agreement Between Sacramento City Unified School District and Urban Charter Schools Collective Regarding Yav Pem Suab Academy

**Estimated Time of Presentation:** N/A

**Submitted by:** Sue Lee, Ed.D., Charter Oversight, Coordinator II

Lisa Allen, Interim Deputy Superintendent

**Approved by:** José L. Banda, Superintendent

**OPERATIONAL MEMORANDUM OF UNDERSTANDING BETWEEN  
SACRAMENTO CITY UNIFIED SCHOOL DISTRICT  
AND  
CAPITOL COLLEGIATE REGARDING  
CAPITOL COLLEGIATE ACADEMY**

This Operational Memorandum of Understanding (“Agreement”) is entered into as of \_\_\_\_\_, 2015 (“Effective Date”), by and between the Board of Trustees of the Sacramento City Unified School District (“District”) and Capitol Collegiate (“Non-Profit”), a California non-profit public benefit corporation, operating the Capitol Collegiate Academy (“Charter School”), a public charter school chartered by the District. The District and the Non-Profit are collectively referred to as the “Parties.” This Agreement shall be enforceable only following execution by both Parties and ratification or approval by the governing boards of each of the Parties.

**RECITALS:**

- A. The District is the granting agency of the Charter School. The District extended the Charter School’s charter (“Charter”) on March 5, 2015, for a term of one year, beginning on July 1, 2015 and expiring June 30, 2016.
- B. By approving the charter petition, the District assumed certain oversight responsibilities of the Charter School pursuant to the California’s Charter Schools Act (Cal. Ed. Code, §§ 47600 *et seq.*). This Agreement is intended to outline the Parties’ agreements governing their respective fiscal and administrative responsibilities, their legal relationship, and other matters of mutual interest not otherwise addressed or resolved in the terms of the Charter.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein set forth, the Parties do hereby agree as follows:

- 1. Use of Terms.** Unless otherwise stated, for the purposes of this Agreement, the terms Charter School and Non-Profit may be used interchangeably, with the duties and responsibilities of the Charter School and Non-Profit being the same under this Agreement.
- 2. Term and Renewal.** This Agreement shall commence on the date upon which it is executed by both Parties, but shall not be effective absent ratification or approval by the governing boards of each of the Parties. The Agreement shall cover the remaining term of the charter, expiring on June 30, 2016. The Agreement is also subject to termination in accordance with the processes as set forth in this Agreement or as otherwise permitted by law. Renewal or extension of the charter and this Agreement shall be based, in part, on compliance with the terms set forth in this Agreement, District policy, and applicable law.
- 3. Designation of School.** The Charter School shall be known as the “Capitol Collegiate Academy”. The Charter School may not change its name, nor operate under any other name, without the prior express written approval of the District. The Non-Profit shall be responsible

for all functions of the Charter School pursuant to the terms and conditions set forth in this Agreement and the Charter. The Charter School shall not be located at more than one school site without the prior express written approval of the District. The Charter School shall not change locations without the prior express written approval of the District. Any change of location shall be considered a material revision of the charter petition under Education Code sections 47605 and 47607.

**4. Programmatic Audit.** The Charter School will compile and provide to the District an annual performance audit. The annual performance audit shall be submitted to the District within ninety (90) days of the last day of instruction for the regular school year or by October 1, whichever date is earlier. To the extent that the State delays providing any of the required data to Charter School, the Charter School shall notify the District and the District shall provide a reasonable extension to Charter School for submitting such data. This audit will, at a minimum, include the following data:

(a) Summary data showing student progress toward the goals and outcomes specified in the charter from assessment instruments and techniques listed in the charter or otherwise required by the District.

(b) Information regarding the number of students taking and passage rate of the California High School Exit Exam (“CAHSEE”), if applicable.

(c) An analysis of whether student performance is meeting the goals specified in the charter. This data will be displayed on a school-wide basis and also disaggregated by major racial and ethnic categories and shall include analysis based on the California Assessment of Student Performance and Progress (“CAASPP”) and CAHSEE programs of the State of California.

(d) The Charter School’s progress towards meeting its Academic Performance Index (“API”) and Adequate Yearly Progress (“AYP”) targets.

(e) Results of any additional internal assessments used by the Charter School.

(f) A copy of the Charter School’s governing board’s self-evaluation on prior-year management performance, including summary of major decisions and policies established during the year, and upcoming year goals.

(g) Data on the level of parent involvement in the school’s governance (and other aspects of the school, if applicable) and summary data from an annual parent and student satisfaction survey.

(h) Data regarding the number of staff working at the Charter School and their qualifications.

(i) A copy of the Charter School’s policies, including health and safety policies, and a summary of any major changes to those policies during the year.

(j) Information demonstrating whether the Charter School implemented the means stated in the Charter or this Agreement to achieve a racially and ethnically balanced student population.

(k) An overview of the Charter School's admissions practices during the year and data regarding the numbers of students enrolled and the number on waiting lists.

(l) Analysis of the effectiveness of the school's internal and external dispute mechanisms and data on the number and resolution of disputes and complaints.

(m) A report on student discipline, including the number of students suspended or expelled from the Charter School; and

(n) Any other information regarding the educational program and the administrative, legal and governance operations of the Charter School requested by the District.

## **5. School Accountability.**

(a) LCAP Reporting. The Charter School shall comply with Education Code section 47606.5, as that statute may be amended from time to time, as well as its implementing regulations, if any. The Charter School's initial draft of its Local Control and Accountability Plan ("LCAP") shall be provided to the District by July 1, 2015, and on or before July 1 annually thereafter, unless a different date is established by law. Discussion in the LCAP report shall include descriptions for all numerically significant pupil subgroups identified in Education Code section 52052, including foster youth and English learners. To the extent practicable, the Charter School shall report LCAP data in a manner consistent with how information is reported on a school accountability report card.

## **6. Funding.**

(a) Basic Funding. The Charter School shall receive its funding in accordance with applicable law. Should anything in this Agreement require revision based upon change in law or regulation, the Parties shall meet without delay to cooperatively revise the Agreement to ensure consistency with the law. Any future revision of the Charter Schools Act to revise the manner in which charter schools are funded shall not be interpreted to prevent the Charter School's direct receipt of full funding in accordance with applicable law.

The Charter School is eligible for a general-purpose entitlement and supplemental funding allocated through the Local Control Funding Formula ("LCFF") under Education Code section 42238.02, as implemented by Education Code section 42238.03. In addition to LCFF funding, the Charter School may continue to receive Block Grant Funding for eligible expenses from prior years consistent with state law. Except as otherwise noted in this Agreement, it shall be the responsibility of the Charter School to apply for funding due to the Charter School under LCFF.

The Charter School has elected to receive funding from the State directly, pursuant to Education Code section 47651. The District shall comply with Education Code section 47635 in providing the Charter School with funding in lieu of property taxes. However, the Parties understand that in the event that such funds are not timely received by the District due to processing delays at either the state or county level, such funds shall be provided to the Charter School as soon as practicable after such funds are made available to the District. The District recognizes the authority of the Charter School to pursue additional sources of funding. Any application for funding by the Charter School that depends on the support or creditworthiness of the District shall be presented to the District for its prior written approval.

(b) District Applications for Funding. When the District applies for additional sources of funding in the form of grants and/or categorical funding at the request of and for the benefit of the Charter School, the District will receive one percent (1%) of such funds at the time they are paid to the Charter School. Such funds shall not be considered revenue for purposes of the District's oversight fee set forth in section 9(b).

(c) Expenditure of Funds. The Charter School agrees to comply with all regulations related to expenditures and receipt of its funds (including compliance with federal and state compliance regulations and certifications). Assets or funds allocated or held by the Charter School for provision of its educational services shall be used consistent with applicable law and the terms of any funding restrictions. The Charter School will provide the District with written monthly notice when the Charter School withdraws funds deposited by the Sacramento County Superintendent of Schools in the Sacramento County Treasury for the account of the Charter School and re-deposits those funds in a financial institution selected by the Charter School. Such notice is provided when the Charter School provides the District with monthly bank statements from the banks where all Charter Schools accounts are held. Within fifteen calendar days of opening an account at a bank or other financial institution, the Charter School will provide written notice to the District of the commencement of that account, the type of account, the financial institution or bank and any identifying account numbers.

(d) Compliance with Procedures. To the extent that the Charter School is required to submit records or information to the District or the County Office of Education in order to confirm funding, those records must be prepared by the Charter School in conformance with District or county procedures.

**7. Legal Relationship.** Pursuant to its charter and Education Code section 47604, the Charter School is operated by the Non-Profit. The Charter School and the Non-Profit are separate legal entities from the District. As such, the District shall not be liable for the debts or obligations of the Charter School or the Non-Profit to the maximum extent permitted by applicable law. Except as such reimbursement is limited by law, including but not limited to Education Code section 47613, it is agreed that it is the Parties' intent that the District shall incur no unreimbursed cost or expenses of any type whatsoever as a result of its relationship with the Charter School. The Charter School may not enter into a contract or agreement to be managed or operated by any other non-profit public benefit corporation (or any other corporation or entity) without the express written prior approval of the District. The obligations of the Charter School

under such agreement or contract are solely the responsibility of the Charter School and the Non-Profit, and are not the responsibility of the District.

**8. Complaints.** Complaints filed with the Charter, whether formal or informal and including complaints filed with any governmental entity other than the District, must be provided to the District within three (3) working days of receipt. If any such complaint raises an issue or issues that may be grounds for revocation or non-renewal of the charter, the District may request that the Charter School report to the District on how such complaints are being addressed, and the Charter School agrees to provide such information upon the District's request. The Charter School shall make such information available to the District for inspection and copying upon request during regular business hours or, upon request, the Charter School shall deliver to the District within ten (10) business days a current copy of any requested records or information. Under all circumstances, the Charter School will cooperate fully in the release of information to the District to assist in the District's oversight obligations.

**9. Fiscal Relationship.**

(a) Administrative Services. . The Charter School may purchase any of the "Optional Administrative Services" designated by the District in the District's Fee Schedule for Services to Charter Schools ("Fee Schedule"). If the Charter School elects to purchase such services, the District's agreement to provide those services shall be reduced to writing and signed by the Parties in a separate agreement. The District reserves the right to annually revise the Fee Schedule to reflect the District's then-calculated rates, and the rates stated by each such revision shall apply to services the Charter School is purchasing from the District. If the Charter School contracts for services that require the District to provide labor beyond the current work and vacation calendars of District employees, then the Charter School shall pay the actual cost of these services.

(b) Oversight Fee. The Parties agree that the District will incur costs in connection with its performance of supervisory oversight of the Charter School as required by law, and that it is not in the best interests of either Party to require a mechanical assessment, accounting, billing and payment process to compensate the District for such costs. The Parties further agree that the District is not providing the Charter School with substantially rent-free facilities as referenced by Education Code section 47613(b). Therefore, the Parties agree that the actual cost of the District's supervisory oversight of the Charter School is one percent (1%) of all "Revenue of the Charter School" (excluding grants, loans, and private donations), as defined in Education Code sections 47613, 47632, subdivision (a), 42238.02, and 42238.03.

"Supervisory Oversight" as used in the Education Code section 47613 is defined in Education Code sections 47604.32 and 47604.33 to mean the District's performance of duties to include the following:

- Identification of at least one (1) staff member as contact person for the Charter School.
- Visiting the Charter School at least annually.

- Ensuring that the Charter School complies with all reports required of charter schools by law.
- Monitoring the fiscal condition of the Charter School.
- Providing timely notification regarding whether the charter's renewal is granted or denied, the charter is revoked, or the charter will cease operation for any reason.
- Reviewing annual reports and assessing the fiscal condition of the Charter School pursuant to Education Code section 47604.33.

(c) Payment for Administrative Services, Oversight Fee and Expenses. On a quarterly basis, the District shall provide a written invoice and, as necessary, supporting expense information, to the Charter School detailing the amount due for services performed by the District, the oversight fee due pursuant to section 9(b), and any expenses paid by the District on the Charter School's behalf. Prior to paying any expenses on the Charter School's behalf, District shall provide Charter School with reasonable notice and an opportunity to pay or dispute the expense directly.

Payment on invoices provided to the Charter School pursuant to this section shall be due within thirty (30) calendar days of receipt unless Charter School has provided written notice to District that it disagrees with invoiced charges. Payments shall be made to the District's Business Services Department. The Charter School may only withhold payment for services, fees or expenses that it has specifically contested. The Charter School shall make payment by check.

(d) Distribution of Assets Upon Revocation or Closure. Should the Charter School, as an entity separate from the Non-Profit, cease to exist (by revocation or nonrenewal of its charter or by voluntary closure), and upon a final audit and the payment of, or provision for payment of, all debts and liabilities of the Charter School, any public funds held by or for the Charter School and any assets of the Charter School purchased with public funds shall be distributed in accordance with the terms of the Charter.

## **10. Fiscal Controls.**

(a) Fiscal Policies. The Charter School shall adopt and meet generally accepted accounting principles and shall adopt policies to ensure the Charter School's funds are used to most effectively support the Charter School's mission and to ensure that funds are budgeted, accounted for, expended, and maintained in an appropriate fashion. Such policies will include, but not be limited to the following:

- (1) Expenditures shall be made in accordance with the annual budget adopted by the Charter School's governing board;
- (2) The Charter School's funds shall be managed and held in a manner that provides a high degree of protection of the Charter School's assets; and



- (3) All transactions shall be recorded and documented in an appropriate manner that allows reporting to the State, the District, and/or the County Office of Education.

(b) Attendance Accounting. The Charter School will establish and maintain an appropriate attendance accounting system to record the number of days students are actually in attendance and engaged in activities required of them by the Charter School. The annual audit (see section 10(c) below) will review actual attendance accounting records and practices to ensure compliance. The Charter School's attendance accounting practices will be in conformance with applicable law.

(c) Annual Financial Audit. The Charter School's governing board will annually appoint an external fiscal auditor, subject to the approval of the District. Said external fiscal auditor must be listed on the State Controller's Office website as approved to conduct such audits. The audit shall include, but not be limited to:

- (1) An audit of the accuracy of the Charter School's financial statements;
- (2) An audit of the Charter School's attendance accounting and revenue claims practices; and
- (3) An audit of the Charter School's internal control practices.

The Charter School shall complete its audit within ninety (90) days of the close of the fiscal year. A copy of the audit report shall be submitted to the District within thirty (30) days of completion, and no later than December 15 of the fiscal year following the fiscal year for which the audit was performed. The Charter School agrees to implement all audit recommendations to the District's satisfaction, unless other terms are agreed to between the District and the Charter School.

(d) Financial Reports. In addition to the foregoing requirements, the Charter School shall annually prepare and submit the following reports to the District and the County Superintendent of Schools:

- (1) On or before July 1, an adopted budget;
- (2) On or before December 15, a first interim financial report, reflecting changes through October 31;
- (3) On or before March 15, a second interim financial report, reflecting changes through January 31; and
- (4) On or before September 15, a final unaudited report for the full prior fiscal year.

Failure to submit accurate and complete financial information as required hereby shall be considered grounds for revocation of the charter, subject to reasonable opportunity on the part of the Charter School to amend and rectify findings of the above reports.

(e) Voter Approved Measures. In the event that the District seeks and receives a voter approved bond or parcel tax, the Charter School shall have no entitlement to any portion of the funds unless otherwise negotiated in advance, or as otherwise required by law. The Charter

School agrees that it has no entitlement to funds currently being received, if any, by the District under former parcel tax or bond elections.

(f) Loans. The Charter School agrees that it shall establish a fiscal plan for repayment of any loans received by the Charter School in advance of receipt of such loans. It is agreed that all loans sought by the Charter School shall be authorized in advance by the governing board of the Charter School and shall be the sole responsibility of the Charter School. The District will have no obligation with respect to any loans received by the Charter School to finance its operations, and any such loan shall be the sole responsibility of the Charter School. Upon request, the Charter School will provide information regarding any such loan to the requesting agency pursuant to Education Code section 47604.3. The Charter School shall notify the District, in writing, no later than thirty (30) days prior to entering into any debt whatsoever.

(g) Advance of Funds. The District may in its sole discretion advance funds to the Charter School. In addition, the District may in its sole discretion provide a line of credit for the Charter School.

(h) Cash Flow and Reserve. The Parties agree that the maintenance of a sufficient level of funding reserve is in the best interest of Charter School and its successful operation. Accordingly, Charter School shall maintain reserves of no less than three percent (3%). An explanation of any projected drop in reserves below the three percent (3%) level must be included in the Charter School's assumptions in the adopted budget for the fiscal year.

(i) Third Party Debts and Liabilities. Assets or funds allocated or held by the Charter School for provision of its educational services shall be used consistent with applicable law and terms of any funding restrictions.

(j) Banking Arrangements. In addition to those obligations set forth in section 6(c) above, the Charter School's business manager will reconcile the Charter School's ledger(s) with its bank accounts or accounts in the County Treasury on a monthly basis and prepare (1) a balance sheet, (2) a comparison of budgeted to actual revenues and expenditures to date, and (3) a cash flow statement, which will be submitted with the reports listed above in section 10(d). The Charter School will deposit all funds received as soon as practical upon receipt. A petty cash fund, not to exceed two hundred dollars (\$200), may be established with an appropriate ledger to be reconciled twice monthly by the Non-Profit Business Manger, who shall not be authorized to expend petty cash.

(k) Purchasing Procedures. The Charter School shall adopt a procurement policy consistent with applicable law, which policy shall address the reasonable retention of documents related to the Charter School's procurement decisions.

(l) Property Inventory. The Charter School's head of school or his or her designee shall establish and maintain an inventory of all Charter School non-consumable goods and equipment valued at more than six hundred dollars (\$600). This inventory shall include the original purchase price and date, a brief description, serial numbers, and other information appropriate for documenting the Charter School's assets. Property shall be inventoried on an

annual basis and lists of any missing property shall be presented to the Charter School's governing board. Said inventory, or copies thereof, shall be provided to the District immediately upon request.

(m) Payroll. The Charter School will prepare payroll checks, tax and retirement withholdings, tax statements and perform other payroll support functions. The President of the Charter School's governing board or his or her designee will establish and oversee a system to prepare time and attendance reports and submit payroll check requests. The Charter School's head of school or his or her designee and the Charter School's business manager will review payroll statements monthly to ensure that (1) the salaries are consistent with staff contracts and personnel policies and (2) the proper tax, retirement, disability, and other withholdings have been deducted and forwarded to the appropriate authority. All staff expense reimbursements will be on checks separate from payroll checks. Upon hiring of staff, a personnel file will be established with all appropriate payroll-related documentation including a federal I-9 form, tax withholding forms, retirement data and use of sick leave.

(n) Other Fiscal Control Policies. The Charter School shall develop and maintain other fiscal control policies as recommended by independent certified public accountants retained by the Charter School to advise it on fiscal control policy matters.

## **11. Reporting to the District.**

### (a) Enrollment.

1. Annual enrollment reporting. The Charter School recognizes the need to achieve sufficient enrollment each year so that the Charter School remains fiscally viable. On an annual basis and no later than January 15 of each year, the Charter School shall provide the District a copy of its estimated maximum enrollment plans and anticipated grade level offerings for the following school year. The Charter School shall also provide a list of students meaningfully interested in enrolling in the Charter School the following school year (including their name, residential address, and telephone number) and the district of residence for each student. The Charter School recognizes that this information is critical to District planning for the next year.

2. Monthly enrollment reporting. No later than the 15th calendar day of every month, the Charter School shall provide the District with a copy of its student enrollment list for the prior month, including the name, residential address, residential telephone number, and school district of residence for each student. In the alternative, the Charter School may provide the District with access to the enrollment attendance data program of the Charter School.

(b) Reporting to Public Agencies. The Charter School shall submit to the District a copy of all reports or other documents that the Charter School is required to submit to any state or other public agency in the State of California. Such reports will be submitted to the District, when submitted to the state or other public agency.

(c) Notification to District Regarding Governing Body Composition. The Charter School shall annually (on or before July 1) send to the District a list of its directors and officers. The District shall be provided with immediate notice of any change in the composition of these directors or officers.

(d) School Calendar and Schedules. The Charter School shall provide by August 1 of each year the school calendar and bell schedule for the following school year, including calculation of instructional minutes. If summer school, extended day or intersession is offered, the Charter School shall provide calendars and bell schedules for such programs.

(e) Cumulative File Information. The District and Charter School shall promptly forward to each other all cumulative file information, including, but not limited to, information regarding special education and related services, whenever a student transfers from a District school to the Charter School, or vice versa.

(f) Performance Assessments. The Charter School shall forward results from statewide assessments to the District promptly upon receipt by the Charter School, but in no event later than thirty (30) days after such receipt.

(g) Student Records. To the extent necessary to discharge its reasonable supervisory oversight activities, the Charter School hereby designates the employees of the District as having a legitimate educational interest such that they are entitled upon request access to the Charter School's education records under the Federal Educational Rights and Privacy Act ("FERPA") and related state laws regarding student records. All student records and information from such records shall be kept and maintained by the District in accordance with FERPA and may not be disclosed except with prior written consent of the parent or eligible student or as otherwise authorized by law. At a minimum, such records include emergency contact information, health and immunization data, attendance summaries, and academic performance data from all statewide student assessments pursuant to Education Code sections 60605 and 60851 to the extent necessary for the District to discharge its oversight activities. The District, Charter School, and their officers and employees shall comply with FERPA and state laws regarding student records at all times.

## **12. Special Education and Related Services; English Learners.**

(a) Provision of Special Education and Related Services. Pursuant to Education Code section 47641, the Non-Profit has elected to participate as an independent Local Educational Agency ("LEA") for Special Education services. When the Charter School serves as its own LEA for the purposes of special education, the Charter School will be solely responsible, at its own expense, for insuring that all children with disabilities enrolled in the Charter School receive special education and designated instruction and services in conformity with their individualized education programs and in compliance with the IDEA (20 U.S.C. § 1400 *et seq.*), its implementing regulations and all applicable state and federal law. (34 C.F.R. § 300.209, subd. (c); Ed. Code, § 47646, subd. (a).)

In recognition of the Charter School's use of El Dorado County for Special education services, the District will not assess a Special Education Encroachment Fee. The Non-Profit will provide

to the District a copy of the agreement between the Non-Profit and El Dorado County (or other third party SELPA). The Non-Profit must notify the District of any changes to or termination of its SELPA agreement. The Non-Profit must be a part of a SELPA at all times.

(b) Compliance with Applicable Law. All children will have access to the Charter School and no student shall be denied admission due to disability. The Charter School shall be solely responsible for compliance with Section 504 of the Rehabilitation Act of 1973 (“Section 504”) (29 U.S.C. §§ 794 *et seq.*) and the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 *et seq.*), except as otherwise agreed to by the parties, such as in a Facilities Use Memorandum of Understanding.

(c) Student Study Team. The Charter School agrees to implement a Student Study Team (“SST”) Process, a general education function that develops strategies for students in the general education classroom. The SST shall develop and monitor implementation of Section 504 plans for eligible students as appropriate.

(d) English Learners. The Charter School will annually administer the California English Language Development Test (“CELDT”) to all eligible students. The Charter School will be responsible for all components necessary to comply with state and federal testing and reporting of English Learners.

### **13. Human Resources Management.**

(a) Charter School Exclusive Employer. All employees of the Charter School are employees of the Non-Profit and shall have no right to employment by the District. The Non-Profit shall have sole responsibility for employment, management, dismissal and discipline of employees of the Charter School.

(b) Compliance with Fingerprinting Requirements. Throughout the term of the Charter and this Agreement, all employees of the Charter School, parent volunteers who will be performing services that are not under the direct supervision of a certificated teacher, and onsite vendors having unsupervised contact with students, will submit to background checks and fingerprinting in accordance with the provisions of Education Code sections 44237 and 45125.1. The Charter School will provide certification to the District that all employees and volunteers or vendors have clear criminal records summaries prior to their having any unsupervised contact with students. The Charter School will maintain on file and have available for inspection, during District site visits, evidence that the Charter School has performed criminal background checks for all employees and documentation that vendors have conducted required criminal background checks for their employees prior to any unsupervised contact with students.

(c) STRS/PERS. If the Charter School decides to offer existing or new employees of the Charter School the opportunity to participate in the State Teachers’ Retirement System (“STRS”) or the Public Employees’ Retirement System (“PERS”), the Charter School shall be responsible for entering into a contract with STRS and/or PERS or the District. At the request of the Charter School, the District shall create any reports required by STRS or PERS and may charge the Charter School for the actual costs of such reporting services.

(d) NCLB. The Charter School will be responsible for ensuring its staff is compliant with all provisions of the federal No Child Left Behind Act (“NCLB”).

**14. Indemnification.** The Non-Profit shall promptly defend, indemnify, and hold harmless the District, its officers, directors, employees, agents, representatives, volunteers, administrators, successors, and assigns (collectively hereinafter the “Indemnified Parties”) from and against any and all alleged or actual breach of any obligation imposed under this Agreement, or any other actual or alleged breach of any duty or obligation owed to the District or any third party, including any Charter School student (including any student placed with a school other than the Charter School, or in any nonpublic, nonsectarian school or in other special services to address special need or disability situations) or employee, by the Non-Profit or its officers, directors, employees, agents, representatives, volunteers, guests, students, administrators or trustees, successors or assigns. The District shall promptly defend, indemnify, and hold harmless the Non-Profit, its officers, directors, employees, agents, representatives, volunteers, administrators, successors, and assigns (collectively hereinafter the “Charter Indemnified Parties”) from and against any and all alleged or actual breach of any obligation imposed on the District under this Agreement, or any other actual or alleged breach of any duty or obligation owed to the Charter School or any third party, arising from the District’s sole or separate negligence.

In the event of a third party claim or potential claim covered by these provisions, the Parties agree to take all steps reasonable or necessary to cooperate in defending and protecting their joint interests, and in expediting all reasonable or necessary efforts to gain coverage for the Parties under any liability policy or indemnity agreement issued in favor of the Non-Profit and/or District, including indemnity rights or agreements existing in contracts between the Non-Profit and/or District and any third party (such as contract with a supplier of goods or services), and further including efforts to reduce defense costs (through joint representation whenever possible), expenses and potential liability exposures.

**15. Insurance and Risk Management.** The Non-Profit shall, for itself and the Charter School, and at its sole cost and expense, purchase and maintain during the entirety of this Agreement, insurance or indemnity protection as follows, as well as any additional insurance as may be required by law:

(a) Liability Insurance. Occurrence-based liability indemnity protection, having a combined limit of liability of no less than five million dollars (\$5,000,000) per claim and in the aggregate, and a per occurrence deductible of no greater than five thousand dollars (\$5,000), whether purchased in the form of a single policy/agreement or by way of multiple policies/agreements, including excess or umbrella policies or agreements, that extends coverage for, among other things, educators’ legal liability, property damage liability, employment practices liability, automobile (owned, non-owned, and hired) liability, personal injury and advertising injury liability, directors and officers, and errors and omissions liability, with such coverage extended to the Charter School, its governing board, its officers, agents, employees, and volunteers. To the fullest extent allowed by law, and in keeping with the Non-Profit’s indemnity obligations described above, the Indemnified Parties shall be included as “additional insureds” or “additional covered parties” under each

of the Non-Profit's liability policies or agreements, with such coverage evidenced by duly issued "additional insured" or "additional covered party" endorsement(s) and/or duly issued certificate(s) of insurance, which must affirmatively state that the required coverage shall not be reduced or prematurely terminated or cancelled absent 30-days notice to District.

(b) Workers' Compensation. In accordance with the California Labor Code, the Non-Profit shall purchase and maintain workers' compensation and employers liability insurance or indemnity protection adequate to protect the Charter School from claims under California's Workers' Compensation Act, with a limit of liability no less than \$500,000.00, and that extends coverage and protection to Charter School employees and volunteers. Evidence of such coverage shall be provided in the form of a duly issued certificate of insurance which must affirmatively state that the required coverage shall not be reduced or prematurely terminated or cancelled absent 30-days notice to District.

(c) Property Insurance. The District will maintain insurance for facilities, consistent with the Facilities Use Agreement. This includes property damage coverage sufficient to replace, at current market value and in compliance with any enhanced building codes or disability access ordinances, regulations or laws, all personal property, fixtures, and property owned or under the care, custody, or control of the Charter School. Evidence of such coverage shall be provided in the form of a duly issued certificate of insurance or coverage which must affirmatively state that the required coverage shall not be reduced or prematurely terminated or cancelled absent 30-days notice to District.

(d) Bond. Fidelity and crime coverage extending to wrongful acts with respect to money or property owned by or under the care, custody or control of any Charter School employee, volunteer, agent or representative. Evidence of such coverage shall be provided in the form of a duly issued certificate of insurance or coverage which must affirmatively state that the required coverage shall not be reduced or prematurely terminated or cancelled absent 30-days notice to District.

**16. Compliance with Applicable Law.** The Charter School agrees to comply at all times with applicable federal or state laws (which may be amended from time to time), which shall include the following:

- The Ralph M. Brown Act (Cal. Gov. Code, §§ 54950 *et seq.*);
- The California Public Records Act (Cal. Gov. Code, §§ 6250 *et seq.*);
- State conflict of interest laws applicable to charter schools operated by nonprofit corporations, including, but not limited to the Political Reform Act (Gov. Code, §§ 87100 *et seq.*; Gov. Code, §§ 1090 *et seq.*);
- The Child Abuse and Neglect Reporting Act (Cal. Penal Code, §§ 11164 *et seq.*);
- The Individuals with Disabilities Education Rights Act ("IDEA") (20 U.S.C. §§ 1400 *et seq.*);
- The Americans with Disabilities Acts (42 U.S.C. §§ 12101 *et seq.*);
- The U.S. Civil Rights Acts, including Title VII of the 1964 Civil Rights Act;
- The California Fair Employment and Housing Act ("FEHA") Cal. Gov. Code, §§ 12900 *et seq.*);

- The Age Discrimination in Employment Act (“ADEA”) (29 U.S.C. §§ 621 *et seq.*);
- Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §§ 794 *et seq.*)
- Ed. Code section 220.;
- The Uniform Complaint Procedure (5 Cal. Code Regs., tit. 5, §§ 4600 *et seq.*);
- The Family Educational Rights and Privacy Act (“FERPA”) (20 U.S.C. §§ 1232g *et seq.*);
- Local Control Funding Formula (California Assembly Bill 97); and
- All applicable state and federal laws and regulations concerning the improvement of student achievement, including but not limited to any applicable provisions of the Elementary and Secondary Education Act of 1965 (20 U.S.C. §§ 6301 *et seq.*) as amended by the No Child Left Behind Act (“NCLB”) (20 U.S.C. §§ 6301 *et seq.*).

(a) Brown Act and Governing Board Meetings. During the term of the Charter, the Charter School agrees to comply with key terms of the Brown Act and shall conduct the meetings of its governing board in accordance with the Brown Act, including making public the agendas of such meetings in advance, as required by the Brown Act. Prior to opening, the Charter School will provide verification by letter to the District that all members of the Governing Board, administrative staff, and any other staff deemed appropriate by the Charter School have participated in Brown Act training. The governing board of the Charter School shall conduct public meetings at such intervals as are necessary to ensure that the board is providing sufficient direction to the Charter School through implementation of effective policies and procedures. The District reserves the right to appoint a single representative to the Charter School’s governing board in accordance with the provisions of Education Code section 47604(b). The Charter School agrees to provide to the District’s representative on the governing board a complete board packet of information being submitted to the board before each meeting, in sufficient time for review. Governing board adopted policies, meeting agendas and minutes shall be maintained and shall be available for public inspection and to the District during site visits (or upon request).

(b) Public Records Act. The Charter School agrees that all of its records that relate in any way to the operation of the Charter School shall be treated as public records subject to the requirements of the Public Records Act (Cal. Gov. Code, § 6250 *et seq.*) as well as Education Code section 47604.3.

## **17. Participation in Special Programs and Services; Transportation.**

(a) Sports and Other Activities; Student Insurance. In the event that the Charter School wishes to have its students or staff participate in a program or service offered by the District other than those specified by this Agreement, advance approval and arrangements must be made and confirmed in writing, and expenses for such participation may be charged to the Charter School. The District has sole discretion whether to allow the Charter School to participate in such District programs or services, including California Interscholastic Federation (“CIF”) activities . Charter School participation in CIF activities and sports are subject to the



rules and regulations of CIF. Charter School students may participate at their own expense in student insurance coverage programs offered by the District.

(b) Transportation. Unless otherwise agreed with the District, the Charter School shall be responsible for any transportation offered to students who enroll in the Charter School.

**18. Revisions to Charter.** Changes to the Charter deemed to be material revisions in accordance with Education Code section 47607(a) may not be made without District consideration and approval. Revisions to the Charter considered to be material changes include, but are not limited to, the following:

- (a) Substantial changes to the educational program (including the addition or deletion of an educational program), mission, or vision;
- (b) Changing to (or adding) a non-classroom-based program, if originally approved as a classroom-based program;
- (c) Proposed changes in enrollment that differ by more than 10 percent +/- of the enrollment originally projected in the charter petition;
- (d) Addition or deletion of grades or grade levels to be served;
- (e) The addition of facilities and/or new sites;
- (f) Admission preferences, unless necessary to comply with applicable state and/or federal law, regulations, or guidance governing the Public Charter Schools Grant Program or Charter School Facilities Grant Program;
- (g) Governance structure; and
- (h) Name changes of the Charter School.

**19. Amendments to Agreement.** Any modification of this Agreement must be in writing and executed by duly authorized representatives of both Parties specifically indicating the intent of the Parties to modify this Agreement. No such modification or amendment shall be effective absent approval or ratification by the governing boards of both Parties.

In the event of changes in laws, the District and the Charter School agree to negotiate modifications to this Agreement as required by applicable law.

**20. Dispute Resolution.** Any and all disputes arising out of the interpretation or performance of this Agreement shall be subject to the dispute process as described in the charter. Exercise of any dispute mechanism authorized by this Agreement shall not, in and of itself, constitute a material violation of the charter or otherwise be grounds for revocation.

**21. Severability.** If any provision or any part of this Agreement is for any reason held to be invalid or unenforceable or contrary to law, the remainder of this Agreement shall not be affected thereby and shall remain valid and fully enforceable.

**22. Venue.** The Parties agree that any legal action to enforce the terms of this Agreement shall be brought in the appropriate court in Sacramento County, California.

**23. Notices.** All notices, requests, and other communications under this Agreement shall be in writing and submitted in writing to the addresses set forth below. Notice shall be deemed given on the second day following the mailing of notice by certified mail.

To the District at:

Sacramento City Unified School District  
5735 47th Ave.  
Sacramento, CA 95824  
Attn: José L. Banda, Superintendent  
Facsimile: (916) 399-2058

To the Non-Profit and Charter School at:

Capitol Collegiate Academy  
2118 Meadowview Road  
Sacramento, CA 95832  
Attn: Penny Schwinn, School Founder/Executive Director  
Facsimile: (916) 469-9735

**24. Entire Agreement; Counterparts.** This Agreement contains the entire agreement of the Parties with respect to the matters covered hereby, and supersedes any oral or written understandings or agreements between the Parties with respect to the subject matter of this Agreement. This Agreement may be executed in counterparts, each of which shall constitute an original. Facsimile copies of signature pages transmitted to other Parties to this Agreement shall be deemed equivalent to original signatures on counterparts.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Penny Schwinn  
School Founder/Executive Director  
Capitol Collegiate Academy

Dated: \_\_\_\_\_

\_\_\_\_\_  
José L. Banda  
Superintendent  
Sacramento City Unified School District

**OPERATIONAL MEMORANDUM OF UNDERSTANDING BETWEEN  
SACRAMENTO CITY UNIFIED SCHOOL DISTRICT  
AND  
URBAN CHARTER SCHOOLS COLLECTIVE REGARDING  
YAV PEM SUAB ACADEMY**

This Operational Memorandum of Understanding (“Agreement”) is entered into as of \_\_\_\_\_, 2015 (“Effective Date”), by and between the Board of Trustees of the Sacramento City Unified School District (“District”) and Urban Charter Schools Collective (“Non-Profit”), a California non-profit public benefit corporation, operating the Yav Pem Suab Academy (“Charter School”), a public charter school chartered by the District. The District and the Non-Profit are collectively referred to as the “Parties.” This Agreement shall be enforceable only following execution by both Parties and ratification or approval by the governing boards of each of the Parties.

**RECITALS:**

- A. The District is the granting agency of the Charter School. The District approved the Charter School’s charter (“Charter”) on April 23, 2015, for a term of five years, beginning on July 1, 2015 and expiring June 30, 2020.
- B. By approving the charter petition, the District assumed certain oversight responsibilities of the Charter School pursuant to the California’s Charter Schools Act (Cal. Ed. Code, §§ 47600 *et seq.*). This Agreement is intended to outline the Parties’ agreements governing their respective fiscal and administrative responsibilities, their legal relationship, and other matters of mutual interest not otherwise addressed or resolved in the terms of the Charter.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein set forth, the Parties do hereby agree as follows:

- 1. Use of Terms.** Unless otherwise stated, for the purposes of this Agreement, the terms Charter School and Non-Profit may be used interchangeably, with the duties and responsibilities of the Charter School and Non-Profit being the same under this Agreement.
- 2. Term and Renewal.** This Agreement shall commence on the date upon which it is executed by both Parties, but shall not be effective absent ratification or approval by the governing boards of each of the Parties. The Agreement shall cover the remaining term of the charter, expiring on June 30, 2020. The Agreement is also subject to termination in accordance with the processes as set forth in this Agreement or as otherwise permitted by law. Renewal or extension of the charter and this Agreement shall be based, in part, on compliance with the terms set forth in this Agreement, District policy, and applicable law.
- 3. Designation of School.** The Charter School shall be known as the “Yav Pem Suab Academy”. The Charter School may not change its name, nor operate under any other name, without the prior express written approval of the District. The Non-Profit shall be responsible

for all functions of the Charter School pursuant to the terms and conditions set forth in this Agreement and the Charter. The Charter School shall not be located at more than one school site without the prior express written approval of the District. The Charter School shall not change locations without the prior express written approval of the District. Any change of location shall be considered a material revision of the charter petition under Education Code sections 47605 and 47607.

**4. Programmatic Audit.** The Charter School will compile and provide to the District an annual performance audit. The annual performance audit shall be submitted to the District within ninety (90) days of the last day of instruction for the regular school year or by October 1, whichever date is earlier. To the extent that the State delays providing any of the required data to Charter School, the Charter School shall notify the District and the District shall provide a reasonable extension to Charter School for submitting such data. This audit will, at a minimum, include the following data:

(a) Summary data showing student progress toward the goals and outcomes specified in the charter from assessment instruments and techniques listed in the charter or otherwise required by the District.

(b) Information regarding the number of students taking and passage rate of the California High School Exit Exam (“CAHSEE”), if applicable.

(c) An analysis of whether student performance is meeting the goals specified in the charter. This data will be displayed on a school-wide basis and also disaggregated by major racial and ethnic categories and shall include analysis based on the California Assessment of Student Performance and Progress (“CAASPP”) and CAHSEE programs of the State of California.

(d) The Charter School’s progress towards meeting its Academic Performance Index (“API”) and Adequate Yearly Progress (“AYP”) targets.

(e) Results of any additional internal assessments used by the Charter School.

(f) A copy of the Charter School’s governing board’s self-evaluation on prior-year management performance, including summary of major decisions and policies established during the year, and upcoming year goals.

(g) Data on the level of parent involvement in the school’s governance (and other aspects of the school, if applicable) and summary data from an annual parent and student satisfaction survey.

(h) Data regarding the number of staff working at the Charter School and their qualifications.

(i) A copy of the Charter School’s policies, including health and safety policies, and a summary of any major changes to those policies during the year.

(j) Information demonstrating whether the Charter School implemented the means stated in the Charter or this Agreement to achieve a racially and ethnically balanced student population.

(k) An overview of the Charter School's admissions practices during the year and data regarding the numbers of students enrolled and the number on waiting lists.

(l) Analysis of the effectiveness of the school's internal and external dispute mechanisms and data on the number and resolution of disputes and complaints.

(m) A report on student discipline, including the number of students suspended or expelled from the Charter School; and

(n) Any other information regarding the educational program and the administrative, legal and governance operations of the Charter School requested by the District.

**5. School Accountability.**

(a) LCAP Reporting. The Charter School shall comply with Education Code section 47606.5, as that statute may be amended from time to time, as well as its implementing regulations, if any. The Charter School's initial draft of its Local Control and Accountability Plan ("LCAP") shall be provided to the District by July 1, 2015, and on or before July 1 annually thereafter, unless a different date is established by law. Discussion in the LCAP report shall include descriptions for all numerically significant pupil subgroups identified in Education Code section 52052, including foster youth and English learners. To the extent practicable, the Charter School shall report LCAP data in a manner consistent with how information is reported on a school accountability report card.

**6. Funding.**

(a) Basic Funding. The Charter School shall receive its funding in accordance with applicable law. Should anything in this Agreement require revision based upon change in law or regulation, the Parties shall meet without delay to cooperatively revise the Agreement to ensure consistency with the law. Any future revision of the Charter Schools Act to revise the manner in which charter schools are funded shall not be interpreted to prevent the Charter School's direct receipt of full funding in accordance with applicable law.

The Charter School is eligible for a general-purpose entitlement and supplemental funding allocated through the Local Control Funding Formula ("LCFF") under Education Code section 42238.02, as implemented by Education Code section 42238.03. In addition to LCFF funding, the Charter School may continue to receive Block Grant Funding for eligible expenses from prior years consistent with state law. Except as otherwise noted in this Agreement, it shall be the responsibility of the Charter School to apply for funding due to the Charter School under LCFF.

The Charter School has elected to receive funding from the State directly, pursuant to Education Code section 47651. The District shall comply with Education Code section 47635 in providing the Charter School with funding in lieu of property taxes. However, the Parties understand that in the event that such funds are not timely received by the District due to processing delays at either the state or county level, such funds shall be provided to the Charter School as soon as practicable after such funds are made available to the District. The District recognizes the authority of the Charter School to pursue additional sources of funding. Any application for funding by the Charter School that depends on the support or creditworthiness of the District shall be presented to the District for its prior written approval.

(b) District Applications for Funding. When the District applies for additional sources of funding in the form of grants and/or categorical funding at the request of and for the benefit of the Charter School, the District will receive one percent (1%) of such funds at the time they are paid to the Charter School. Such funds shall not be considered revenue for purposes of the District's oversight fee set forth in section 9(b).

(c) Expenditure of Funds. The Charter School agrees to comply with all regulations related to expenditures and receipt of its funds (including compliance with federal and state compliance regulations and certifications). Assets or funds allocated or held by the Charter School for provision of its educational services shall be used consistent with applicable law and the terms of any funding restrictions. The Charter School will provide the District with written monthly notice when the Charter School withdraws funds deposited by the Sacramento County Superintendent of Schools in the Sacramento County Treasury for the account of the Charter School and re-deposits those funds in a financial institution selected by the Charter School. Such notice is provided when the Charter School provides the District with monthly bank statements from the banks where all Charter Schools accounts are held. Within fifteen calendar days of opening an account at a bank or other financial institution, the Charter School will provide written notice to the District of the commencement of that account, the type of account, the financial institution or bank and any identifying account numbers.

(d) Compliance with Procedures. To the extent that the Charter School is required to submit records or information to the District or the County Office of Education in order to confirm funding, those records must be prepared by the Charter School in conformance with District or county procedures.

**7. Legal Relationship.** Pursuant to its charter and Education Code section 47604, the Charter School is operated by the Non-Profit. The Charter School and the Non-Profit are separate legal entities from the District. As such, the District shall not be liable for the debts or obligations of the Charter School or the Non-Profit to the maximum extent permitted by applicable law. Except as such reimbursement is limited by law, including but not limited to Education Code section 47613, it is agreed that it is the Parties' intent that the District shall incur no unreimbursed cost or expenses of any type whatsoever as a result of its relationship with the Charter School. The Charter School may not enter into a contract or agreement to be managed or operated by any other non-profit public benefit corporation (or any other corporation or entity) without the express written prior approval of the District. The obligations of the Charter School

under such agreement or contract are solely the responsibility of the Charter School and the Non-Profit, and are not the responsibility of the District.

**8. Complaints.** Complaints filed with the Charter School, whether formal or informal and including complaints filed with any governmental entity other than the District, must be provided to the District within three (3) working days of receipt by the Charter School. If any such complaint raises an issue or issues that may be grounds for revocation or non-renewal of the charter, the District may request that the Charter School report to the District on how such complaints are being addressed, and the Charter School agrees to provide such information upon the District's request. The Charter School shall make such information available to the District for inspection and copying upon request during regular business hours or, upon request, the Charter School shall deliver to the District within ten (10) business days a current copy of any requested records or information. Under all circumstances, the Charter School will cooperate fully in the release of information to the District to assist in the District's oversight obligations.

**9. Fiscal Relationship.**

(a) Administrative Services. . The Charter School may purchase any of the "Optional Administrative Services" designated by the District in the District's Fee Schedule for Services to Charter Schools ("Fee Schedule"). If the Charter School elects to purchase such services, the District's agreement to provide those services shall be reduced to writing and signed by the Parties in a separate agreement. The District reserves the right to annually revise the Fee Schedule to reflect the District's then-calculated rates, and the rates stated by each such revision shall apply to services the Charter School is purchasing from the District. If the Charter School contracts for services that require the District to provide labor beyond the current work and vacation calendars of District employees, then the Charter School shall pay the actual cost of these services.

(b) Oversight Fee. The Parties agree that the District will incur costs in connection with its performance of supervisory oversight of the Charter School as required by law, and that it is not in the best interests of either Party to require a mechanical assessment, accounting, billing and payment process to compensate the District for such costs. The Parties further agree that the District is not providing the Charter School with substantially rent-free facilities as referenced by Education Code section 47613(b). Therefore, the Parties agree that the actual cost of the District's supervisory oversight of the Charter School is one percent (1%) of "Revenue of the Charter School" (excluding grants, loans, and private donations), as defined in Education Code sections 47613, 47632, subdivision (a), 42238.02, and 42238.03.

"Supervisory Oversight" as used in the Education Code section 47613 is defined in Education Code sections 47604.32 and 47604.33 to mean the District's performance of duties to include the following:

- Identification of at least one (1) staff member as contact person for the Charter School.
- Visiting the Charter School at least annually.

- Ensuring that the Charter School complies with all reports required of charter schools by law.
- Monitoring the fiscal condition of the Charter School.
- Providing timely notification regarding whether the charter’s renewal is granted or denied, the charter is revoked, or the charter will cease operation for any reason.
- Reviewing annual reports and assessing the fiscal condition of the Charter School pursuant to Education Code section 47604.33.

(c) Payment for Administrative Services, Oversight Fee and Expenses. On a quarterly basis, the District shall provide a written invoice and, as necessary, supporting expense information, to the Charter School detailing the amount due for services performed by the District, the oversight fee due pursuant to section 9(b), and any expenses paid by the District on the Charter School’s behalf, with the exception of special education encroachment fees (which shall be computed and charged in accordance with the Special Education Memorandum Of Understanding between Sacramento City Unified School District and Yav Pem Suab Academy (Special Education MOU) entered into concurrently herewith by the District and the Non-Profit). Prior to paying any expenses on the Charter School’s behalf, District shall provide Charter School with reasonable notice and an opportunity to pay or dispute the expense directly.

Payment on invoices provided to the Charter School pursuant to this section shall be due within thirty (30) calendar days of receipt unless Charter School has provided written notice to District that it disagrees with invoiced charges. Payments shall be made to the District’s Business Services Department. The Charter School may only withhold payment for services, fees or expenses that it has specifically contested. The Charter School shall make payment by check.

(d) Distribution of Assets Upon Revocation or Closure. Should the Charter School, as an entity separate from the Non-Profit, cease to exist (by revocation or nonrenewal of its charter or by voluntary closure), and upon a final audit and the payment of, or provision for payment of, all debts and liabilities of the Charter School, any public funds held by or for the Charter School and any assets of the Charter School purchased with public funds shall be distributed in accordance with the terms of the Charter.

## **10. Fiscal Controls.**

(a) Fiscal Policies. The Charter School shall adopt and meet generally accepted accounting principles and shall adopt policies to ensure the Charter School’s funds are used to most effectively support the Charter School’s mission and to ensure that funds are budgeted, accounted for, expended, and maintained in an appropriate fashion. Such policies will include, but not be limited to the following:

- (1) Expenditures shall be made in accordance with the annual budget adopted by the Charter School’s governing board;



- (2) The Charter School's funds shall be managed and held in a manner that provides a high degree of protection of the Charter School's assets; and
- (3) All transactions shall be recorded and documented in an appropriate manner that allows reporting to the State, the District, and/or the County Office of Education.

(b) Attendance Accounting. The Charter School will establish and maintain an appropriate attendance accounting system to record the number of days students are actually in attendance and engaged in activities required of them by the Charter School. The annual audit (see section 10(c) below) will review actual attendance accounting records and practices to ensure compliance. The Charter School's attendance accounting practices will be in conformance with applicable law.

(c) Annual Financial Audit. The Charter School's governing board will annually appoint an external fiscal auditor, subject to the approval of the District. Said external fiscal auditor must be listed on the State Controller's Office website as approved to conduct such audits. The audit shall include, but not be limited to:

- (1) An audit of the accuracy of the Charter School's financial statements;
- (2) An audit of the Charter School's attendance accounting and revenue claims practices; and
- (3) An audit of the Charter School's internal control practices.

The Charter School shall complete its audit within ninety (90) days of the close of the fiscal year. A copy of the audit report shall be submitted to the District within thirty (30) days of completion, and no later than December 15 of the fiscal year following the fiscal year for which the audit was performed. The Charter School agrees to implement all audit recommendations to the District's satisfaction, unless other terms are agreed to between the District and the Charter School.

(d) Financial Reports. In addition to the foregoing requirements, the Charter School shall annually prepare and submit the following reports to the District and the County Superintendent of Schools:

- (1) On or before July 1, an adopted budget;
- (2) On or before December 15, a first interim financial report, reflecting changes through October 31;
- (3) On or before March 15, a second interim financial report, reflecting changes through January 31; and
- (4) On or before September 15, a final unaudited report for the full prior fiscal year.

Failure to submit accurate and complete financial information as required hereby shall be considered grounds for revocation of the charter, subject to reasonable opportunity on the part of the Charter School to amend and rectify findings of the above reports.

(e) Voter Approved Measures. In the event that the District seeks and receives a voter approved bond or parcel tax, the Charter School shall have no entitlement to any portion of the funds unless otherwise negotiated in advance, or as otherwise required by law. The Charter School agrees that it has no entitlement to funds currently being received, if any, by the District under former parcel tax or bond elections.

(f) Loans. The Charter School agrees that it shall establish a fiscal plan for repayment of any loans received by the Charter School in advance of receipt of such loans. It is agreed that all loans sought by the Charter School shall be authorized in advance by the governing board of the Charter School and shall be the sole responsibility of the Charter School. The District will have no obligation with respect to any loans received by the Charter School to finance its operations, and any such loan shall be the sole responsibility of the Charter School. Upon request, the Charter School will provide information regarding any such loan to the requesting agency pursuant to Education Code section 47604.3. The Charter School shall notify the District, in writing, no later than thirty (30) days prior to entering into any debt whatsoever.

(g) Advance of Funds. The District may in its sole discretion advance funds to the Charter School. In addition, the District may in its sole discretion provide a line of credit for the Charter School.

(h) Cash Flow and Reserve. The Parties agree that the maintenance of a sufficient level of funding reserve is in the best interest of Charter School and its successful operation. Accordingly, Charter School shall maintain reserves of no less than three percent (3%). An explanation of any projected drop in reserves below the three percent (3%) level must be included in the Charter School's assumptions in the adopted budget for the fiscal year.

(i) Third Party Debts and Liabilities. Assets or funds allocated or held by the Charter School for provision of its educational services shall be used consistent with applicable law and terms of any funding restrictions.

(j) Banking Arrangements. In addition to those obligations set forth in section 6(c) above, the Charter School's business manager will reconcile the Charter School's ledger(s) with its bank accounts or accounts in the County Treasury on a monthly basis and prepare (1) a balance sheet, (2) a comparison of budgeted to actual revenues and expenditures to date, and (3) a cash flow statement, which will be submitted with the reports listed above in section 10(d). The Charter School will deposit all funds received as soon as practical upon receipt. A petty cash fund, not to exceed two hundred dollars (\$200), may be established with an appropriate ledger to be reconciled twice monthly by the Non-Profit Business Manger, who shall not be authorized to expend petty cash.

(k) Purchasing Procedures. The Charter School shall adopt a procurement policy consistent with applicable law, which policy shall address the reasonable retention of documents related to the Charter School's procurement decisions.

(l) Property Inventory. The Charter School's head of school or his or her designee shall establish and maintain an inventory of all Charter School non-consumable goods and

equipment valued at more than six hundred dollars (\$600). This inventory shall include the original purchase price and date, a brief description, serial numbers, and other information appropriate for documenting the Charter School's assets. Property shall be inventoried on an annual basis and lists of any missing property shall be presented to the Charter School's governing board. Said inventory, or copies thereof, shall be provided to the District immediately upon request.

(m) Payroll. The Charter School will prepare payroll checks, tax and retirement withholdings, tax statements and perform other payroll support functions. The President of the Charter School's governing board or his or her designee will establish and oversee a system to prepare time and attendance reports and submit payroll check requests. The Charter School's head of school or his or her designee and the Charter School's business manager will review payroll statements monthly to ensure that (1) the salaries are consistent with staff contracts and personnel policies and (2) the proper tax, retirement, disability, and other withholdings have been deducted and forwarded to the appropriate authority. All staff expense reimbursements will be on checks separate from payroll checks. Upon hiring of staff, a personnel file will be established with all appropriate payroll-related documentation including a federal I-9 form, tax withholding forms, retirement data and use of sick leave.

(n) Other Fiscal Control Policies. The Charter School shall develop and maintain other fiscal control policies as recommended by independent certified public accountants retained by the Charter School to advise it on fiscal control policy matters.

## **11. Reporting to the District.**

### (a) Enrollment.

1. Annual enrollment reporting. The Charter School recognizes the need to achieve sufficient enrollment each year so that the Charter School remains fiscally viable. On an annual basis and no later than January 15 of each year, the Charter School shall provide the District a copy of its estimated maximum enrollment plans and anticipated grade level offerings for the following school year. The Charter School shall also provide a list of students meaningfully interested in enrolling in the Charter School the following school year (including their name, residential address, and telephone number) and the district of residence for each student. The Charter School recognizes that this information is critical to District planning for the next year.

2. Monthly enrollment reporting. No later than the 15th calendar day of every month, the Charter School shall provide the District with a copy of its student enrollment list for the prior month, including the name, residential address, residential telephone number, and school district of residence for each student. In the alternative, the Charter School may provide the District with access to the enrollment attendance data program of the Charter School.

(b) Reporting to Public Agencies. The Charter School shall submit to the District a copy of all reports or other documents that the Charter School is required to submit to any state

or other public agency in the State of California. Such reports will be submitted to the District, when submitted to the state or other public agency.

(c) Notification to District Regarding Governing Body Composition. The Charter School shall annually (on or before July 1) send to the District a list of its directors and officers. The District shall be provided with immediate notice of any change in the composition of these directors or officers.

(d) School Calendar and Schedules. The Charter School shall provide by August 1 of each year the school calendar and bell schedule for the following school year, including calculation of instructional minutes. If summer school, extended day or intersession is offered, the Charter School shall provide calendars and bell schedules for such programs.

(e) Cumulative File Information. The District and Charter School shall promptly forward to each other all cumulative file information, including, but not limited to, information regarding special education and related services, whenever a student transfers from a District school to the Charter School, or vice versa.

(f) Performance Assessments. The Charter School shall forward results from statewide assessments to the District promptly upon receipt by the Charter School, but in no event later than thirty (30) days after such receipt.

(g) Student Records. To the extent necessary to discharge its reasonable supervisory oversight activities, the Charter School hereby designates the employees of the District as having a legitimate educational interest such that they are entitled upon request access to the Charter School's education records under the Federal Educational Rights and Privacy Act ("FERPA") and related state laws regarding student records. All student records and information from such records shall be kept and maintained by the District in accordance with FERPA and may not be disclosed except with prior written consent of the parent or eligible student or as otherwise authorized by law. At a minimum, such records include emergency contact information, health and immunization data, attendance summaries, and academic performance data from all statewide student assessments pursuant to Education Code sections 60605 and 60851 to the extent necessary for the District to discharge its oversight activities. The District, Charter School, and their officers and employees shall comply with FERPA and state laws regarding student records at all times.

**12. Special Education and Related Services; English Learners.** The Parties have concurrently herewith entered into the Special Education MOU. In addition to the terms thereof, the following terms govern the provision of special education and related services to Charter School students:

(a) Compliance with Applicable Law. All children will have access to the Charter School and no student shall be denied admission due to disability. The Charter School shall be solely responsible for compliance with Section 504 of the Rehabilitation Act of 1973 ("Section 504") (29 U.S.C. §§ 794 *et seq.*) and the Americans with Disabilities Act of 1990 (42 U.S.C. §§

12101 *et seq.*), except as otherwise agreed to by the parties, such as in a Facilities Use Memorandum of Understanding.

(b) Student Study Team. The Charter School agrees to implement a Student Study Team (“SST”) Process, a general education function that develops strategies for students in the general education classroom. The SST shall develop and monitor implementation of Section 504 plans for eligible students as appropriate.

(c) SELPA Membership. The Parties agree to implement and comply with the Individuals with Disabilities Education Act (“IDEA”) (20 U.S.C. § 1400 *et seq.*) as specified in the Special Education MOU.

(d) English Learners. The Charter School will annually administer the California English Language Development Test (“CELDT”) to all eligible students. The Charter School will be responsible for all components necessary to comply with state and federal testing and reporting of English Learners.

### **13. Human Resources Management.**

(a) Charter School Exclusive Employer. All employees of the Charter School are employees of the Non-Profit and shall have no right to employment by the District. The Non-Profit shall have sole responsibility for employment, management, dismissal and discipline of employees of the Charter School.

(b) Compliance with Fingerprinting Requirements. Throughout the term of the Charter and this Agreement, all employees of the Charter School, parent volunteers who will be performing services that are not under the direct supervision of a certificated teacher, and onsite vendors having unsupervised contact with students, will submit to background checks and fingerprinting in accordance with the provisions of Education Code sections 44237 and 45125.1. The Charter School will provide certification to the District that all employees and volunteers or vendors have clear criminal records summaries prior to their having any unsupervised contact with students. The Charter School will maintain on file and have available for inspection, during District site visits, evidence that the Charter School has performed criminal background checks for all employees and documentation that vendors have conducted required criminal background checks for their employees prior to any unsupervised contact with students.

(c) STRS/PERS. If the Charter School decides to offer existing or new employees of the Charter School the opportunity to participate in the State Teachers’ Retirement System (“STRS”) or the Public Employees’ Retirement System (“PERS”), the Charter School shall be responsible for entering into a contract with STRS and/or PERS or the District. At the request of the Charter School, the District shall create any reports required by STRS or PERS and may charge the Charter School for the actual costs of such reporting services.

(d) NCLB. The Charter School will be responsible for ensuring its staff is compliant with all provisions of the federal No Child Left Behind Act (“NCLB”).

**14. Indemnification.** The Non-Profit shall promptly defend, indemnify, and hold harmless the District, its officers, directors, employees, agents, representatives, volunteers, administrators, successors, and assigns (collectively hereinafter the “Indemnified Parties”) from and against any and all alleged or actual breach of any obligation imposed under this Agreement, or any other actual or alleged breach of any duty or obligation owed to the District or any third party, including any Charter School student (including any student placed with a school other than the Charter School, or in any nonpublic, nonsectarian school or in other special services to address special need or disability situations) or employee, by the Non-Profit or its officers, directors, employees, agents, representatives, volunteers, guests, students, administrators or trustees, successors or assigns. The District shall promptly defend, indemnify, and hold harmless the Non-Profit, its officers, directors, employees, agents, representatives, volunteers, administrators, successors, and assigns (collectively hereinafter the “Charter Indemnified Parties”) from and against any and all alleged or actual breach of any obligation imposed on the District under this Agreement, or any other actual or alleged breach of any duty or obligation owed to the Charter School or any third party, arising from the District’s sole or separate negligence.

In the event of a third party claim or potential claim covered by these provisions, the Parties agree to take all steps reasonable or necessary to cooperate in defending and protecting their joint interests, and in expediting all reasonable or necessary efforts to gain coverage for the Parties under any liability policy or indemnity agreement issued in favor of the Non-Profit and/or District, including indemnity rights or agreements existing in contracts between the Non-Profit and/or District and any third party (such as contract with a supplier of goods or services), and further including efforts to reduce defense costs (through joint representation whenever possible), expenses and potential liability exposures.

**15. Insurance and Risk Management.** The Non-Profit shall, for itself and the Charter School, and at its sole cost and expense, purchase and maintain during the entirety of this Agreement, insurance or indemnity protection as follows, as well as any additional insurance as may be required by law:

(a) Liability Insurance. Occurrence-based liability indemnity protection, having a combined limit of liability of no less than five million dollars (\$5,000,000) per claim and in the aggregate, and a per occurrence deductible of no greater than five thousand dollars (\$5,000), whether purchased in the form of a single policy/agreement or by way of multiple policies/agreements, including excess or umbrella policies or agreements, that extends coverage for, among other things, educators’ legal liability, property damage liability, employment practices liability, automobile (owned, non-owned, and hired) liability, personal injury and advertising injury liability, directors and officers, and errors and omissions liability, with such coverage extended to the Charter School, its governing board, its officers, agents, employees, and volunteers. To the fullest extent allowed by law, and in keeping with the Non-Profit’s indemnity obligations described above, the Indemnified Parties shall be included as “additional insureds” or “additional covered parties” under each of the Non-Profit’s liability policies or agreements, with such coverage evidenced by duly issued “additional insured” or “additional covered party” endorsement(s) and/or duly issued certificate(s) of insurance, which must affirmatively state that the required coverage shall not be reduced or prematurely terminated or cancelled absent 30-days notice to District.

(b) Workers' Compensation. In accordance with the California Labor Code, the Non-Profit shall purchase and maintain workers' compensation and employers liability insurance or indemnity protection adequate to protect the Charter School from claims under California's Workers' Compensation Act, with a limit of liability no less than \$500,000.00, and that extends coverage and protection to Charter School employees and volunteers. Evidence of such coverage shall be provided in the form of a duly issued certificate of insurance which must affirmatively state that the required coverage shall not be reduced or prematurely terminated or cancelled absent 30-days notice to District.

(c) Property Insurance. The District will maintain insurance for facilities, consistent with the Facilities Use Agreement. This includes property damage coverage sufficient to replace, at current market value and in compliance with any enhanced building codes or disability access ordinances, regulations or laws, all personal property, fixtures, and property owned or under the care, custody, or control of the Charter School. Evidence of such coverage shall be provided in the form of a duly issued certificate of insurance or coverage which must affirmatively state that the required coverage shall not be reduced or prematurely terminated or cancelled absent 30-days notice to District.

(d) Bond. Fidelity and crime coverage extending to wrongful acts with respect to money or property owned by or under the care, custody or control of any Charter School employee, volunteer, agent or representative. Evidence of such coverage shall be provided in the form of a duly issued certificate of insurance or coverage which must affirmatively state that the required coverage shall not be reduced or prematurely terminated or cancelled absent 30-days notice to District.

**16. Compliance with Applicable Law.** The Charter School agrees to comply at all times with applicable federal or state laws (which may be amended from time to time), which shall include the following:

- The Ralph M. Brown Act (Cal. Gov. Code, §§ 54950 *et seq.*);
- The California Public Records Act (Cal. Gov. Code, §§ 6250 *et seq.*);
- State conflict of interest laws applicable to charter schools operated by nonprofit corporations, including, but not limited to the Political Reform Act (Gov. Code, §§ 87100 *et seq.*; Gov. Code, §§ 1090 *et seq.*);
- The Child Abuse and Neglect Reporting Act (Cal. Penal Code, §§ 11164 *et seq.*);
- The Individuals with Disabilities Education Rights Act ("IDEA") (20 U.S.C. §§ 1400 *et seq.*);
- The Americans with Disabilities Acts (42 U.S.C. §§ 12101 *et seq.*);
- The U.S. Civil Rights Acts, including Title VII of the 1964 Civil Rights Act;
- The California Fair Employment and Housing Act ("FEHA") Cal. Gov. Code, §§ 12900 *et seq.*);
- The Age Discrimination in Employment Act ("ADEA") (29 U.S.C. §§ 621 *et seq.*);
- Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §§ 794 *et seq.*)
- Ed. Code section 220;
- The Uniform Complaint Procedure (5 Cal. Code Regs., tit. 5, §§ 4600 *et seq.*);

- The Family Educational Rights and Privacy Act (“FERPA”) (20 U.S.C. §§ 1232g *et seq.*);
- Local Control Funding Formula (California Assembly Bill 97); and
- All applicable state and federal laws and regulations concerning the improvement of student achievement, including but not limited to any applicable provisions of the Elementary and Secondary Education Act of 1965 (20 U.S.C. §§ 6301 *et seq.*) as amended by the No Child Left Behind Act (“NCLB”) (20 U.S.C. §§ 6301 *et seq.*).

(a) Brown Act and Governing Board Meetings. During the term of the Charter, the Charter School agrees to comply with key terms of the Brown Act and shall conduct the meetings of its governing board in accordance with the Brown Act, including making public the agendas of such meetings in advance, as required by the Brown Act. Prior to opening, the Charter School will provide verification by letter to the District that all members of the Governing Board, administrative staff, and any other staff deemed appropriate by the Charter School have participated in Brown Act training. The governing board of the Charter School shall conduct public meetings at such intervals as are necessary to ensure that the board is providing sufficient direction to the Charter School through implementation of effective policies and procedures. The District reserves the right to appoint a single representative to the Charter School’s governing board in accordance with the provisions of Education Code section 47604(b). The Charter School agrees to provide to the District’s representative on the governing board a complete board packet of information being submitted to the board before each meeting, in sufficient time for review. Governing board adopted policies, meeting agendas and minutes shall be maintained and shall be available for public inspection and to the District during site visits (or upon request).

(b) Public Records Act. The Charter School agrees that all of its records that relate in any way to the operation of the Charter School shall be treated as public records subject to the requirements of the Public Records Act (Cal. Gov. Code, § 6250 *et seq.*) as well as Education Code section 47604.3.

## **17. Participation in Special Programs and Services; Transportation.**

(a) Sports and Other Activities; Student Insurance. In the event that the Charter School wishes to have its students or staff participate in a program or service offered by the District other than those specified by this Agreement, advance approval and arrangements must be made and confirmed in writing, and expenses for such participation may be charged to the Charter School. The District has sole discretion whether to allow the Charter School to participate in such District programs or services, including California Interscholastic Federation (“CIF”) activities. Charter School participation in CIF activities and sports are subject to the rules and regulations of CIF. Charter School students may participate at their own expense in student insurance coverage programs offered by the District.

(b) Transportation. Unless otherwise agreed with the District, the Charter School shall be responsible for any transportation offered to students who enroll in the Charter School.



**18. Revisions to Charter.** Changes to the Charter deemed to be material revisions in accordance with Education Code section 47607(a) may not be made without District consideration and approval. Revisions to the Charter considered to be material changes include, but are not limited to, the following:

- (a) Substantial changes to the educational program (including the addition or deletion of an educational program), mission, or vision;
- (b) Changing to (or adding) a non-classroom-based program, if originally approved as a classroom-based program;
- (c) Proposed changes in enrollment that differ by more than 10 percent +/- of the enrollment originally projected in the charter petition;
- (d) Addition or deletion of grades or grade levels to be served;
- (e) The addition of facilities and/or new sites;
- (f) Admission preferences, unless necessary to comply with applicable state and/or federal law, regulations, or guidance governing the Public Charter Schools Grant Program or Charter School Facilities Grant Program;
- (g) Governance structure; and
- (h) Name changes of the Charter School.

**19. Amendments to Agreement.** Any modification of this Agreement must be in writing and executed by duly authorized representatives of both Parties specifically indicating the intent of the Parties to modify this Agreement. No such modification or amendment shall be effective absent approval or ratification by the governing boards of both Parties.

In the event of changes in laws, the District and the Charter School agree to negotiate modifications to this Agreement as required by applicable law.

**20. Dispute Resolution.** Any and all disputes arising out of the interpretation or performance of this Agreement shall be subject to the dispute process as described in the charter. Exercise of any dispute mechanism authorized by this Agreement shall not, in and of itself, constitute a material violation of the charter or otherwise be grounds for revocation.

**21. Severability.** If any provision or any part of this Agreement is for any reason held to be invalid or unenforceable or contrary to law, the remainder of this Agreement shall not be affected thereby and shall remain valid and fully enforceable.

**22. Venue.** The Parties agree that any legal action to enforce the terms of this Agreement shall be brought in the appropriate court in Sacramento County, California.

**23. Notices.** All notices, requests, and other communications under this Agreement shall be in writing and submitted in writing to the addresses set forth below. Notice shall be deemed given on the second day following the mailing of notice by certified mail.

To the District at:

Sacramento City Unified School District  
5735 47th Ave.  
Sacramento, CA 95824  
Attn: José L. Banda, Superintendent  
Facsimile: (916) 399-2058

To the Non-Profit and Charter School at:

Yav Pem Suab Academy  
7555 South Land Park Drive  
Sacramento, CA 95831  
Attn: Lee Yang, Superintendent  
Facsimile: (916) 433-5289

**24. Entire Agreement; Counterparts.** This Agreement, including the Special Education MOU, contains the entire agreement of the Parties with respect to the matters covered hereby, and supersedes any oral or written understandings or agreements between the Parties with respect to the subject matter of this Agreement. This Agreement may be executed in counterparts, each of which shall constitute an original. Facsimile copies of signature pages transmitted to other Parties to this Agreement shall be deemed equivalent to original signatures on counterparts.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Lee Yang  
Superintendent  
Urban Charter Schools Collective

Dated: \_\_\_\_\_

\_\_\_\_\_  
José L. Banda  
Superintendent  
Sacramento City Unified School District

**SPECIAL EDUCATION MEMORANDUM OF UNDERSTANDING  
BETWEEN SACRAMENTO CITY UNIFIED SCHOOL DISTRICT  
AND  
URBAN CHARTER SCHOOLS COLLECTIVE REGARDING  
YAV PEM SUAB ACADEMY**

This Memorandum of Understanding (“Agreement”) is entered into as of \_\_\_\_\_, (“Effective Date”), by and between the Board of Trustees of the Sacramento City Unified School District (“District”) and Urban Charter Schools Collective (“Non-Profit”), a California non-profit public benefit corporation, operating Yav Pem Suab Academy (“Charter School”), a public charter school chartered by the District. The District and the Non-Profit are collectively referred to as the “Parties.” This Agreement will set forth the responsibilities of the Parties with respect to the delivery and financing of special education services to children enrolled in the Charter School.

**I. RECITALS**

- A. The District is the granting agency of the Charter School. The District approved the Charter School’s charter (“Charter”) on April 23, 2015, for a term of five years, beginning on July 1, 2015 and expiring June 30, 2020.
- B. The Charter School shall be categorized as a “public school” within the District in conformity with California Education Code section 47641, subdivision (b) for the purposes of special education. The Charter School’s students will be students of the District for purposes of special education.
- C. The District will serve as the Charter School’s local educational agency (“LEA”) for the purposes of special education, and as such must take steps to ensure that all children with disabilities enrolled in the Charter School receive special education and designated instruction and services in conformity with their individualized education plans (“IEP”) and in compliance with the Individuals with Disabilities Education Act (“IDEA”) (20 U.S.C. § 1400 *et seq.*), its implementing regulations and all applicable state and federal law. (Ed. Code, § 47646(a).)
- D. This Agreement has the purpose of clarifying the roles and responsibilities of the parties with regard to students who are enrolled and attend the Charter School and are or may be eligible for special education and related services under the IDEA.

NOW, THEREFORE, in consideration of the promises and the mutual covenants and agreements herein set forth, the Charter School and the District do hereby agree as follows:

**II. USE OF TERMS**

The Parties agree that unless otherwise stated herein, for the purposes of this Agreement, the terms “Charter School” and “Non-Profit” may be used interchangeably, with the

duties and responsibilities of the Charter School and Non-Profit being the same under this Agreement.

### **III. TERM**

The term of this Agreement shall be from the Effective Date to June 30, 2020. This Agreement may be amended by mutual written agreement of the Parties at any time. This Agreement is subject to termination during the term of as permitted by law. This Agreement is also subject to termination if the Charter School becomes the LEA of another Special Education Local Plan Area (“SELPA”).

If at any time the Charter School desires to become a local educational agency (“LEA”) and seek membership in a SELPA other than the District’s SELPA, the Charter School shall confer with the District. The Non-Profit shall notify the District by March 1st of the prior calendar year if the Charter School intends to seek membership in another SELPA. The Charter School will also comply with all procedures, including but not limited to, dispute resolution and other procedures of the District’s SELPA, the receiving SELPA, and those procedures required by law. To the extent this constitutes a material revision of the Charter School’s Petition, the Charter School will comply with Education Code requirements necessary to amend the Petition.

### **IV. DESIGNATED REPRESENTATIVE**

The District’s designated representative shall be the District’s Superintendent who shall have the authority to act on behalf of the District. The Charter School shall designate a representative in writing and this representative shall have the authority to act on behalf of the Charter School, except to the extent action by the Governing Board of the Charter School is legally required.

### **V. NONDISCRIMINATION IN ADMISSIONS**

All students will have access to the Charter School and no student shall be denied admission due to his or her disability. (20 U.S.C. § 1412(a)(2); 34 C.F.R. § 300.209; Ed. Code, § 47605(d).)

### **VI. SECTION 504 AND THE ADA**

The Parties agree that this Agreement is intended to address the responsibilities of the parties with respect to the provision and financing of special education services under the IDEA and does not cover services or accommodations required under Section 504 of the Rehabilitation Act of 1973 (“Section 504”) (29 U.S.C. §§ 794 *et seq.*), or under the Americans with Disabilities Act of 1990 (“ADA”) (42 U.S.C. §§ 12101 *et seq.*). The Charter School shall be solely responsible, at its own expense, for compliance with Section 504 and the ADA unless otherwise agreed to in writing by the parties, such as in a Facilities Use Agreement.

## VII. SPECIAL EDUCATION FUNDING

A. Retention of Special Education Funds by the District. The Charter School, which has been deemed a public school of the District, shall participate in state and federal funding in the same manner as any other public school of the District. (Ed. Code, § 47646(a).) The Parties agree that, pursuant to the division of responsibilities set forth in this Agreement, the District has agreed to provide special education and related services for the Charter School, consistent with the services it provides eligible students at its other public schools. Consistent with this division of responsibility, the District shall retain all state and federal special education funding allocated for Charter School students through the Sacramento City Special Education Local Plan Area (“SELPA”). The District shall be solely responsible, as necessary, to contract and pay for any special education services, except as otherwise agreed between the Parties.

B. Charter School Contribution to Encroachment. The Charter School shall owe the District a pro-rata share of the District’s unfunded special education costs (encroachment) as estimated in the District’s current Fee Schedule for Services to Charter Schools (“Fee Schedule”). The encroachment amounts set forth in the Fee Schedule are subject to updating when the District’s actual unfunded special education costs become available. At the end of each fiscal year, June 30, the District shall calculate the Charter School’s pro-rata share of the District-wide encroachment for that year as calculated by the total unfunded special education costs of the District (including those costs attributable to the Charter School) divided by the total number of District enrollment (including Charter School students) and multiplied by the total number of Charter School enrollment. Charter School enrollment shall include all students, regardless of home district. Payments for encroachment shall be made by the Charter School to the District pursuant to the following schedule:

October 31: 25% of the Charter School’s estimated pro-rata share of encroachment based upon prior year encroachment, which shall be adjusted by a credit or deduction, to reflect any difference between Charter School’s actual pro-rata share for the prior year and actual payments made. If it is determined that the Charter School has paid more than its actual pro rata share of encroachment, such amounts shall be refunded to the Charter School, or at the sole option of the Charter School, applied to the encroachment of the following school year. If it is determined that the Charter School has paid less than its actual pro-rata share of encroachment, then the Charter School shall be required to pay the District the difference.

January 31: 25% of the Charter School’s estimated pro-rata share of encroachment based upon prior year encroachment.

April 30: 25% of the Charter School’s estimated pro-rata share of encroachment based upon prior year encroachment.

July 15: 25% of the Charter School’s estimated pro-rata share of encroachment based upon prior year encroachment.

If at any time, including through the updating of the amounts set forth in the Fee Schedule, it is determined by the District that the Charter School has paid more than its actual pro rata share of encroachment, the District will give notice of same within 30 days, and such amounts shall be refunded to the Charter School or, at the sole option of the Charter School, applied to the encroachment of the following school year. Similarly, if at any time it is determined by the District that the Charter School has paid less than its actual pro rata share of encroachment, the District will give notice of same within 30 days, and such amounts shall be paid by the Charter School or, at the sole option of the District, added to the encroachment of the following school year. In the event that the District and Charter School cannot agree as to the amount owed pursuant to the calculations, the matter shall be resolved pursuant to the dispute resolution provision in the Charter. However, the Charter School shall pay any undisputed amount based on the timelines prescribed in this section.

The District shall provide financial and other information needed to allow the Charter School to review and confirm the accuracy of the District’s estimated and actual pro-rate encroachment calculations as reasonably requested by the Charter School. For the 2015-2016 school year, the Charter School’s estimated pro-rata share of encroachment shall be calculated based upon District’s actual preceding school year encroachment and the Charter School’s average daily attendance (“ADA”)

## **VIII. PROVISION OF SPECIAL EDUCATION AND RELATED SERVICES**

### **A. General Provisions**

1. Intent of the Parties. The Parties intend to ensure that all students with disabilities who attend the Charter School are provided a free appropriate public education (“FAPE”) in compliance with the IDEA (20 U.S.C. § 1400, *et seq.*) and California Education Code section 56000, *et seq.*
2. Provision of Services. A child with disabilities attending the Charter School shall receive special education and related services in the same manner as a child with disabilities who attends another public school of the District. (Ed. Code, § 56145.) A full continuum of special education programs and related services shall be provided to Charter School students as required by an individual student’s IEP.
3. Division and Coordination of Responsibility. Where particular services are generally provided by staff at the local school site level, the Charter

School, subject to District approval, and after consulting with a District program specialist, may provide staff and programming.

4. Days of Service. Special education services shall be available to the Charter School for the number of days specified in students' IEPs.
5. Staffing Requirements. All special education and related services must be provided by qualified personnel meeting state certification, licensing, registration or other applicable requirements. (34 C.F.R. § 300.156.) The District shall be responsible for screening and hiring employees to provide special education services for students enrolled in the Charter School in the same manner as for District schools.

To the extent allowable and consistent with the District's applicable collective bargaining agreements with its employees, the District shall consult with the Charter School regarding the assignment of employees providing special education pursuant to this Agreement.

To the extent that the District and/or SELPA provide training opportunities and/or information regarding special education to site staff, such opportunities and/or information shall be made available to Charter School staff.

6. Contracts with Non-District Providers. The Charter School shall not contract with any outside person or agency for the provision of special education and/or related services to Charter School students without the prior written approval of the District. Moreover, any such contracts may only be entered into with nonpublic schools or agencies properly certified by the State of California.
7. Student Records. The Charter School is responsible for obtaining the cumulative files, prior and/or current IEPs and other special education information on any student enrolling from a non-District school. The Charter School shall forward copies of all such information to the District. The District will ensure that the Charter School is provided with notification and relevant files of all students transferring to the Charter School from a District school, who have an existing IEP, in the same manner that ensures the forwarding of such information between District schools. All records and files will be released with the signed permission of the Parent/Guardian.
8. Notice of Procedural Safeguards. The District shall provide the Parent/Guardian with a notice of procedural safeguards when: a Parent/Guardian asks for a copy; the first time a child is referred for special education assessment; each time a child is reassessed; each time a Parent/Guardian requests a due process hearing; and each time a change of

placement is implemented because of a violation of a code of student conduct. (20 U.S.C. § 1415(d)(1)(A); 34 C.F.R. §§ 300.504(a) and 300.530(h); Ed. Code, §§ 56301(d)(2), 56321, 56500.1 and 56502.)

B. Enrollment, Identification and Evaluation

1. Enrollment Information. The Charter School shall include on its enrollment form(s) a question regarding whether the student seeking to enroll in the Charter School is, or may be, a student eligible for special education and related services. The Charter School shall provide the District with a list of special education students enrolled in the Charter School at the beginning of each school year and shall update the list on a quarterly basis.
2. Identification and Referral. The District shall work cooperatively with the Charter School in identifying and referring students who have or may have exceptional needs that qualify them to receive special education services. The District will develop, maintain, and implement policies and procedures to ensure identification and referral of students who have, or may have, such exceptional needs. These policies and procedures will be in accordance with California law and District policy. The Charter School will implement the District's policies and procedures. The District shall provide the Charter School with any assistance that it generally provides its other public schools in the identification and referral processes. A pupil shall be referred for special education instruction and services only after the resources of the regular education program have been considered and, where appropriate, utilized. (Ed. Code, § 56303.)
3. Assessment. District staff shall conduct all necessary special education assessments of Charter School students, including but not limited to initial assessments, annual assessments and triennial assessments, unless the parties agree otherwise in writing. All such assessments will be conducted by qualified personnel and comply with state and federal law and regulations. (20 U.S.C. § 1414(a)-(c); 34 C.F.R. §§ 300.300-305; Ed. Code, § 56320; Cal. Code Regs., tit. 5, § 3023.) Except as provided by state and federal law, the District and the Charter School may not conduct an assessment without first obtaining the written consent of the Parent/Guardian. (20 U.S.C. § 1414(a)(1)(D); 34 C.F.R. § 300.300; Ed Code, § 56321.)

If a Parent/Guardian refuses to consent to an assessment that the District or the Charter School believes is required to provide a Charter School student with FAPE, the Charter School shall immediately notify the District.



The Charter School shall not refer its students for independent educational evaluations without prior written approval of the District.

4. Interim Placement. For students with a current IEP who enroll in the Charter School from a school outside the District, the Charter School and the District shall confer and either implement the student's existing IEP to the extent possible, or otherwise provide the student with an interim placement, not to exceed 30 days, in accordance with all applicable state and federal law. Before the expiration of the 30 day period, the interim placement shall be reviewed by the IEP team and final recommendations made. (Ed. Code, § 56325.)

The Charter School shall notify the District immediately of students who may fall into this category. The District will provide consultative assistance and necessary services to the Charter School to help transition such students.

5. Attendance Monitoring. The Charter School shall monitor attendance for related services on a monthly basis to ensure students are accessing all services outlined in their IEPs.

C. Individualized Education Programs (IEPs)

1. IEP Team Membership. IEP team membership shall be in compliance with state and federal law and shall include a designated representative of the Charter School and a designated representative of the District. (20 U.S.C. § 1414(d)(1)(B); 34 C.F.R. § 300.321; Ed. Code, § 56341(b).)
2. IEP Meetings. Responsibility for arranging and providing notice for all IEP team meetings shall be allocated in accordance with the District's general practice and procedure and applicable law. The Charter School shall be responsible for having the designated representative of the Charter School and other members of the student's IEP team, including at least one general education teacher knowledgeable about the regular education program at the Charter School in attendance at the IEP team meeting. District staff and Charter School staff shall consult as needed and work cooperatively to review individual students' assessment data and progress prior to IEP meetings and discuss how special students' needs may be most effectively met. However the District staff and Charter School shall not predetermine any aspect of the IEP. The Parent/Guardian shall be given a copy of the procedural safeguards upon notice of each IEP meeting. (Ed. Code, § 56341.)
3. IEP Contents. The District and the Charter School shall use the SELPA forms to complete the IEPs. Each IEP must include, but is not limited to: a statement of the child's present levels of educational performance;

measurable annual goals; the special education and related services and supplementary aids and services to be provided to the child; an explanation of the extent, if any, to which a child will not participate with non-disabled children; the dates, frequency, location and duration of services for the child; and a statement of how the child's progress toward his or her annual goals will be measured. (20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. § 300.320; Ed. Code, § 56345.)

4. Parental Consent to the IEP. The Parties may not implement an IEP to which a Parent/Guardian does not provide written consent. If a Parent/Guardian consents to only part of an IEP, the District and the Charter School must implement the portion of the IEP to which the Parent/Guardian consented. (Ed. Code, § 56346(e).) Notification of the other party is required any time a Parent/Guardian refuses to consent to any portion of an IEP. Anytime a Parent/Guardian refuses to consent to any portion of an IEP that the Charter School believes is required to provide a student with FAPE, the Charter School must notify the District.

D. Program and Services

1. Eligibility and Placement. Decisions regarding eligibility, goals/objectives, program, placement and exit from special education shall be the decision of the IEP team. Services and placements shall be provided to all eligible Charter School students in accordance with the policies, procedures and requirements of the District, the SELPA and applicable law. Whenever the Charter School takes, proposes or refuses to initiate or change the identification, evaluation or educational placement of a Charter School student, the Charter School must, in consultation with the District, provide the Parent/Guardian with prior written notice of such action. (34 C.F.R. § 300.503.)

In the event that either party believes that placement in a District program is necessary to provide a student with FAPE, such placement shall only be made by an IEP team comprised of representatives of the Charter School and the District.

2. Independent Study. No Charter School student eligible for special education and related services may participate in independent study, unless his or her IEP provides for such participation. The determination regarding the appropriateness of independent study for a particular student shall be made by the IEP team. (Ed. Code, § 51745(c).)
3. Referral to Nonpublic or Private Schools. The Charter School shall not make referrals for placement at nonpublic schools, private schools or residential placements without consultation with and prior written approval of the District. However, the decision to refer a student to a

nonpublic or private school shall be an IEP team decision. If a parent unilaterally places a student at a nonpublic school, private school or in a residential placement, the Charter School shall immediately notify the District upon learning such information.

4. Transition Services. The District and the Charter School shall jointly ensure the provision of appropriate transition services to Charter School students in the same manner they are provided to other eligible students in the District. (20 U.S.C. § 1414(d)(1)(A)(viii); 34 C.F.R. §§ 300.43 and 300.320; Ed. Code, § 56345.1.) Transition services shall be provided in conformity with applicable state and federal law. Transition services will be addressed in each charter school student's IEP no later than age 16.
5. Transportation. The District shall provide transportation to any Charter School student, if required by that student's IEP. The Charter School shall not provide special education transportation to its students, unless the Parties agree otherwise. The Charter School shall pay the Special Education Transportation Encroachment to the District as set forth in Appendix A, per student transported, as calculated in paragraph VII(B), above. All special education transportation shall be provided in the same manner it is provided to other eligible students in the District.

## **IX. DISCIPLINE OF SPECIAL EDUCATION STUDENTS**

- A. Suspension and Expulsion. The Charter School shall have discipline policies that comply with all applicable portions of the California Education Code and Federal Code of Regulations, title 34 section 300.530, *et seq.* The Charter School shall provide a copy of such policies to the District. These include, but are not limited to policies regarding suspension, expulsion, conducting functional analysis assessments, drafting and reviewing behavior interventions plans, and conducting manifestation determination reviews. If a Charter School student is suspended for more than 10 days in any school year and/or commits an expellable offense, the Charter School shall immediately notify the District and the District shall provide necessary assistance to support the discipline process, including, but not limited to, manifest determination reviews.

## **X. COMPLAINTS AND DISPUTE RESOLUTION**

- A. Parent Concerns. The Charter School shall instruct Parents/Guardians to raise concerns regarding special education services, related services and rights to District and/or Charter School staff. Whenever a Parent/Guardian raises a concern regarding special education and/or related services, the Charter School shall immediately inform the District. The District representative in consultation with the Charter School's designated representative shall respond to and address the Parent/Guardian concerns.

- B. Complaints. In consultation with the Charter School, the District shall address/respond/investigate all complaints received under the Uniform Complaint procedure involving special education. The Charter School shall cooperate fully with reasonable requests from the District for information and documentation related to such complaints.
  
- C. Due Process Hearings. In consultation with the Charter School, the District may initiate a due process hearing related to the provision of FAPE to a Charter School student, if the District determines it is legally necessary to meet the District's responsibilities under federal and state law.

The District and the Charter School shall work together to defend any due process hearing brought by a student enrolled in the Charter School. If such hearing arises out of or results from the Charter School's negligent or wrongful acts or omissions in the performance of this Agreement, the Charter School shall indemnify the District to the fullest extent pursuant to Section XIII of this Agreement. If such hearing arises out of or results from the District's negligent or wrongful acts or omissions in the performance of this Agreement, the District shall indemnify the Charter School to the fullest extent pursuant to Section XIII of this Agreement. In the event that the District determines that legal counsel representation is needed, the District/Charter School shall be jointly represented by legal counsel, selected by the District, unless there is a conflict of interest.

The Charter School and District shall cooperate fully with reasonable requests from one-another for information and documentation related to due process hearings in which the District and/or the Charter School is a party.

## **XI. SELPA ACTIVITIES**

The District Superintendent or designee shall represent the Charter School at all SELPA activities as it represents the need of all schools in the District. Reports to the Charter School regarding SELPA decisions, policies, etc. shall be communicated to the Charter school as they are to all other schools within the District. To the extent that District staff has the opportunity to participate in committee meetings of the SELPA as representatives of their District, such opportunities shall be made available to Charter School staff.

## **XII. COST CONTAINMENT EFFORTS**

Charter School and District acknowledge the importance of containing the costs of providing special education services to individual students so that these costs do not exceed the amount the District would normally expend if the student being served were attending a District school. Accordingly, Charter School agrees to fully cooperate with the District in order to achieve cost efficiencies to the extent expected of and practiced by other schools in the SELPA and SELPAs serving similar student populations.

### **XIII. INDEMNIFICATION, INSURANCE AND RISK MANAGEMENT**

The Non-Profit shall comply with its obligations under the indemnification, insurance, and risk management terms set forth in the Operational Memorandum of Understanding between the Sacramento Unified School District and Yav Pem Suab Academy dated \_\_\_\_\_, which terms are incorporated as if fully set forth herein.

### **XIV. MISCELLANEOUS PROVISIONS**

- A. Venue. The validity of this Agreement and any of its terms or provisions as well as the rights and duties of the parties shall be governed by the laws of the state of California, and venue shall lie only in Sacramento County Superior Court.
- B. Modifications. No modifications, amendments, changes, or variations or any kind to this Agreement are authorized without written consent, evidenced by execution of an amendment by an authorized representative of each Party.
- C. Interpretation. The language herein shall be construed as jointly proposed and jointly accepted, and in the event of any subsequent determination of ambiguity, all Parties shall be treated as equally responsible for such ambiguity.
- D. Integrated Agreement. This Agreement, together with the Operational Memorandum of Understanding, is intended by the Parties as the final expression of their agreement with respect to such terms as are included herein and as the complete and exclusive statement of its terms and may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement, nor explained or supplemented by evidence of consistent additional terms. Each of the Parties acknowledges that no one has made any promise, representation or warranty whatsoever, express or implied, written or oral, not contained herein to induce them to execute this Agreement, and that this Agreement is not executed in reliance upon any such promise, representation or warranty.
- E. Non-Assignability. This Agreement may not be assigned by the Parties.
- F. Binding Effect. This Agreement is binding upon the successors and assigns of the parties, subject to the non-assignability restrictions set forth in subsection E above.
- G. Survival of Covenants. Notwithstanding termination of the Agreement, the indemnification provisions set forth in the Operational Memorandum of Understanding shall survive and be fully enforceable notwithstanding the termination date of the Agreement.
- H. Notices. All notices required by this Agreement may be sent by United States mail; postage pre-paid, to the Parties as follows:

To the District at:

Sacramento City Unified School District  
5735 47th Ave.  
Sacramento, CA 95824  
Attn: José L. Banda, Superintendent  
Facsimile: (916) 399-2058

To the Non-Profit and the Charter School at:

Yav Pem Suab Academy  
7555 South Land Park Drive  
Sacramento, CA 95831  
Attn: Dennis M. Mah, Superintendent  
Facsimile: (916) 433-5289

Any notices required by this Agreement sent by facsimile transmission or electronic mail to the facsimile and electronic mail addresses above shall be considered received on the business day they are sent, provided they are sent during in the receiving party’s business hours and provided receipt is confirmed by telephone, facsimile, or electronic mail, and further provided the original is promptly placed into the United States mail, postage pre-paid, and addressed as indicated above.

- I. Warranty. Each person below warrants and guarantees that s/he is legally authorized to execute this Agreement on behalf of the designated entity and that such execution shall bind the designated entity to the terms of this Agreement.
- J. Counterparts. This Agreement may be signed in counterpart such that the signatures may appear on separate signature pages. Facsimile or photocopy signatures shall have the same force and effect as original signatures.
- K. Ratification. This Agreement shall not be effective until the District’s governing board has ratified this Agreement.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Dennis M. Mah  
Superintendent  
Urban Charter Schools Collective

Dated: \_\_\_\_\_

\_\_\_\_\_  
José L. Banda  
Superintendent  
Sacramento City Unified School District

## FACILITIES USE AGREEMENT

This Facilities Use Agreement (“Freeport Agreement”) is made by and between Sacramento City Unified School District (“District”) and Capitol Collegiate Academy, a California non-profit public benefit corporation (“Non-Profit”), which operates Capitol Collegiate Academy Charter School, a charter school (“Charter School”). The Non-Profit and District are collectively referred to as the “Parties.”

### RECITALS

- A. WHEREAS, the District and its charter schools are partners in the public education of students and it is the District’s intent to ensure that its facilities are shared equally with all of its students, including those students who attend its charter schools housed in District facilities.
- B. WHEREAS, the District is the owner of real property located at 2118 Meadowview Road, Sacramento, CA 95832 (“Freeport Site”).
- C. WHEREAS, Charter School is a charter school duly formed and approved by the District under the laws of the Charter Schools Act of 1992 (Education Code §§ 47600, *et seq.*) serving students in grades Kindergarten through 4th grade in the 2015-2016 school year, and eventually Kindergarten through 6th grade in the 2017-2018 school year, as the Charter School rolls out a new grade level each school year.
- D. WHEREAS, Non-Profit desired to use certain District facilities for the Charter School and its public charter school program.
- E. WHEREAS, the Parties intend this Agreement to satisfy their obligations under Education Code Section 47614 and Title 5 of the California Code of Regulations Section 11969, *et seq.*, adopted by the State Board of Education (“Proposition 39”), which among other things require a written agreement regarding the allocation of facilities under Proposition 39, for the 2015-2016, 2016-2017, and 2017-2018 school years.

### AGREEMENT

NOW THEREFORE, in consideration of the covenants and conditions of this Freeport Agreement, the Parties hereby agree as follows. All obligations imposed hereby on the Charter School are equally imposed on the Non-Profit, and vice-versa.

1. Recitals.

The recitals set forth above are incorporated herein and made part of this Freeport Agreement.

2. Facilities.

The District grants use of portions of the Freeport Site (“Facilities”) for specified school years as described and/or depicted in Exhibits A and B, which are attached hereto and incorporated herein by reference, to the Charter School under the terms and conditions set forth in this Freeport Agreement. The intent of the Parties is to increase the type and space of the Facilities in the second, third and fourth years of this Freeport Agreement, as the Charter School rolls out grade levels to be served at the Charter School. Use of the Facilities shall be for the purposes set forth in the Charter School’s charter and on the terms and conditions set forth herein. The Charter School shall not have exclusive use of the Freeport Site.

3. Term of this Freeport Agreement.

The term of this Freeport Agreement shall be from July 1, 2015, to June 30, 2018 (“Term”), unless earlier terminated as provided herein.

4. Facilities Use Fee.

Each and every school year, Non-Profit shall pay District fees for use of the Facilities (“Facilities Use Fees”). Facilities Use Fees shall be paid out in equal installments each month throughout the respective school year within the Term. Beginning on July 1, 2015, payments shall be payable on or in advance on the first day of each month (“Due Date”) in lawful money of the United States.

The calculation for the 2015-2016 school year, and terms of Facilities Use Fee payments, are further described with more particularity in Exhibit C, attached hereto and incorporated herein. These fees will be calculated and adjusted annually by the District. The Facility Use Fee shall be based on a pro rata cost estimate per square foot for the Facilities provided. The dollar amount to be paid by Non-Profit, per square foot, for use of the Facilities during the Term will be calculated by the District pursuant to Title 5, California Code of Regulations, section 11969.7. To calculate the fee, the District must determine actual facilities costs and total space figures in the year preceding the fiscal year in which the Facilities are provided. Such amounts may only become available to the District after each fiscal year ends. Therefore, within ninety (90) days of the beginning of each fiscal year, or as soon as the actual facilities costs and total space figures for the prior fiscal year become available, whichever is later, the District shall provide notice to the Non-Profit of any amended Facilities Use Fee calculations based on the actual data for the prior fiscal year. Amounts owed to or by the Non-Profit due to this calculation will be credited or added to subsequent remaining monthly installment payments of the Facilities Use Fees.

If any payment is made more than fifteen (15) days after the Due Date, a late fee of one percent (1%) shall apply and interest shall accrue thereafter on such late payment commencing thirty (30) days after the Due Date, provided however that no interest shall



accrue on said late fee. The interest charged shall be computed at the then-current discount rate established by the Federal Reserve Bank of San Francisco plus five percent (5%), or the maximum rate permitted by law. The payment by Non-Profit of any late fees or interest shall in no event excuse or cure any default by Non-Profit nor waive District's legal rights and remedies with respect to such default.

The Parties agree that the Facilities Use Fee is in lieu of Non-Profit paying a pro rata share for in-district students and any actual costs for out-of-district students.

5. Over-Allocation.

The District reserves the right to collect over-allocation and other applicable fees and reimbursements from the Charter School, pursuant to Title 5, California Code of Regulations, Section 11969.8. The Charter School's projected in-District Average Daily Attendance ("ADA") for the 2015-2016 school year, and upon which the Facilities are provided, is 212.22; for the 2016-2017 school year, 251.91; and for the 2017-2018 school year, 290.79.

6. Dispute Resolution.

The Parties agree to attempt to resolve all disputes regarding this Freeport Agreement, including the alleged violation, misinterpretation, or misapplication of the Freeport Agreement, pursuant to the dispute resolution procedures identified in the Charter School's charter. Notwithstanding the foregoing, those disputes that may result in revocation of Charter School's charter, pursuant to Education Code section 47607, are not required to go through the dispute resolution process.

7. Use.

(a) Public Charter School. The Facilities shall be used and occupied by the Charter School for the sole purpose of operating a California public charter school and for no other purpose without the prior written consent of the District. The Charter School's enrollment must not exceed the safe and legal limit for the classroom space it occupies.

(b) Insurance Risk. The District shall maintain first party property insurance for the Facilities. The Charter School shall not do or permit anything to be done in or about the Facilities nor bring or keep anything therein which will in any way increase the existing insurance rate or affect any fire or other insurance upon the Facilities, or any of the contents of the Facilities (unless the District gives its prior approval and the Charter School pays any increased premium as a result of such use or acts), or cause a cancellation of any insurance policy covering the Facilities or any part thereof or any of its contents, nor shall the Charter School sell or permit to be kept, used, or sold in or about the Facilities any articles which may be prohibited by a standard form policy of fire insurance. The Charter School shall provide adequate and appropriate supervision for Charter School students and employees using the Facilities.

(c) Rights of the District. The Charter School shall not do or permit anything to be done in or about the Facilities that will in any way obstruct or interfere with the rights of the District or injure the District or use or allow the Facilities to be used for any unlawful purpose, nor shall the Charter School cause, maintain or permit any nuisance in or about the Facilities. The Charter School shall not commit or suffer to be committed any waste in or upon the Facilities.

(d) Illegal Uses. The Charter School shall not use the Facilities or permit anything to be done in or about the Facilities that will in any way conflict with any applicable law, statute, ordinance or governmental rule, or regulation. The Charter School agrees to comply with its charter as it relates to District Facilities.

(e) Security Badges. The Charter School will provide security badges for its staff. The badges will be pictured with school name, staff names, and titles. The Charter School staff shall wear these badges to use as evidence that they are lawfully on the premises.

(f) Civic Center Act. The Charter School agrees to comply with the provisions of the Civic Center Act (Education Code Section 38131, *et seq.*) in making use of the Facilities accessible to members of the community. The Parties understand that the Facilities are to be primarily used for school programs and activities and as such any use of the Facilities by members of the community shall not interfere with school activities. District Board Policy and Administrative Regulations related to the Civic Center Act shall control scheduling, use and collection of fees related to use of the Facilities by members of the public. Consistent with that policy and the regulations, the District shall be solely responsible for coordinating access to the Facilities under the Civic Center Act and shall require users to provide appropriate proof of insurance related to use of the Facilities and to indemnify and hold harmless the District and Charter School for injury, risk of loss, or damage to property as a result of that access by members of the community. The District agrees to promptly clean and repair, if necessary, any portion of the Facilities used by members of the community immediately following such use. All requests for use of the Facilities made directly to the Charter School shall be forwarded to the District for coordination of use consistent with Board Policy and Administrative Regulations. The Charter School's scheduled reasonable use of the Freeport Site shall take priority over any requested Civic Center Act, joint-use agreement, or recreational program use. The District shall confirm whether the Charter School has scheduled any use of the Site prior to scheduling any such use.

(g) Alarms. The Charter School shall have access to activate burglar alarms and intruder alerts corresponding to the Facilities provided at the Freeport Site. The Charter School agrees that in the event that any of Charter School's employees, directors, trustees, officers, agents, students, visitors, or contractors, trigger a false alarm at the Freeport Site, Charter School shall be responsible for costs incurred.

8. Furnishings and Equipment.

The furnishings and equipment to be provided by the District for the Facilities are those furnishings and equipment that exist at the Facilities as of July 1, 2015, and shall be sufficient to conduct classroom instruction, and to provide for student services that directly support classroom instruction, as found in the comparison group schools. Said furnishings and equipment will include sufficient desks, chairs, and a white board for each classroom.

The Charter School is responsible for any furnishings and equipment over and above those provided by the District. The Charter School shall return all such furniture, fixtures and equipment to the District in like condition at the termination of this Freeport Agreement, excepting ordinary wear and tear. Upon return of the furniture, fixtures, and equipment, the District will inspect said items within sixty (60) calendar days. The Charter School shall be responsible for costs to repair or replace furniture, fixtures, and equipment to like condition, excepting ordinary wear and tear. All furniture, fixtures, and equipment that are not the property of the District or are not otherwise reimbursed by the District shall remain the property and under the ownership of Charter School and shall be disposed of according to the provisions of the approved Charter petition.

9. Utilities.

District agrees to furnish or cause to be furnished to the Facilities necessary utilities. Utilities include, but are not limited to, are electrical, natural gas, sewer, waste disposal/recycling and water services. Due to cost containment efforts by the District, the number of bins associated with the Freeport Site, the bin capacities and the number of removals per week shall not increase during the Term. The District's failure to furnish or cause to be furnished necessary utilities when such failure is caused by (i) Acts of God or other acts beyond the control or fault of the District; (ii) strikes, lockouts, or other labor disturbances or labor disputes of any kind; (iii) any laws, rules, orders, ordinances, directions, regulations, requirements, or any other action by federal, state, county or municipal authority; (iv) inability despite the exercise of reasonable diligence by the District to obtain electricity, water, or fuel; or (v) any other unavoidable delay, shall not cause the District to be in default and shall not result in any liability of the District.

The Charter School shall reimburse the District for the cost of utilities at the Freeport Site, as charged to the District by its utility providers, pro-rated to reflect use by other users of the Freeport Site. Thirty (30) days prior to the commencement of the 2015-2016 school year, the District shall endeavor to notify the Charter School of its estimated monthly charge for utilities. The Charter School shall pay such charge to the District throughout the Term on a monthly basis concurrent with the Charter School's payment of the Facilities Use Fee to the District pursuant to Section 4 of this Freeport Agreement. Within one hundred twenty (120) days after the expiration or earlier termination of this Freeport Agreement, the District shall provide the Charter School with a reconciliation of the Charter School's actual utility usage throughout the Term and the cost thereof. The

District shall either refund the Charter School for any overpayment or shall invoice the Charter School for any underpayment. The Charter School shall reimburse the District for such underpayment, if any, within thirty (30) days after receipt of said invoice.

The Charter School shall comply with all District energy conservation policies in regard to use of the Facilities, as amended from time to time, including, but not limited to, Board Policy 3511 and the District's Energy Education program.

10. Proposition 39/Conditions Reasonably Equivalent.

(a) Charter School acknowledges by execution of the Freeport Agreement that the Facilities provided by the Freeport Agreement are "reasonably equivalent," as that term is defined by Proposition 39. Charter School agrees that upon execution of this Freeport Agreement, all obligations of the District to the Charter School under Proposition 39 have been satisfied for the Term of this Freeport Agreement.

(b) Charter School acknowledges and agrees that neither the District nor any of its agents have made, and the District hereby disclaims any representations or warranties, express or implied, concerning the premises, the physical or environmental condition of the premises or any other property beneath, adjacent to, or otherwise related to the premises.

11. Custodial Services.

Custodial services shall be provided pursuant to the terms and conditions as defined in Exhibit D, and Charter School shall pay for such services in addition to any other fees or payments required by this Freeport Agreement. The District will not provide gardening services.

12. Signage.

The Charter School shall be allowed to place signage on the exterior of the Facilities. The District will keep its own signage exhibited at the Freeport Site, identifying the school as operated or formerly operated by the District. The District shall have final approval over the design, content and location of the Charter School's signage, but shall not unreasonably deny such design, content or location. The Charter School must remove the signage upon termination of this Freeport Agreement. The Charter School must restore the Facilities, following removal of the signage, to the condition existing prior to installation of the signage to District's reasonable satisfaction. All such signage shall be subject to compliance with all applicable laws at Charter School's sole cost.

13. Operations and Maintenance.

(a) The District shall maintain the Facilities, furnishings and equipment, in good order, condition, and repair. The Non-Profit will reimburse the District for the costs, including time, labor and materials, to maintain the Facilities in good order, condition and repair.

Said costs to the Non-Profit will be the sum total of: 1) The Facilities Use Fee of Section 4 and Exhibit C of the Agreement; and, 2) the costs of custodial services per Section 11 and Exhibit D of the Agreement. The District will invoice the Non-Profit quarterly for these actual costs of the District employed custodian assigned to the Site, and the Non-Profit will pay said invoices within thirty (30) days of receipt.

The District shall be responsible for providing the wiring/MIS infrastructure for Charter School's use and maintaining it in its condition as of July 1, 2012. In addition, any upgrades or improvements to the wiring/MIS infrastructure shall be the responsibility of the Charter School, in compliance with Section 14 ("Alterations and Additions"), and the Charter School is responsible for the cost of internet service provided at the commercial rate.

(b) The District shall be responsible for any modifications necessary to maintain the Facility in accordance with Education Code Sections 47610(d) or 47610.5. Projects eligible to be included in the District's deferred maintenance plan established pursuant to Education Code Section 17582 and the replacement of furnishings and equipment supplied by the District in accordance with the District's schedules and practices shall remain the responsibility of the District. The Charter School shall comply with the District's policies regarding the operations and maintenance of the school facility and furnishings and equipment, except to the extent renovation is approved by the District. However, the Charter School need not comply with policies in cases where actual District practice substantially differs from official policies.

(c) Upon the expiration or earlier termination of this Freeport Agreement, Charter School shall surrender the Facilities and furnishings and equipment in the same condition as received, ordinary wear and tear excepted.

14. Alterations and Additions.

The Charter School shall only make alterations, additions, or improvements ("Improvements") to the Facilities after obtaining the prior written consent of the District's Superintendent or his designee. Any Improvements to the Facilities made by the Charter School shall be paid for by the Charter School, and shall be contracted for and performed in accordance with all applicable building code standards, including Title 24 of the California Code of Regulations, the Field Act, Americans with Disabilities Act and the Fair Employment and Housing Act.

The District may impose as a condition to the aforesaid consent to such requirements as the District may deem necessary in its sole discretion, including without limitation, the manner in which the work is done, a right of approval of the contractor by whom the work is to be performed, and the times during which it is to be accomplished.

Upon written reasonable request of the District prior to the expiration or earlier termination of the Freeport Agreement, Charter School will remove any and all improvements to the Facilities, at its own cost, that can be done without damage to the Facilities. In the event of charter termination or closure of the Charter School, all property shall be disposed of in accordance with the provision of the approved Charter School's petition. Unless the Parties agree otherwise in writing on an item by item basis, Charter School maintains its ownership rights in any alterations, additions or improvements and may be allowed to remove at termination of this Freeport Agreement and restore the Facilities to the condition existing prior to alteration, addition or improvement. Notwithstanding the foregoing, any addition to the Facilities that the Charter School does not remove prior to vacating the Facilities, shall vest in the District.

15. Entry by District.

The District may enter the facility at any time to inspect the Facilities, to supply any service to be provided by the District to the Charter School hereunder and to alter, improve or repair the Facilities, or in the case of an emergency, consistent with Education Code Section 47607(a)(1). The District may erect scaffolding and other necessary structures where reasonably required by the character of the work to be performed so long as the Charter School operations do not suffer unreasonable interference. The District agrees to use its best efforts at all times to keep any interference to the academic programs at Charter School to a minimum. The Charter School waives any claim for damages for any inconvenience to or interference with the Charter School's business, any loss or use of quiet enjoyment of the Facilities related to District's entry for the purposes identified in this Section.

16. Employees, Contractors and Independent Contractors.

The Charter School and the District, their employees, agents, contractors and subcontractors shall comply with the requirements of Education Code Sections 45125.1 and 45125.2 related to access to the Facilities and protection of minor students.

17. Indemnity.

The Charter School shall indemnify, hold harmless, and defend the District, its Board of Trustees, the members of its Board of Trustees, officers, employees and agents against and from any and all claims, demands, actions, suits, losses, liabilities, expenses and costs for any injury, death or damage to any person or property arising from the Charter School's use of the Facilities, excepting those claims, demands, actions, suits, losses, liabilities, expenses and costs arising from the negligent or intentional acts of the District, its employees, agents, officers and invitees.

The Charter School shall further indemnify, hold harmless, and defend the District, its Board of Trustees, the members of its Board of Trustees, officers, employees and agents against and from any and all claims arising from any breach or default in the performance

of any obligation on the Charter School's part to be performed under the terms of this Freeport Agreement, and from all costs, attorneys' fees, and liabilities incurred in or about the defense of any such claim or any action or proceeding brought thereon.

The District shall indemnify, hold harmless, and defend the Charter School, its trustees, officers, and agents against and from any and all claims, demands, actions, suits, losses, liabilities, expenses and costs for any injury, death or damage to any person or property arising from the District's conduct of business at the Facilities, excepting those claims, demands, actions, suits, losses, liabilities, expenses and costs arising from the negligent or intentional acts of the Charter School, its employees, agents, officers and invitees.

The District shall further indemnify, hold harmless, and defend the Charter School against and from any and all claims arising from any breach or default in the performance of any obligation on the District's part to be performed under the terms of this Freeport Agreement, and from all costs, attorneys' fees, and liabilities incurred in or about the defense of any such claim or any action or proceeding brought thereon.

Upon becoming aware of any casualty or accident in or on the Facilities, each Party to this Freeport Agreement shall give prompt written notice thereof to the other Party.

In the event of a third party claim or potential claim covered by these provisions, the Parties agree to take all steps reasonable or necessary to cooperate in defending and protecting their joint interests, and in expediting all reasonable or necessary efforts to gain coverage for the Parties under any liability policy or indemnity agreement issued in favor of the Non-Profit, including indemnity rights or agreements existing in contracts between the Non-Profit and any third party (such as contract with a supplier of goods or services), and further including efforts to reduce defense costs (through joint representation whenever possible), expenses and potential liability exposures.

18. Insurance.

The Charter School shall comply with insurance provisions contained within its charter and any Memoranda Of Understanding between the Parties.

19. Damage to or Destruction of School Site.

(a) Cost. The cost of restoring the Facilities under this Section shall be borne by the Charter School if the cause of the casualty is the negligence or intentional act of the Charter School, its employees, agents, students or invitees. The cost of restoring the Facilities under this Section shall be borne by the District if the cause of the casualty is the negligence or intentional act of the District, its employees, agents, or invitees. The Parties shall tender the cost of restoring the Facilities to their respective insurance carriers if the casualty is caused by a third party.

(b) Partial Damage – Insured. If the Facilities are damaged by any casualty which is covered under fire and extended coverage insurance carried by District, then District may restore such damage provided insurance proceeds are available to pay eighty percent (80%) or more of the cost of restoration and provided such restoration can be completed within ninety (90) days after the commencement of the work in the opinion of a registered architect or engineer appointed by District. In such event this Freeport Agreement shall continue in full force and effect, except that Charter School shall be entitled to proportionate reduction of use payments while such restoration takes place, such proportionate reduction to be based upon the extent to which the restoration efforts interfere with Charter School’s business in the Facilities. The District shall provide the Charter School alternative space in the District for any part of the Charter School program that is displaced by the partial damage and/or the repair work of the same. If the Charter School secures alternative space then there shall be no diminution in the use payments during the period of the restoration.

(c) Total Destruction. If the Facilities are totally destroyed (defined as the destruction of more than fifty percent (50%) of the usable classroom space) or the Facilities cannot be restored as required herein under applicable laws and regulations, notwithstanding the availability of insurance proceeds, then this Freeport Agreement shall be terminated effective the date of the damage. Immediately upon the effective date of the damage, the District must provide a reasonably equivalent school facility to the Charter School as soon as reasonable so as to avoid any interruption in the educational program of the Charter School.

20. Liens.

Charter School shall keep the Facilities free from any liens arising out of any work performed, materials furnished or obligations incurred by or on behalf of Charter School. Notwithstanding anything stated herein to the contrary, if Charter School fails to promptly release and remove any such lien, District, at its sole option, may immediately (but shall not be obligated to) take all action necessary to release and remove such lien, without any duty to investigate the validity thereof, and all sums, costs and expenses, including reasonable attorneys’ fees and costs, incurred by District in connection with such lien shall be immediately due and payable by Charter School.

21. Holding Over.

Charter School shall not remain in possession of the Facilities or any part thereof after the expiration of this Freeport Agreement or after termination thereof without the express written consent of District. Notwithstanding the foregoing, if the Charter School holds over, the Charter School shall pay the monthly Facilities Use Fee plus all other charges payable required by this Freeport Agreement. Any holdover by Charter School requires the Charter School to comply with all terms of this Freeport Agreement. A holdover by the Charter School shall not trigger any additional term. The District shall have the right



to remove the Charter School at any time after the expiration of the Term or termination of this Freeport Agreement.

22. Assignment and Subletting.

The Charter School may not assign its rights under this Freeport Agreement or sublet any portion of the Facilities without the prior written consent of the District.

23. Rules, Regulations and Law.

The Charter School and the Charter School's agents, employees, students, visitors and invitees shall observe and comply fully and faithfully with all reasonable and nondiscriminatory policies, rules, and regulations adopted by the District for the care, protection, cleanliness, and operation of the Facilities, and the Facilities' furnishings and equipment, and shall comply with all applicable laws.

24. Smoking.

Smoking or the consumption of alcohol in any form shall not be allowed in or on District property and Facilities, including but not limited to all courtyards, walkways, and parking areas.

25. Default by Charter School.

The occurrence of any one or more of the following events shall constitute a default and material breach of this Freeport Agreement by Charter School:

(a) The failure by Charter School to utilize the Facilities for the sole purpose of operating a charter school.

(b) The failure by Charter School to make timely payments required under this Freeport Agreement.

(c) The failure by Charter School to observe or perform any of the express covenants, conditions or provisions of this Freeport Agreement.

(d) The revocation or non-renewal of the Charter School's charter. Notwithstanding the foregoing, this Freeport Agreement shall not be terminated pursuant to this provision provided that the Charter School continues to operate in accordance with the terms of this Freeport Agreement and is diligently pursuing a statutory appeal of the revocation or nonrenewal of its charter.

(e) The failure by Charter School to maintain ADA at a level that would avoid over-allocation of space under Title 5, California Code of Regulations, Section 11969.8.

In the event of any material default or breach by Charter School, District may, but shall not be obligated to, terminate this Freeport Agreement and Charter School's right to possession of the Facilities upon thirty (30) days written notice thereof to the Charter School if the default is not cured within the thirty (30) day period. If the nature of the default is such that the same cannot reasonably be cured within said thirty (30) day period, the Charter School shall not be in default if Charter School shall within such thirty (30) day period commence such cure and thereafter, diligently prosecute the same to completion. In no event shall such period to cure exceed sixty (60) days. Upon termination, District shall retain the right to recover from Charter School, without limitation, any amounts due under this Freeport Agreement or applicable law. Unpaid Facilities Use Fees shall bear interest from the date due at the maximum legal rate. In the event of termination by the District by reason of Charter School's default or breach of this Freeport Agreement, the District shall not be obligated to provide facilities to Charter School pursuant to Proposition 39 for the remainder of that school year.

26. Default by District.

District shall be in default of this Freeport Agreement if District fails to perform any material obligation required by this Freeport Agreement. In the event of any default by District, Charter School may terminate this Freeport Agreement upon thirty (30) days written notice thereof to the District if the District has failed to cure the default within thirty (30) days, unless the nature of the default is such that the same cannot reasonably be cured within said thirty (30) day period, in which event District shall not be in default (and Charter School may not terminate this Freeport Agreement) if District commences to cure such default within such thirty (30) day period and thereafter, diligently prosecutes the same to completion.

27. Miscellaneous.

(a) Waiver. The waiver by either Party of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of any charge hereunder by District or payment of any charge by Charter School shall not be deemed to be a waiver of any preceding default by Charter School or District of any term, covenant or condition of this Freeport Agreement, other than the failure of the Charter School to pay the particular charge so accepted, regardless of District's knowledge of such preceding default at the time of the acceptance of such charge.

(b) Marginal Headings. The marginal headings and article titles to the articles of this Freeport Agreement are not a part of the Freeport Agreement and shall have no effect upon the construction or interpretation of any part hereof.

(c) Successors and Assigns. The covenants and conditions herein contained, subject to the provisions as to assignment, apply and bind the heirs, successors, executors, administrators and assigns of the Parties hereto.

(d) Amendment. No provision of this Freeport Agreement may be amended or modified except by an agreement in writing signed by the Parties hereto.

(e) Construction. Each of the Parties acknowledges and agrees that this Freeport Agreement is to be construed as a whole according to its fair meaning and not in favor of nor against any of the Parties as draftsman or otherwise.

(f) Venue. Any action or proceeding by any Party to enforce the terms of this Freeport Agreement shall be brought solely in the Superior Court of the State of California for the County of Sacramento.

(g) Applicable Law. This Freeport Agreement shall be governed by and interpreted under the laws of the State of California applicable to instruments, persons, transactions and subject matter that have legal contacts and relationships exclusively within the State of California.

(h) Severability. If any provision or any part of this Freeport Agreement is for any reason held to be invalid, unenforceable or contrary to public policy, law, or statute and/or ordinance, the remainder of this Freeport Agreement shall not be affected thereby and shall remain valid and fully enforceable.

(i) Prevailing Authority. In the event of a conflict between the law and the terms of this Freeport Agreement, the law shall prevail, and any such conflicting terms shall be severed from this Freeport Agreement and nullified. In the event of a conflict between the terms of the charter and the terms of this Freeport Agreement, the terms of this Freeport Agreement shall prevail and shall be deemed an amendment to the charter, replacing any conflicting terms therein. In the event of a conflict between the terms of the charter and any other agreement between the Charter School and the District, the terms of this Freeport Agreement shall prevail and shall be deemed an amendment to any other such agreement, replacing any conflicting terms therein.

(j) No Admission. Except as expressly agreed herein, nothing contained herein shall constitute an admission of fact or law.

(k) Binding Obligation. If and to the extent that the Charter School is a separate legal entity from the District, the Charter School expressly agrees that this Freeport Agreement is a binding obligation on the Charter School and the District agrees that this Freeport Agreement is a binding obligation on the District.

(l) Prior Agreements. This Freeport Agreement contains all of the agreements of the Parties hereto with respect to any matter covered or mentioned in this Freeport Agreement, and no prior agreements or understanding pertaining to any such matters shall be effective for any purpose.

(m) Subject to Approval by Governing Board. This Freeport Agreement shall become effective upon ratification by the District's Governing Board.

(n) Notices. All notices and demands that may be or are to be required or permitted to be given by either Party to the other hereunder shall be in writing. All notices and demands by the District to Non-Profit or Charter School shall be sent by United States Mail, postage prepaid, addressed to Non-Profit or Charter School at the address set forth below. All notices and demands by the Charter School to the District shall be sent by United States Mail, postage prepaid, addressed to the District at the address set forth below.

To District:

Sacramento City Unified School District  
Attn: Jose L. Banda  
5735 47th Avenue  
Sacramento, CA 95824

To Non-Profit or Charter School:

Attn: Cristin Fiorelli  
Capitol Collegiate Academy  
2118 Meadowview Road  
Sacramento, CA 95832

(o) Execution in Counterparts. This Freeport Agreement may be executed in counterparts, each of which shall constitute an original of the Freeport Agreement. Signatures transmitted via facsimile or portable document format ("pdf") to other Parties to this Freeport Agreement shall be deemed equivalent to original signatures on counterparts.

(p) Warranty of Authority. Each of the persons signing this Freeport Agreement represents and warrants that such person has been duly authorized to sign this Freeport Agreement on behalf of the Party indicated, and each of the Parties by signing this Freeport Agreement warrants and represents that such Party is legally authorized and entitled to enter into this Freeport Agreement.

Non-Profit and Charter School

District

By: \_\_\_\_\_  
Cristin Fiorelli  
Head of School

By: \_\_\_\_\_  
Jose L. Banda  
Superintendent

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved and ratified this \_\_\_\_ day of \_\_\_\_\_, 2015, by the Board of Education of the Sacramento City Unified School District by the following vote:

AYES:

NOES:

Abstentions:

\_\_\_\_\_  
Secretary to the Board of Education

## **Exhibit A –Facilities**

Per the spreadsheet, the total square footage of the Facilities for the Charter School’s use will be as follows: 2015-2016 through 2017-2018 = 32,888 total square feet.

School Name: Freeport Elementary School  
 School Code: 114  
 Site Area: 10.46 Acres  
 Year Built: 1954  
 Year Modernized: 1999  
 A.P.N. 052-0100-004

Bldg/Room Code	Bldg/Room No.	Classroom No.	Room Use	Area	Year Built/ Modernized	DSA #	Comments	Charter Only	Vacant
<b>PERMANENT BUILDINGS</b>									
<b>Bldg. 001</b>	<b>C</b>				1960 1999	20604 67792			
J001	C9		Janitor	52			FY 12/13	52	
O001	C5	1	Classroom	1,335			FY 12/13	1,335	
O002	C4	2	Classroom	952			FY 12/13	952	
O003	C3	3	Classroom	952			FY 12/13	952	
O004	C2	4	Classroom	952			FY 12/13	952	
O005	C1	5	Classroom	979			FY 12/13	979	
T001	C8		Toilet (Women)	110			FY 12/13	110	
T01A	C7		Toilet	47			FY 12/13	47	
T01B	C6		Toilet	47			FY 12/13	47	
T002	C10		Toilet (Men)	110			FY 12/13	110	
BUILDING AREA TOTAL				5,535					
COVERED WALKWAYS				868				868	
CLASSROOMS				5					
<b>Bldg. 002</b>	<b>B</b>				1954 1999	11831 67792			
B001	B3		Heater	214			FY 12/13	214	
J001	B1		Closet	63			FY 12/13	63	
J002	B2		Janitor	66			FY 12/13	66	
T001	B4		Toilet (Boys)	226			FY 12/13	226	
T002	B5		Toilet (Girls)	226			FY 12/13	226	
BUILDING AREA TOTAL				795					
COVERED WALKWAYS				208				208	
CLASSROOMS				0					
<b>Bldg. 003</b>	<b>A</b>				1954 1960	11831 2064			
C005			Closet	69			FY 12/13	69	
O007	A4	7	Classroom	960			FY 13/14	960	
O008	A3	8	Classroom	960			FY 13/14	960	
O009	A2	9	Classroom	960			FY 14/15	960	
O010	A1	10	Classroom	967			FY 14/15	967	
S005	A7		Storage	178			FY 12/13	178	
S06A	A6		Closet	82			FY 12/13	82	

X006	A5	6	Library	1,118			FY 12/13	1,118
BUILDING AREA TOTAL				5,294				
COVERED WALKWAYS				941			Prorated	941
CLASSROOMS				4				

<b>Bldg. 004</b>		<b>D</b>			1960	20604		
					1999	67792		
		D7	Workroom	105			FY 12/13	105
		D6	Speech	157			FY 12/13	157
Z001		D5	Principal	440			FY 12/13	440
C004		D4	Health Room	194			FY 12/13	194
C005		D2	Rest Area	88			FY 12/13	88
		D9	Office	216			FY 12/13	216
		D10	Closet	10			FY 12/13	10
		D8	Office	260			FY 12/13	260
H001		D1	Lobby	299			FY 12/13	299
H002		D1	Administration	295			FY 12/13	295
T001		D3	Toilet	28			FY 12/13	28
M001		D11	Storage	41			FY 12/13	41
S001		D12	Closet	23			FY 12/13	23
BUILDING AREA TOTAL				2,155				
COVERED WALKWAYS				344			FY 12/13	344
COVERED WALKWAYS (ENCLOSED)				922			FY 12/13	922
CLASSROOMS				0				

<b>Bldg. 005</b>		<b>E</b>			1960	20604		
					1999	67792		
T001		E6	Toilet (Mens)	110			FY 12/13	110
T002		E7	Toilet (Womens)	110			FY 12/13	110
T030		E4	Toilet	85			FY 12/13	85
T040		E3	Toilet	85			FY 12/13	85
Y030		E1	Classroom	1,037	30		FY 12/13	1,037
		E5	Workroom	192			FY 12/13	192
Y040		E2	Classroom	1,037	40		FY 12/13	1,037
		E8	Workroom	192			FY 12/13	192
BUILDING AREA TOTAL				2,847				
COVERED WALKWAYS				766			FY 12/13	766
CLASSROOMS				2				

<b>Bldg. 006</b>		<b>F</b>			1954	11831		
					1960	20604		
J001		F2	Janitor	115			FY 12/13	115
K001		F3	Kitchen	434			FY 12/13	434
S001		F4	Food Storage	42			FY 12/13	42
S002		F6	Dry Storage	70			FY 12/13	70
S003		F3	Storage	128			FY 12/13	128
S003		F7	Storage	259			FY 12/13	259
T001		F5	Toilet	43			FY 12/13	43
U001		F1	Multi-Purpose	2,822			FY 12/13	2,822
U002		F8	Platform	809			FY 12/13	809
BUILDING AREA TOTAL				4,720				





O036		36	Classroom	900	1970	34230
TOTAL BUILDING AREA				900		
COVERED WALKWAYS				0		
CLASSROOMS				1		

900

<b>P09/P10</b>						
O001			Classroom	960	1990	51931
O002			Classroom	960	1990	51931
TOTAL BUILDING AREA				1,920		
COVERED WALKWAYS				0		
CLASSROOMS				2		

960

960

<b>P11</b>						
			Classroom	1,440	2001	02-101487
TOTAL BUILDING AREA				1,440		
COVERED WALKWAYS				0		
CLASSROOMS				1		

1440

<b>Portable Building Area</b>	<b>20,460</b>
<b>Covered Walkways</b>	<b>0</b>
<b>Portable Classrooms</b>	<b>20</b>
<b>TOTAL BUILDING AREA</b>	<b>41,805</b>
<b>TOTAL COVERED WALKWAYS</b>	<b>3,760</b>
<b>TOTAL COVERED WALKWAYS (ENCLOSED)</b>	<b>1,062</b>
<b>TOTAL CLASSROOMS</b>	<b>31</b>

Check Sum 46,627

<b>TOTAL</b>	<b>32,888</b>	<b>13,740</b>
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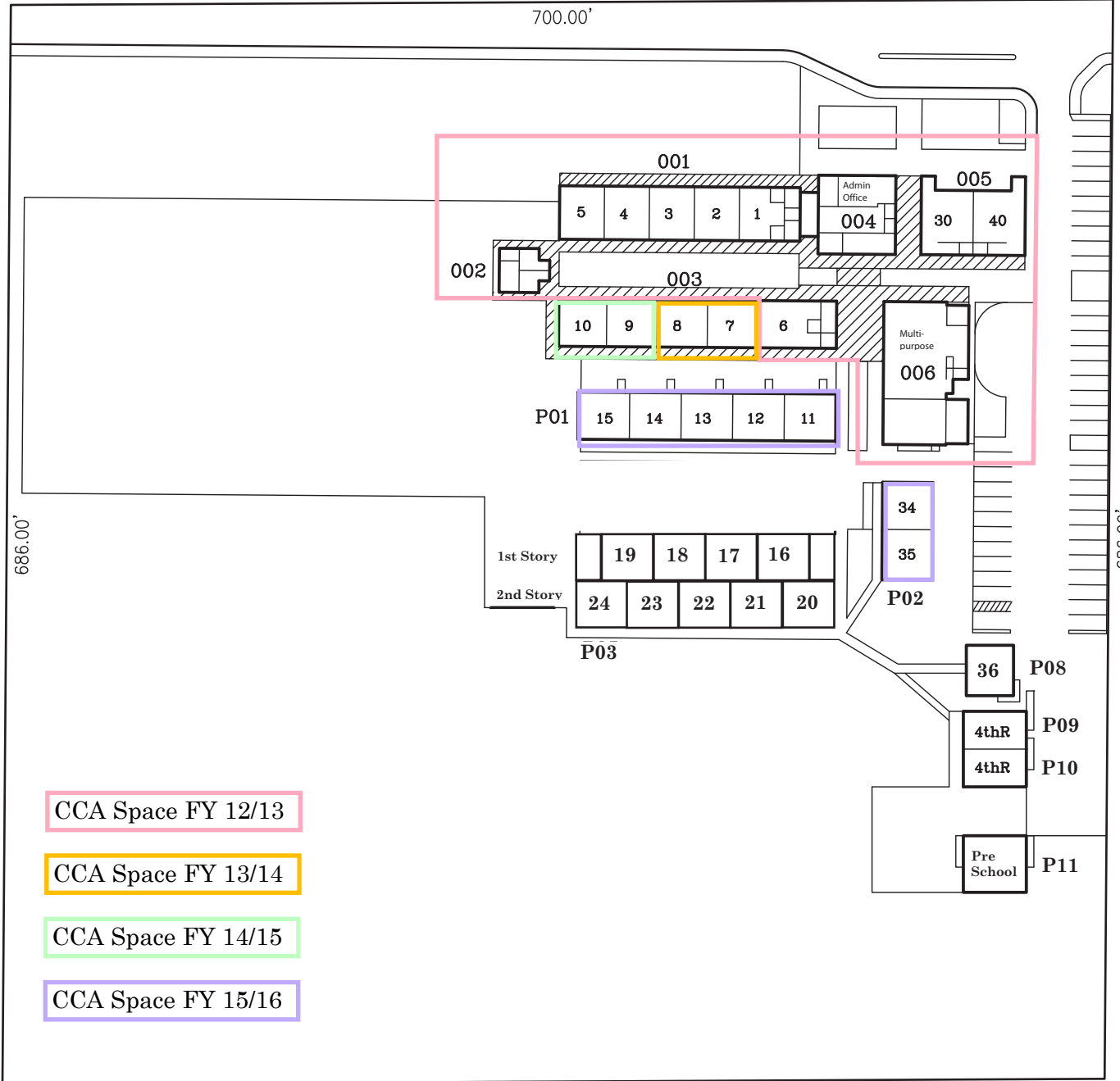
<b>Total Shared Space</b>	<b>0</b>
<b>Total Exclusive Charter Space</b>	<b>32,888</b>
<b>Total Exclusive District Space</b>	<b>13,740</b>
<b>Charter Site Percent</b>	<b>70.53%</b>
<b>Total Square Feet to be reflected in Facilities Use Agreement</b>	<b>32,888</b>
<b>Space Exclusively for Charter Shared Space</b>	<b>32,888</b>
<b>Total</b>	<b>32,888</b>

## **Exhibit B – Map of Facilities/ Buildings and Other Property**

The Facilities are limited to the buildings and other property that are marked on the attached “Existing Site Diagram.”

MEADOWVIEW RD.

700.00'



686.00'

686.00'

700.00'

CCA Space FY 12/13

CCA Space FY 13/14

CCA Space FY 14/15

CCA Space FY 15/16



NORTH

Scale 1"=100'

SITE AREA: 10.46 ACRES  
A.P.N. 052-0100-004

Freepoint Elementary School (114)  
2118 Meadowview Road  
SACRAMENTO CITY UNIFIED SCHOOL DISTRICT

# EXISTING SITE DIAGRAM

### **Exhibit C – Facilities Use Fee**

For the 2015-2016 school year, Non-Profit shall pay District an initial estimated Facilities Use Fee of sixty-nine thousand sixty-four and seventy-six cents (\$69,064.76) based on a pro rata Facilities cost estimate of two dollars and ten cents (\$2.10) per square foot for the use of thirty-two thousand eight hundred eighty-eight (32,888) square feet of the Freeport Site (the Facilities) during that time. The Facilities Use Fee shall be paid out in twelve equal monthly installments throughout the fiscal year. Beginning on July 1, 2015, the monthly installment payments shall be payable on or in advance on the first day of each month (“Due Date”), without deduction, offset, prior notice or demand, in lawful money of the United States.

## **Exhibit D – Custodial Services**

The Charter School shall pay the District for custodial services for the Facilities. Said services shall result in a level of performance consistent with custodial services maintained by the District for its other District schools. The Charter School will reimburse the District for the actual costs, including time and labor (including salary, benefits and payroll taxes), to provide custodial services for the Facilities.

For the 2015-2016, 2016-2017, and 2017-2018 school years, the Charter School will reimburse the District for increased amounts of services, supplies and tools caused by the increase in the Facilities and/or the increase in the Charter School's use of the Facilities. The Parties shall meet and confer at least sixty (60) days before July 1 of each of these school years to determine the necessary increase in the hours of daily custodial service for that school year. Should the Parties be unable to agree on the necessary increase, the District may increase the hours a reasonable necessary amount to correspond with the increased amount of Facilities provided to the Charter School on an annual basis.

**Additional Services:** Should the Charter School require additional custodial services above the District's standard practices and policies, or for special events, those costs to the Charter School will be assessed separately as requested.

## **FACILITIES USE AGREEMENT**

This Facilities Use Agreement (“Agreement”) is made by and between Sacramento City Unified School District (“District”) and Urban Charter Schools Collective, a California non-profit public benefit corporation (“Non-Profit”), which operates Yav Pem Suab—Preparing for the Future Charter School, a charter school (“Charter School”). The Non-Profit and District are collectively referred to as the “Parties.”

### **RECITALS**

- A. WHEREAS, the District and its charter schools are partners in the public education of students and it is the District’s intent to ensure that its facilities are shared equally with all of its students, including those students who attend its charter schools housed in District facilities.
- B. WHEREAS, District is the owner of real property located at Lisbon Elementary School, 7555 South Land Park Drive, Sacramento, California (“Site”).
- C. WHEREAS, Charter School is a charter school duly formed and approved by the District under the laws of the Charter Schools Act of 1992 (Education Code §§ 47600, *et seq.*) serving students in grades kinder through 6<sup>th</sup> grade in the 2015-16, 2016-17, and 2016-17 school year.
- D. WHEREAS, Charter School desires to use certain District facilities located on the Site for its public charter school program.
- E. WHEREAS, the Parties intend this Agreement to satisfy their obligations under Education Code Section 47614 and Title 5 of the California Code of Regulations Section 11969, *et seq.*, adopted by the State Board of Education (“Proposition 39”), which among other things require a written agreement regarding the allocating of facilities under Proposition 39, for the 2015-2016, 2016-2017, and 2017-18 school years.

### **AGREEMENT**

NOW THEREFORE, in consideration of the covenants and conditions of this Agreement, the Parties hereby agree as follows. All obligations imposed hereby on the Charter School are equally imposed on the Non-Profit.

- 1. Recitals. The recitals set forth above are incorporated herein and made part of this Agreement.
- 2. Facilities. Use of the Facilities shall be for the purposes set forth in the Charter School’s charter and on the terms and conditions set forth herein. The Charter School shall not have exclusive use of the Site. The District grants use of the following facilities (“Facilities”) located on the Site as described and/or depicted in Exhibits A and B, which are attached hereto and incorporated herein by reference, to the Charter School under the terms and conditions set forth in this Agreement.

3. Term. The term of this Agreement shall be from July 1, 2015, to July 31, 2018 (“Term”), unless earlier terminated as provided herein.

4. Facilities Use Fee.

Each and every school year, Non-Profit shall pay District a Facilities Use Fee. Facilities Use Fees shall be paid out in equal installments each month throughout the respective school year within the Term. Beginning on July 1, 2015, payments shall be payable on or in advance on the first day of each month (“Due Date”) in lawful money of the United States.

The calculation for the 2015-2016 school year, and terms of Facilities Use Fee payments, are further described with more particularity in Exhibit C, attached hereto and incorporated herein. These fees will be calculated and adjusted annually by the District. The Facility Use Fee shall be based on a pro rata cost estimate per square foot for the Facilities provided. The dollar amount to be paid by Non-Profit, per square foot, for use of the Facilities during the Term will be calculated by the District pursuant to Title 5, California Code of Regulations, section 11969.7. To calculate the fee, the District must determine actual facilities costs and total space figures in the year preceding the fiscal year in which facilities are provided. Such amounts may only become available to the District after each fiscal year ends. Therefore, within ninety (90) days of the beginning of each fiscal year, or as soon as the actual facilities costs and total space figures for the prior fiscal year become available, whichever is later, the District shall provide notice to the Non-Profit of any amended Facilities Use Fee calculations based on the actual data for the prior fiscal year. Amounts owed to or by the Non-Profit due to this calculation will be credited or added to subsequent remaining monthly installment payments of the Facilities Use Fees.

If any payment is made more than fifteen (15) days after the Due Date, a late fee of one percent (1%) shall apply and interest shall accrue thereafter on such late payment commencing thirty (30) days after the Due Date, provided however that no interest shall accrue on said late fee. The interest charged shall be computed at the then-current discount rate established by the Federal Reserve Bank of San Francisco plus five percent (5%), or the maximum rate permitted by law. The payment by Non-Profit of any late fees or interest shall in no event excuse or cure any default by Non-Profit nor waive District’s legal rights and remedies with respect to such default.

The Parties agree that the Facilities Use Fee is in lieu of Non-Profit paying a pro rata share for in-district students and any actual costs for out-of-district students.

5. Over-Allocation. The District reserves the right to collect over-allocation and other applicable fees and reimbursements from the Charter School, pursuant to Title 5, California Code of Regulations, Section 11969.8. The Charter School’s projected in-District Average Daily Attendance (“ADA”) for the 2015-2016 school year, and upon which the Facilities are provided, is **298.7**.



6. Dispute Resolution. The Parties agree to attempt to resolve all disputes regarding this Agreement, including the alleged violation, misinterpretation, or misapplication of the Agreement, pursuant to the dispute resolution procedures identified in the Charter School's charter. Notwithstanding the foregoing, those disputes that may result in revocation of Charter School's charter, pursuant to Education Code section 47607, are not required to go through the dispute resolution process.
  
7. Use.
  - (a) Public Charter School. The Facilities shall be used and occupied by the Charter School for the sole purpose of operating a California public charter school and for no other purpose without the prior written consent of the District. The Charter School's enrollment must not exceed the safe and legal limit for the classroom space it occupies.
  
  - (b) Insurance Risk. The District shall maintain first party property insurance for the Facilities. The Charter School shall not do or permit anything to be done in or about the Facilities nor bring or keep anything therein which will in any way increase the existing insurance rate or affect any fire or other insurance upon the Facilities, or any of the contents of the Facilities (unless the District gives its prior approval and the Charter School pays any increased premium as a result of such use or acts), or cause a cancellation of any insurance policy covering the Facilities or any part thereof or any of its contents, nor shall the Charter School sell or permit to be kept, used, or sold in or about the Facilities any articles which may be prohibited by a standard form policy of fire insurance. The Charter School shall provide adequate and appropriate supervision for Charter School students and employees using the Facilities.
  
  - (c) Rights of the District. The Charter School shall not do or permit anything to be done in or about the Facilities that will in any way obstruct or interfere with the rights of the District or injure the District or use or allow the Facilities to be used for any unlawful purpose, nor shall the Charter School cause, maintain or permit any nuisance in or about the Facilities. The Charter School shall not commit or suffer to be committed any waste in or upon the Facilities.
  
  - (d) Illegal Uses. The Charter School shall not use the Facilities or permit anything to be done in or about the Facilities that will in any way conflict with any applicable law, statute, ordinance or governmental rule, or regulation. The Charter School agrees to comply with its charter as it relates to District Facilities.
  
  - (e) Security Badges. The District will provide security badges to the Charter School for its staff. The Charter School will pay for the cost of the security badges. Charter School staff shall wear these badges to use as evidence that they are lawfully on the premises. Charter School is entitled to up to twenty-five (25) District badges. Lost or stolen badges shall be replaced at a cost of \$5.00 per badge.
  
  - (f) Civic Center Act. The Charter School agrees to comply with the provisions of the Civic Center Act (Education Code Section 38131, *et seq.*) in making use of the Facilities

accessible to members of the community. The Parties understand that the Facilities are to be primarily used for school programs and activities and as such any use of the Facilities by members of the community shall not interfere with school activities. District Board Policy and Administrative Regulations related to the Civic Center Act shall control scheduling, use and collection of fees related to use of the Facilities by members of the public. Consistent with that policy and the regulations, the District shall be solely responsible for coordinating access to the Facilities under the Civic Center Act and shall require users to provide appropriate proof of insurance related to use of the Facilities and to indemnify and hold harmless the District and Charter School for injury, risk of loss, or damage to property as a result of that access by members of the community. The District agrees to promptly clean and repair, if necessary, any portion of the Facilities used by members of the community immediately following such use. All requests for use of the Facilities made directly to the Charter School shall be forwarded to the District for coordination of use consistent with Board Policy and Administrative Regulations.

(g) Alarms. The Charter School shall have access to activate burglar alarms and intruder alerts corresponding to the Facilities provided at the Site. The Charter School agrees that in the event that any of Charter School's employees, directors, trustees, officers, agents, students, visitors, or contractors, trigger a false alarm at the Site, Charter School shall be responsible for costs incurred.

8. Furnishings and Equipment. The furnishings and equipment to be provided by the District for the Facilities are those furnishings and equipment that exist at the Facilities as of July 1, 2011. Said furnishings and equipment will include sufficient desks, chairs and a white board for each classroom. The Charter School is responsible for any furnishings and equipment over and above those provided by the District. The Charter School shall return all such furniture, fixtures and equipment to the District in like condition at the termination of this Agreement, excepting ordinary wear and tear. Upon return of the furniture, fixtures, and equipment, the District will inspect said items within sixty (60) calendar days. The Charter School shall be responsible for costs to repair or replace furniture, fixtures, and equipment to like condition, excepting ordinary wear and tear. All furniture, fixtures, and equipment that are not the property of the District or are not otherwise reimbursed by the District shall remain the property and under the ownership of Charter School and shall be disposed of according to the provisions of the approved Charter petition.
9. Utilities. District agrees to furnish or cause to be furnished to the Facilities necessary utilities. Utilities include, but are not limited to, are electrical, natural gas, sewer, waste disposal/recycling and water services. Due to cost containment efforts by the District, the number of bins associated with the Site(s), the bin capacities and the number of removals per week shall not increase during the Term. The District's failure to furnish or cause to be furnished necessary utilities when such failure is caused by (i) Acts of God or other acts beyond the control or fault of the District; (ii) strikes, lockouts, or other labor disturbances or labor disputes of any kind; (iii) any laws, rules, orders, ordinances, directions, regulations, requirements, or any other action by federal, state, county or municipal authority; (iv) inability despite the exercise of reasonable diligence by the

District to obtain electricity, water, or fuel; or (v) any other unavoidable delay, shall not cause the District to be in default and shall not result in any liability of the District.

The Charter School shall reimburse the District for the cost of utilities at the Site, as charged to the District by its utility providers, pro-rated to reflect use by other users of the Site. Thirty (30) days prior to the commencement of the 2015-2016 school year, the District shall endeavor to notify the Charter School of its estimated monthly charge for utilities. The Charter School shall pay such charge to the District throughout the Term on a monthly basis concurrent with the Charter School's payment of the Facilities Use Fee to the District pursuant to Section 4 of this Agreement. Within one hundred twenty (120) days after the expiration or earlier termination of this Agreement, the District shall provide the Charter School with a reconciliation of the Charter School's actual utility usage throughout the Term and the cost thereof. The District shall either refund the Charter School for any overpayment or shall invoice the Charter School for any underpayment. The Charter School shall reimburse the District for such underpayment, if any, within thirty (30) days after receipt of said invoice.

The Charter School shall comply with all District energy conservation policies in regard to use of the Facilities, as amended from time to time, including, but not limited to, Board Policy 3511 and the District's Energy Education program.

10. Proposition 39/Conditions Reasonably Equivalent.

(a) Charter School acknowledges by execution of the Agreement that the Facilities provided by the Agreement are "reasonably equivalent," as that term is defined by Proposition 39. Charter School agrees that upon execution of this Agreement, all obligations of the District to the Charter School under Proposition 39 have been satisfied for the Term of this Agreement.

(b) Charter School acknowledges and agrees that neither the District nor any of its agents have made, and the District hereby disclaims any representations or warranties, express or implied, concerning the premises, the physical or environmental condition of the premises or any other property beneath, adjacent to, or otherwise related to the premises.

11. Custodial Services.

Custodial services shall be provided pursuant to the terms and conditions as defined in Exhibit D.

12. Signage. The Charter School shall be allowed to place signage on the exterior of the Facilities. The District will keep its own signage exhibited at the Site, identifying the school as operated or formerly operated by the District. The District shall have final approval over the design, content and location of the Charter School's signage, but shall not unreasonably deny such design, content or location. The Charter School must remove the signage upon termination of this Agreement. The Charter School must restore the Facilities, following removal of the signage, to the condition existing prior to installation

of the signage to District's reasonable satisfaction. All such signage shall be subject to compliance with all applicable laws at Charter School's sole cost.

13. Operations and Maintenance.

(a) The cost for the ongoing operations and maintenance of the Facilities and furnishings and equipment is calculated into the Facilities Use Fee of Section 4 of this Agreement. The District shall be responsible for providing the wiring/MIS infrastructure and maintaining it in its condition as of July 1, 2011. Any upgrades or improvements to the wiring/MIS infrastructure shall be the responsibility of the Charter School, in compliance with Section 14 ("Alterations and Additions"). The Charter School is responsible for the cost of internet service provided at the commercial rate.

(b) The District shall be responsible for any modifications necessary to maintain the Facility in accordance with Education Code Sections 47610(d) or 47610.5. Projects eligible to be included in the District's deferred maintenance plan established pursuant to Education Code Section 17582 and the replacement of furnishings and equipment supplied by the District in accordance with the District's schedules and practices shall remain the responsibility of the District. The Charter School shall comply with the District's policies regarding the operations and maintenance of the school facility and furnishings and equipment, except to the extent renovation is approved by the District. However, the Charter School need not comply with policies in cases where actual District practice substantially differs from official policies.

(c) Upon the expiration or earlier termination of this Agreement, Charter School shall surrender the Facilities and furnishings and equipment in the same condition as received, ordinary wear and tear excepted.

14. Alterations and Additions. The Charter School shall only make alterations, additions, or improvements ("Improvements") to the Facilities after obtaining the prior written consent of the District's Superintendent or his designee. Any Improvements to the Facilities made by the Charter School shall be paid for by the Charter School, and shall be contracted for and performed in accordance with all applicable building code standards, including Title 24 of the California Code of Regulations, the Field Act, Americans with Disabilities Act and the Fair Employment and Housing Act.

The District may impose as a condition to the aforesaid consent to such requirements as the District may deem necessary in its sole discretion, including without limitation, the manner in which the work is done, a right of approval of the contractor by whom the work is to be performed, and the times during which it is to be accomplished.

Upon written reasonable request of the District prior to the expiration or earlier termination of the Agreement, Charter School will remove any and all improvements to the Facilities, at its own cost, that can be done without damage to the Facilities. In the event of charter termination or closure of the Charter School, all property shall be disposed of in accordance with the provision of the approved Charter School's petition.

Unless the Parties agree otherwise in writing on an item by item basis, Charter School maintains its ownership rights in any alterations, additions or improvements and may be allowed to remove at termination of this Agreement and restore the Facilities to the condition existing prior to alteration, addition or improvement. Notwithstanding the foregoing, any addition to the Facilities that the Charter School does not remove prior to vacating the Facilities, shall vest in the District.

15. Entry by District. The District may enter the facility at any time to inspect the Facilities, to supply any service to be provided by the District to the Charter School hereunder and to alter, improve or repair the Facilities, or in the case of an emergency, consistent with Education Code Section 47607(a)(1). The District may erect scaffolding and other necessary structures where reasonably required by the character of the work to be performed so long as the Charter School operations do not suffer unreasonable interference. The District agrees to use its best efforts at all times to keep any interference to the academic programs at Charter School to a minimum. The Charter School waives any claim for damages for any inconvenience to or interference with the Charter School's business, any loss or use of quiet enjoyment of the Facilities related to District's entry for the purposes identified in this Section.
16. Employees, Contractors and Independent Contractors. The Charter School and the District, their employees, agents, contractors and subcontractors shall comply with the requirements of Education Code Sections 45125.1 and 45125.2 related to access to the Facilities and protection of minor students.
17. Indemnity.

The Charter School shall indemnify, hold harmless, and defend the District, its Board of Trustees, the members of its Board of Trustees, officers, employees and agents against and from any and all claims, demands, actions, suits, losses, liabilities, expenses and costs for any injury, death or damage to any person or property arising from the Charter School's use of the Facilities, excepting those claims, demands, actions, suits, losses, liabilities, expenses and costs arising from the negligent or intentional acts of the District, its employees, agents, officers and invitees.

The Charter School shall further indemnify, hold harmless, and defend the District, its Board of Trustees, the members of its Board of Trustees, officers, employees and agents against and from any and all claims arising from any breach or default in the performance of any obligation on the Charter School's part to be performed under the terms of this Agreement, and from all costs, attorneys' fees, and liabilities incurred in or about the defense of any such claim or any action or proceeding brought thereon.

The District shall indemnify, hold harmless, and defend the Charter School, its trustees, officers, and agents against and from any and all claims, demands, actions, suits, losses, liabilities, expenses and costs for any injury, death or damage to any person or property arising from the District's conduct of business at the Facilities, excepting those claims,

demands, actions, suits, losses, liabilities, expenses and costs arising from the negligent or intentional acts of the Charter School, its employees, agents, officers and invitees.

The District shall further indemnify, hold harmless, and defend the Charter School against and from any and all claims arising from any breach or default in the performance of any obligation on the District's part to be performed under the terms of this Agreement, and from all costs, attorneys' fees, and liabilities incurred in or about the defense of any such claim or any action or proceeding brought thereon.

Upon becoming aware of any casualty or accident in or on the Facilities, each Party to this Agreement shall give prompt written notice thereof to the other Party.

In the event of a third party claim or potential claim covered by these provisions, the Parties agree to take all steps reasonable or necessary to cooperate in defending and protecting their joint interests, and in expediting all reasonable or necessary efforts to gain coverage for the Parties under any liability policy or indemnity agreement issued in favor of the Non-Profit, including indemnity rights or agreements existing in contracts between the Non-Profit and any third party (such as contract with a supplier of goods or services), and further including efforts to reduce defense costs (through joint representation whenever possible), expenses and potential liability exposures.

18. Insurance. The Charter School shall comply with insurance provisions contained within its charter and any Memoranda Of Understanding between the Parties.

19. Damage to or Destruction of School Site.

(a) Cost. The cost of restoring the Facilities under this Section shall be borne by the Charter School if the cause of the casualty is the negligence or intentional act of the Charter School, its employees, agents, students or invitees. The cost of restoring the Facilities under this Section shall be borne by the District if the cause of the casualty is the negligence or intentional act of the District, its employees, agents, or invitees. The Parties shall tender the cost of restoring the Facilities to their respective insurance carriers if the casualty is caused by a third party.

(b) Partial Damage – Insured. If the Facilities are damaged by any casualty which is covered under fire and extended coverage insurance carried by District, then District may restore such damage provided insurance proceeds are available to pay eighty percent (80%) or more of the cost of restoration and provided such restoration can be completed within ninety (90) days after the commencement of the work in the opinion of a registered architect or engineer appointed by District. In such event this Agreement shall continue in full force and effect, except that Charter School shall be entitled to proportionate reduction of use payments while such restoration takes place, such proportionate reduction to be based upon the extent to which the restoration efforts interfere with Charter School's business in the Facilities. The District shall provide the Charter School alternative space in the District for any part of the Charter School program that is displaced by the partial damage and/or the repair work of the same. If the

Charter School secures alternative space then there shall be no diminution in the use payments during the period of the restoration.

(c) Total Destruction. If the Facilities are totally destroyed (defined as the destruction of more than fifty percent (50%) of the usable classroom space) or the Facilities cannot be restored as required herein under applicable laws and regulations, notwithstanding the availability of insurance proceeds, then this Agreement shall be terminated effective the date of the damage. Immediately upon the effective date of the damage, the District must provide a reasonably equivalent school facility to the Charter School as soon as reasonable so as to avoid any interruption in the educational program of the Charter School.

20. Liens. Charter School shall keep the Facilities free from any liens arising out of any work performed, materials furnished or obligations incurred by or on behalf of Charter School. Notwithstanding anything stated herein to the contrary, if Charter School fails to promptly release and remove any such lien, District, at its sole option, may immediately (but shall not be obligated to) take all action necessary to release and remove such lien, without any duty to investigate the validity thereof, and all sums, costs and expenses, including reasonable attorneys' fees and costs, incurred by District in connection with such lien shall be immediately due and payable by Charter School.
21. Holding Over. Charter School shall not remain in possession of the Facilities or any part thereof after the expiration of this Agreement or after termination thereof without the express written consent of District. Notwithstanding the foregoing, if the Charter School holds over, the Charter School shall pay the monthly Facilities Use Fee plus all other charges payable required by this Agreement. Any holdover by Charter School requires the Charter School to comply with all terms of this Agreement. A holdover by the Charter School shall not trigger any additional term. The District shall have the right to remove the Charter School at any time after the expiration of the Term or termination of this Agreement.
22. Assignment and Subletting. The Charter School may not assign its rights under this Agreement or sublet any portion of the Facilities without the prior written consent of the District.
23. Rules, Regulations and Law. The Charter School and the Charter School's agents, employees, students, visitors and invitees shall observe and comply fully and faithfully with all reasonable and nondiscriminatory policies, rules, and regulations adopted by the District for the care, protection, cleanliness, and operation of the Facilities, and the Facilities' furnishings and equipment, and shall comply with all applicable laws.
24. Smoking. Smoking or the consumption of alcohol in any form shall not be allowed in or on District property and Facilities, including but not limited to all courtyards, walkways, and parking areas.
25. Default by Charter School. The occurrence of any one or more of the following events

shall constitute a default and material breach of this Agreement by Charter School:

- (a) The failure by Charter School to utilize the Facilities for the sole purpose of operating a charter school.
- (b) The failure by Charter School to make timely payments required under this Agreement.
- (c) The failure by Charter School to observe or perform any of the express covenants, conditions or provisions of this Agreement.
- (d) The revocation or non-renewal of the Charter School's charter. Notwithstanding the foregoing, this Agreement shall not be terminated pursuant to this provision provided that the Charter School continues to operate in accordance with the terms of this Agreement and is diligently pursuing a statutory appeal of the revocation or nonrenewal of its charter.
- (e) The failure by Charter School to maintain ADA of eighty (80) or more in-District students as the term "in-District students" is defined in Proposition 39.

In the event of any material default or breach by Charter School, District may, but shall not be obligated to, terminate this Agreement and Charter School's right to possession of the Facilities upon thirty (30) days written notice thereof to the Charter School if the default is not cured within the thirty (30) day period. If the nature of the default is such that the same cannot reasonably be cured within said thirty (30) day period, the Charter School shall not be in default if Charter School shall within such thirty (30) day period commence such cure and thereafter, diligently prosecute the same to completion. In no event shall such period to cure exceed sixty (60) days. Upon termination, District shall retain the right to recover from Charter School, without limitation, any amounts due under this Agreement or applicable law. Unpaid Facilities Use Fees shall bear interest from the date due at the maximum legal rate. In the event of termination by the District by reason of Charter School's default or breach of this Agreement, the District shall not be obligated to provide facilities to Charter School pursuant to Proposition 39 for the remainder of that school year.

- 26. Default by District. District shall be in default of this Agreement if District fails to perform any material obligation required by this Agreement. In the event of any default by District, Charter School may terminate this Agreement upon thirty (30) days written notice thereof to the District if the District has failed to cure the default within thirty (30) days, unless the nature of the default is such that the same cannot reasonably be cured within said thirty (30) day period, in which event District shall not be in default (and Charter School may not terminate this Agreement) if District commences to cure such default within such thirty (30) day period and thereafter, diligently prosecutes the same to completion.
- 27. Miscellaneous.



(a) Waiver. The waiver by either Party of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of any charge hereunder by District or payment of any charge by Charter School shall not be deemed to be a waiver of any preceding default by Charter School or District of any term, covenant or condition of this Agreement, other than the failure of the Charter School to pay the particular charge so accepted, regardless of District's knowledge of such preceding default at the time of the acceptance of such charge.

(b) Marginal Headings. The marginal headings and article titles to the articles of this Agreement are not a part of the Agreement and shall have no effect upon the construction or interpretation of any part hereof.

(c) Successors and Assigns. The covenants and conditions herein contained, subject to the provisions as to assignment, apply and bind the heirs, successors, executors, administrators and assigns of the Parties hereto.

(d) Amendment. No provision of this Agreement may be amended or modified except by an agreement in writing signed by the Parties hereto.

(e) Construction. Each of the Parties acknowledges and agrees that this Agreement is to be construed as a whole according to its fair meaning and not in favor of nor against any of the Parties as draftsman or otherwise.

(f) Venue. Any action or proceeding by any Party to enforce the terms of this Agreement shall be brought solely in the Superior Court of the State of California for the County of Sacramento.

(g) Applicable Law. This Agreement shall be governed by and interpreted under the laws of the State of California applicable to instruments, persons, transactions and subject matter that have legal contacts and relationships exclusively within the State of California.

(h) Severability. If any provision or any part of this Agreement is for any reason held to be invalid, unenforceable or contrary to public policy, law, or statute and/or ordinance, the remainder of this Agreement shall not be affected thereby and shall remain valid and fully enforceable.

(i) Prevailing Authority. In the event of a conflict between the law and the terms of this Agreement, the law shall prevail, and any such conflicting terms shall be severed from this Agreement and nullified. In the event of a conflict between the terms of the charter and the terms of this Agreement, the terms of this Agreement shall prevail and shall be deemed an amendment to the charter, replacing any conflicting terms therein. In the event of a conflict between the terms of the charter and any other agreement between the

Charter School and the District, the terms of this Agreement shall prevail and shall be deemed an amendment to any other such agreement, replacing any conflicting terms therein.

(j) No Admission. Except as expressly agreed herein, nothing contained herein shall constitute an admission of fact or law.

(k) Binding Obligation. If and to the extent that the Charter School is a separate legal entity from the District, the Charter School expressly agrees that this Agreement is a binding obligation on the Charter School and the District agrees that this Agreement is a binding obligation on the District.

(l) Prior Agreements. This Agreement contains all of the agreements of the Parties hereto with respect to any matter covered or mentioned in this Agreement, and no prior agreements or understanding pertaining to any such matters shall be effective for any purpose.

(m) Subject to Approval by Governing Board. This Agreement shall become effective upon ratification by the District's Governing Board.

(n) Notices. All notices and demands that may be or are to be required or permitted to be given by either Party to the other hereunder shall be in writing. All notices and demands by the District to Non-Profit or Charter School shall be sent by United States Mail, postage prepaid, addressed to Non-Profit or Charter School at the address set forth below. All notices and demands by the Charter School to the District shall be sent by United States Mail, postage prepaid, addressed to the District at the address set forth below.

To District:

Sacramento City Unified School District  
Attn: Sue Lee, Charter Oversight Coordinator  
5735 47<sup>th</sup> Ave  
Sacramento, CA 95824  
Facsimile: 916-399-2020

To Non-Profit or Charter School:

Attn: Lee Yang, Superintendent  
Lisbon Elementary School  
7555 South Land Park Drive  
Sacramento, CA 95831  
Facsimile: 916-691-9088

(o) Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original of the Agreement. Signatures transmitted via facsimile

or portable document format (“pdf”) to other Parties to this Agreement shall be deemed equivalent to original signatures on counterparts.

(p) Warranty of Authority. Each of the persons signing this Agreement represents and warrants that such person has been duly authorized to sign this Agreement on behalf of the Party indicated, and each of the Parties by signing this Agreement warrants and represents that such Party is legally authorized and entitled to enter into this Agreement.

Non-Profit and Charter School

District

By: \_\_\_\_\_  
Lee Yang  
Superintendent  
Urban Charter Schools Collective

By: \_\_\_\_\_  
Jose L. Banda  
Superintendent  
Sacramento City Unified  
School District

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved and ratified this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by the Board of Education of the Sacramento City Unified School District by the following vote:

AYES:

NOES:

Abstentions:

\_\_\_\_\_  
Secretary to the Board of Education

## EXHIBIT A- Facilities

Facilities to be provided: Except as otherwise provided herein, Charter School will have use of the entire site, except for the following classrooms 14, 28, 29, 30.

However, the Pre-K play area is east of Room 14 and north of rooms 2 and 3, shall be shared with the Child Development Center that is also operated at the site. A Charter School designee shall meet and confer with Child Development Center in order to determine a schedule for shared use of the pre-K play area.

School Name: Lisbon Elementary School  
 School Code: 284  
 Site Area: 6.37Acres Year Built: 1988  
 A.P.N. 031-0020-073, 031-0620-011 &031-0700-053

Address: 7555 South Land Park Dr., Sacramento, CA 95831

Bldg/Room Code	Classroom No.	Room Use	Classroom Use	Area	Year Built/ Modernized	DSA #
<b>PERMANENT BUILDINGS</b>						
<b>Bldg. 001</b>					1988	49739
Y001	1	Classroom		848		
Y002	2	Classroom		848		
S004		Storage		115		
T001		Toilet		44		
T002		Toilet		44		
K001		Work Area		164		
T003		Toilet		13		
T004		Toilet		13		
S003		Storage		106		
I001		Staff Lounge		516		
S002		Storage		82		
S001		Computer Rm.		224		
X001		Library		1,213		
		Unspecified		165		

<u>Charter Only</u>	<u>District Only</u>	<u>Shared</u>
848		
848		
		115
		44
		44
164		
13		
13		
106		
516		
82		
224		
1,213		
165		

BUILDING AREA TOTAL	4,395	
COVERED CORRIDORS & WALKWAYS	1,089	1,089
CLASSROOMS	2	

<b>Bldg. 002</b>					1988	49739
K001		Kitchen		548		
S002		Pantry		126		
S003		Storage		569		
		Refrig. Room		50		
		Mechanical		12		
U001		Multi-Use		3,530		
ZS00		Platform		673		
		Stairway		58		
		Stairway		24		
		Unspecified		3,205		

548		
126		
		569
50		
12		
3,530		
673		
58		
24		
3,205		

BUILDING AREA TOTAL	8,795	
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COVERED CORRIDORS & WALKWAYS 3,616 3,616  
 CLASSROOMS 0

<b>Bldg. 003</b>					1988	49739
S001		Storage		300		
T001		Toilet (Girls)		460		
T002		Toilet (Boys)		460		
T003		Toilet (Men)		45		
J001		Custodian		25		
		Chase		36		
T004		Toilet (Women)		45		
		Unspecified		129		

300
460
460
45
25
36
45
129

BUILDING AREA TOTAL 1,500  
 COVERED CORRIDORS & WALKWAYS 3,220 3,220  
 CLASSROOMS 0

**PORTABLE BUILDINGS**

P05	4	Classroom		960	1988	49739
P05	5	Classroom		960	1988	49739
P06	6	Classroom		960	1988	49739
P06	7	Classroom		960	1988	49739
P07	8	Classroom		960	1988	49739
P08	9	Classroom		960	1988	49739
P07	10	Classroom		960	1988	49739
P08	11	Classroom		960	1988	49739
P01	12	Classroom		960	1988	49739
P01	13	Classroom		960	1988	49739
P02	16	Classroom		960	1988	49739
P02	19	Classroom		960	1988	49739
P03	20	Classroom		960	1988	49739
P03	21	Classroom		960	1988	49739
P03	22	Classroom		960	1988	49739
P03	23	Classroom		960	1988	49739
P04	24	Classroom		960	1988	49739
P04	25	Classroom		960	1988	49739
P04	26	Classroom		960	1988	49739
P04	27	Classroom		960	1988	49739
P09	28, 29, 30	Classroom		1920	1997	67170
P10	31	Classroom		960	2000	02-102084
P01	14	Children's Center		1920	1988	49739
P02	17	Work/Study Room		960	1988	49739
P02	18	Work/Study Room		960	1988	49739

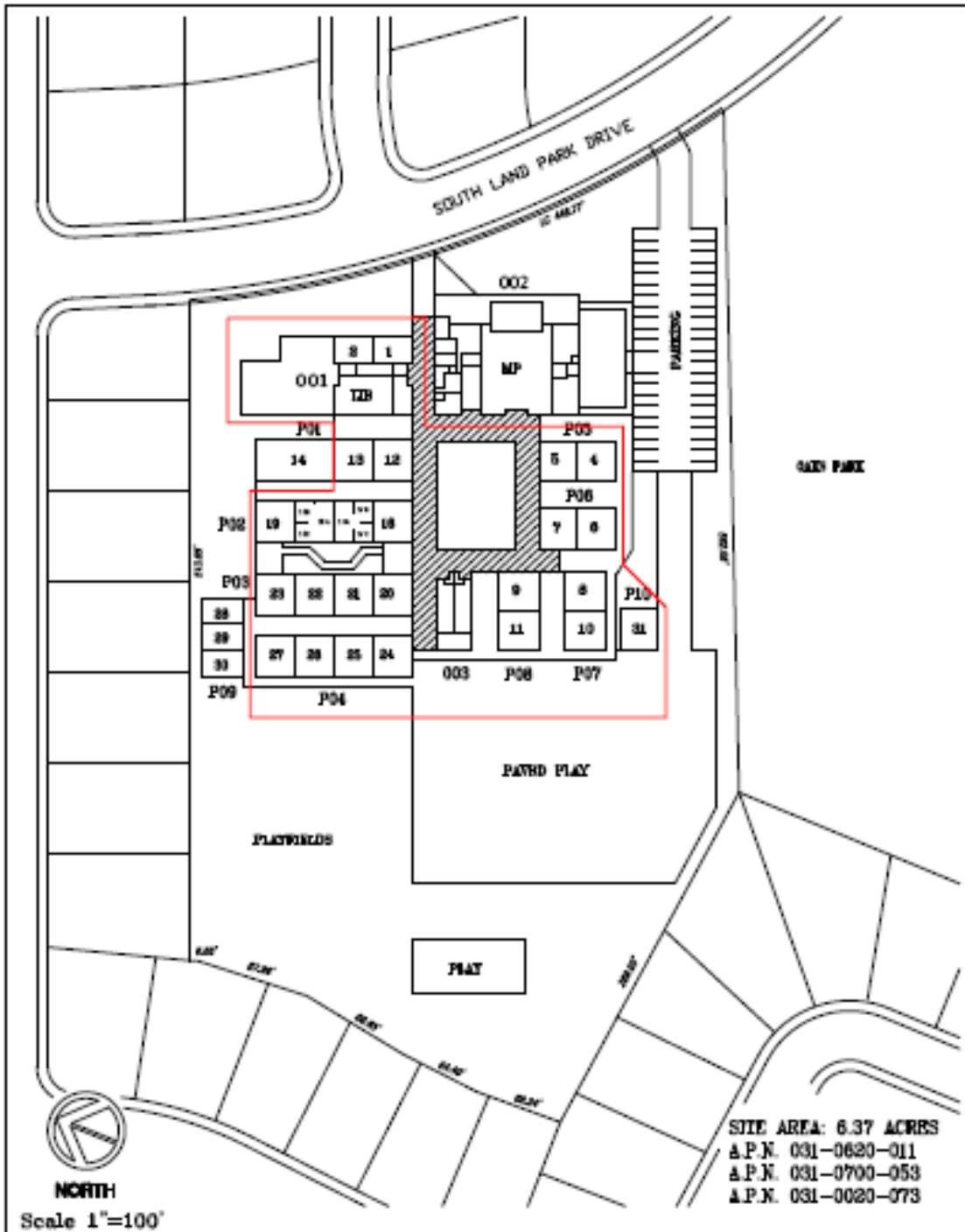
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35,998
3,840
8,697

Portable Building Area 25,920  
 Portable Covered Corridors & Walkways 0  
 Portable Classrooms 27  
 Total Exclusive Charter Space 35,998  
 Total Exclusive District Space 3,840

Permanent Building Area	14,690
Covered Walkways	7,925
Permanent Classrooms	2
<b>Total Site Area</b>	<b>40,610</b>
<b>Total Covered Walkways</b>	<b>7,925</b>
<b>Grand Total</b>	<b>48,535</b>

Total Shared Space	8,697
Ratio of Charter to District Space	0.8933
Shared Space Allocated to Charter	7,769
Total Square Feet to be reflected in Facilities Use Agreement	
Space Exclusively for Charter	35,998
Shared Space	7,769
Total	43,767

EXHIBIT B



Lisbon Elementary School (284)  
 7555 South Land Park Drive  
 SACRAMENTO CITY UNIFIED SCHOOL DISTRICT

EXISTING SITE DIAGRAM  
 DECEMBER 2003



## EXHIBIT C

For the 2015-2016 school year, Charter School shall pay District an initial estimate Facilities Use Fee of Ninety One Thousand Nine Hundred Ten and Seventy Cents (\$91,910.70), based on a pro rata facilities cost estimate of Two Dollars and Ten Cents (\$2.10) per square foot for the use of approximately Forty-Three Thousand Seven Hundred Sixty Seven (43,767) square feet of the Facilities during that time. The initial estimate Facilities Use Fee shall be paid out in equal installments of Seven Thousand Six Hundred Fifty Nine Dollars and Twenty Three Cents (\$7,659.23) each month throughout the fiscal year. Beginning on July 1, 2015, payments shall be payable on or in advance on the first day of each month (“Due Date”), without deduction, offset, prior notice or demand, in lawful money of the United States.

The District will re-calculate and adjust these fees annually for the remaining fiscal years for the Term of this Agreement

## EXHIBIT D

The Charter School shall be responsible for providing and paying directly for custodial services for the Facilities. Said services shall result in a level of performance consistent with custodial services maintained by the District for its other District schools. The Charter School shall bear the cost of such custodial services, including the salary and benefits of the Custodian and the cost of any cleaning supplies and tools necessary for the Custodian to provide services. The Charter School shall purchase, store and provide all consumable materials which the custodian shall use in the provisioning of the facilities' restrooms, including but not limited to toilet paper, soap, and paper towels. The District shall provide its fair share of the paper products to the site consumed by the regular and reasonable use of the restrooms shared by the District, or the District's programs. In the event that the Charter School fails to meet these standards, the School will become responsible for the salary and benefits of the District-supplied plant manager/custodian and the cost of the cleaning supplies, tools and materials used by the custodian.

