



SACRAMENTO CITY UNIFIED SCHOOL DISTRICT BOARD OF EDUCATION

Agenda Item# 9.2

Meeting Date: September 19, 2013

Subject: Facilities Use Agreement: Sol Aureus College Preparatory School 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

Division: Accountability Office

Recommendation: Approve the Facility Use Agreements (FUAs) for Sol Aureus College Preparatory (SAC Prep) (K-8) at Bear Flag, 6620 Gloria Drive and Yav Pem Suab Academy (K-6) at Lisbon, 7555 South Land Park Drive.

Background/Rationale: 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. The District and the Charter Schools have collaboratively worked together to define the specific terms of the Facility Use Agreements.

Financial Considerations: The District will receive from the Charter Schools the pro rata share of the facilities costs which are outlined in both the Executive Summary and the proposed Facility Use Agreements.

Documents Attached:

1. Executive Summary
2. Facility Use Agreements

Estimated Time of Presentation: 10 minutes

Submitted by: Teresa Cummings, Chief Accountability Officer
Jennifer Lopez, Charter and Principal Network
Oversight Coordinator II

Approved by: Jonathan Raymond, Superintendent

Board of Education Executive Summary

Accountability Department

Facilities Use Agreement: Sol Aureus College Preparatory School and

Yav Pem Suab Academy

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I. OVERVIEW / HISTORY

The District is obligated under Proposition 39 to provide reasonably equivalent facilities to Charter Schools with a minimum of 80 in-District students. This includes providing reasonably equivalent “furnishings and equipment.” “Reasonable equivalence” is measured by the quality and quantity of facilities provided to the charter school. Through a process of negotiation, the District establishes Facility Use Agreements or FUAs with the Charter Schools.

Currently, the District provides school facilities to eight (8) Independent Charter Schools, including:

- California Montessori Project-Capitol Campus (K-8)
- Language Academy of Sacramento (K-8)
- Oak Park Preparatory (7-8)
- Public School 7 (PS7) (K-8)
- Sacramento Charter High School (9-12)
- Sol Aureus College Preparatory (K-8)
- Yav Pem Suab Academy (K-6)
- Capitol Collegiate Academy (K-8)

There is only one Charter School that is not in District facility, Capitol Heights Academy (K-5).

II. DRIVING GOVERNANCE

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”), provide guidance to the process. Among other things, the Regulations require a written agreement regarding the allocation of facilities under Proposition 39. However, it should be noted that the Regulations also allow for negotiation by the parties to all terms in the course of reaching agreement.

§ Section 47614 reads:

- (a) The intent is that public school facilities should be shared fairly among all public school pupils, including those in charter schools.
- (b) Each school district shall make available, to each charter school operating in the school district, 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. Facilities provided shall be contiguous, furnished and equipped, and shall remain the property of the school district. The school district shall make reasonable efforts to provide the charter school with facilities near to where the charter school wishes to locate, and shall not move the charter school unnecessarily.

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III. BUDGET

State regulations limit the fees charter schools pay to be housed in District facilities. The Charter Schools pay the District “Facilities Use Fees” based on a pro rata share facilities cost *estimated* at \$2.10 per square foot (SF) for the use of District facilities.

Sol Aureus College Preparatory (SAC Prep) (K-8), Bear Flag, 6220 Gloria Drive

- \$2.10 based on approximately 38,931 square feet \$81,755.10

Yav Pem Suab Academy (K-6), Lisbon Site, 7555 South Land Park Drive

- \$2.10 based on approximately 43,767 square feet \$91,970.70

IV. GOALS, OBJECTIVES, AND MEASURES

The goal of a Facility Use Agreement (FUA) is to finalize agreement with the Charter School to implement the intent of the Proposition 39 regulations to provide “reasonably equivalent” District facilities to the Charter school’s students, and to recognize that the District’s obligations under the law have been met.

V. MAJOR INITIATIVES

The Proposition 39 Implementing Regulations adopted by the State Board of Education on August 29, 2002, and amended on March 29, 2008, require the Charter Schools to make an annual written request for facilities. Title 5 CCS Section 11969.9 (c)(1) specifies the information that must be included in the annual facilities request.

In accordance with the Education Code Section 47614(b)(2) the District is required to allocate school facilities for the following school year based upon a projection of in-District average daily attendance provided by the Charter School and agreed upon by the District.

Moreover, in Education Code Section 47614(b)(5) the District is obligated to provide facilities for charter schools having identified at least 80 in-District students who are meaningfully interested in enrolling in the charter school for the following year.

VI. RESULTS

A collaborative process with the Charter Schools resulted in the attached Facilities Use Agreements for the Board’s consideration. The facilities remain District properties and the Charter Schools do not have exclusive use of the sites. The District intends to co-locate other educational program(s) at the sites. The District will meet and confer with the Charter Schools before deciding on co-location of program(s).

Attached to this Executive Summary are additional items containing further details of the Facility Use Agreements for Charter Schools:

- FUAs
- Maps

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VII. LESSONS LEARNED / NEXT STEPS

Approve the Facilities Use Agreements for: Sol Aureus College Preparatory School and
Yav Pem Suab Academy

FACILITIES USE AGREEMENT

This Facilities Use Agreement (“Agreement”) is made by and between Sacramento City Unified School District (“District”) and Sol Aureus College Preparatory, a California non-profit public benefit corporation (“Non-Profit”), which operates S.A.C. Prep, 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 Bear Flag Elementary School, 6620 Gloria 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 eight in the 2013-2018 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 2013-2018 school year.

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 31, 2013, 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 September 1, 2013 payments shall be payable on or in advance on the first day of each month (“Due Date”) in lawful money of the United States. For each subsequent school year, payments shall be payable starting July 1.

The calculation for the 2013-2014 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 2013-2014 school year, and upon which the Facilities are provided, is **229**.
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. Prior to the commencement of the 2013-2014 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: Teresa Cummings, Chief Accountability Officer
5735 47th Ave
Sacramento, CA 95824
Facsimile: 916-399-2020

To Non-Profit or Charter School:

Attn: Norm Hernandez, Principal
Sol Aureus College Preparatory Charter
6620 Gloria Drive, Sacramento, CA
Sacramento, CA 95831
Facsimile: 916-421-0601

(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: _____
Norm Hernandez
Principal

By: _____
Jonathan P. Raymond,
Superintendent

Date: _____

Date: _____

Approved and ratified this _____ day of _____, 2013, by the Board of Education of the Sacramento City Unified School District by the following vote:

AYES:

NOES:

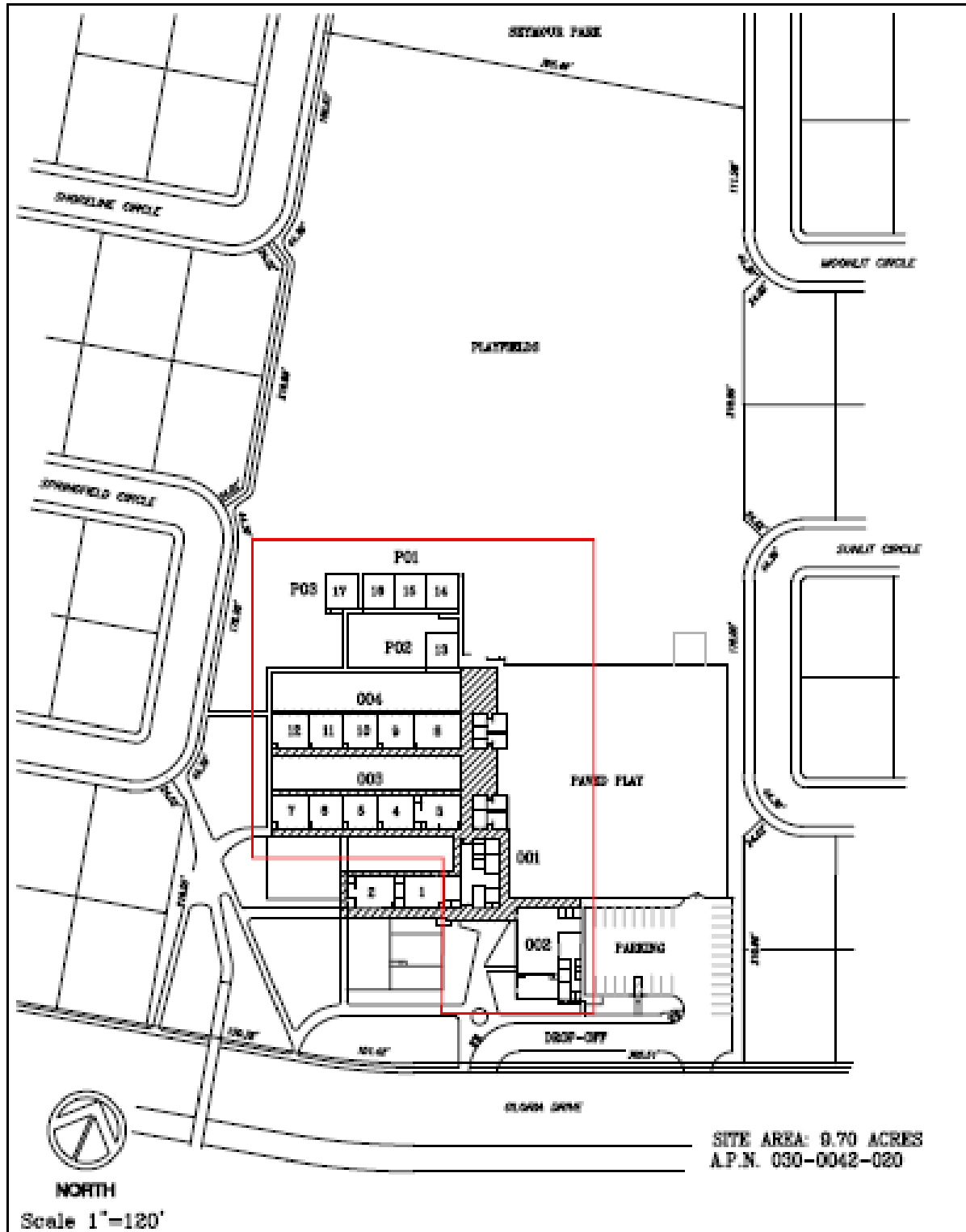
Abstentions:

Secretary to the Board of Education

EXHIBIT A

Facilities to be provided: Except as otherwise provided herein, Charter School will have use of Rooms 3,4,5,6,7,8,9,10,11,12,13, portables 14-17 and office space located in the Bear Flag Elementary School Campus (the "Charter Building"). Such rooms in the Charter Building will be used for classrooms, offices, and storage of the Charter School. The District's Child Development Program and Special Education shall exclusive use of the room 1 and 2. Charter School will have usage of Multi-purpose rooms and athletic fields. Parking for Charter School staff and visitor parking will be provided at the southeast corner of the campus.

EXHIBIT B



Bear Flag Elementary School (017)
6820 Gloria Drive
SACRAMENTO CITY UNIFIED SCHOOL DISTRICT

EXISTING SITE DIAGRAM

DECEMBER 2003

EXHIBIT C

Charter School shall pay District an initial estimate Facilities Use Fee of Eighty One Thousand Six Hundred Thirty One and Twenty Cents (\$81,755.10), based on a pro rata facilities cost estimate of Two Dollars and Ten Cents (\$2.10) per square foot for the use of approximately Thirty-Eight Thousand Nine Hundred Thirty One (38,931) square feet of the Facilities during the Term of the Agreement. The initial estimate Facilities Use Fee shall be paid out in equal installments of Six Thousand Eight Hundred Twelve and Ninety-Three Cents (\$6,812.93) each month throughout the Term. Beginning on September 1, 2013 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. For each subsequent school year, payments shall be payable starting July 1.

School Name: Bear Flag Elementary School
 School Code: 017
 Site Area: 9.70 Acres
 Year Built: 1965
 A.P.N. 030-0042-020
 Address: 6620 Gloria Drive, Sacramento, CA 95831

Bldg/Room Code	Bldg/Room No.	Classroom No.	Room Use	Area	Year Built/Modernized	DSA #
PERMANENT BUILDINGS						
Bldg. 002					1965	24257
B004			Mechanical	151		
J001			Janitor	18		
K001			Kitchen	627		
S001			Locker Area	22		
S002			Pantry	97		
S003			Storage	158		
T001			Toilet	30		
T002			Toilet (Women)	66		
T003			Toilet (Men)	65		
U001			Multi-purpose	2,447		
U002			Platform	741		
			Hall	44		
			Ref	84		
			Storage	142		
			Unspecified	668		

BUILDING AREA TOTAL 5,360
 COVERED WALKWAYS 4,506
 CLASSROOMS 0

Charter Only District Only Shared

151
 18
 627
 22
 97
 158
 30
 66
 65
 2,447
 741
 44
 84
 142
 668

4,506

Bldg/Room Code	Bldg/Room No.	Classroom No.	Room Use	Area	Year Built/Modernized	DSA #
Bldg. 001					1965	24257
B001			Mechanical	156		
C001			Workroom	240		
C002			Nurse	220		
C003			Reception	160		
C004			Principal	139		
H001			Hall	746		
I001			Lounge	344		
J001			Janitor	54		
J002			Store	56		
K001			Kitchen	67		
S001			Storage	56		
S003			Storage	93		
S004			Storage	23		
S005			Storage	42		
T001			Toilet	62		
T002			Toilet	62		
T003			Toilet (Men)	38		
T004			Toilet (Women)	68		
T005			Toilet	22		
Y001		1	Classroom	1,051		
Y002		2	Classroom	1,051		
			Work Room	99		
			Work Room	99		
			Unspecified	98		

BUILDING AREA TOTAL 5,046
COVERED WALKWAYS 664
CLASSROOMS 2

<u>Charter Only</u>	<u>District Only</u>	<u>Shared</u>
156		
240		
220		
160		
139		
746		
344		
54		
56		
67		
56		
93		
	23	
42		
62		
	62	
		38
		68
	22	
	1,051	
	1,051	
	99	
99		
98		
		664

Bldg. 003					1965	24257
B002			Boiler Room	115		
O003		3	Classroom	1,051		
O004		4	Classroom	935		
O005		5	Classroom	935		
O006		6	Classroom	935		
O007		7	Classroom	935		
S001			Storage	236		
T001			Toilet (Girls)	209		
T002			Toilet (Boys)	208		
T003			Toilet	39		
ZC01				59		
			Work Room	140		
			Toilet	39		
			Unspecified	628		

BUILDING AREA TOTAL 6,464
COVERED WALKWAYS 4,010
CLASSROOMS 5

115
1,051
935
935
935
935
935
236
209
208
39
59
140
39
628
4,010

Bldg/Room Code	Bldg/Room No.	Classroom No.	Room Use	Area	Year Built/Modernized	DSA #
Bldg. 004					1965	24257
B003			Boiler Room	115		
O008		8	Library	1,291		
O009		9	Classroom	935		
O010		10	Classroom	935		
O011		11	Classroom	935		
O012		12	Classroom	935		
S005			Storage	132		
T005			Toilet (Women)	99		
T009			Toilet (Boys)	208		
T010			Toilet (Girls)	209		
ZC02				351		

BUILDING AREA TOTAL
COVERED WALKWAYS
CLASSROOMS

6,145
4,448
4

<u>Charter Only</u>	<u>District Only</u>	<u>Shared</u>
115		
1,291		
935		
935		
935		
935		
132		
99		
208		
209		
351		
4,448		

Permanent Building Area 23,015
Covered Walkways 13,628
Permanent Classrooms 11

PORTABLE BUILDINGS

P01					1967	28948
O014		14	Classroom	900		
O015		15	Classroom	900		
O016		16	Classroom	900		
P02					1952	9952
O013		13	Classroom	983		
P03					1986	47820
O017		17	Classroom	960		

Portable Building Area 4,643
Portable Covered Walkways 0
Portable Classrooms 5

TOTAL 38,208 2,308 770

TOTAL BUILDING AREA 27,658
TOTAL COVERED WALKWAYS 13,628
TOTAL CLASSROOMS 16

Total Exclusive Charter Space	38,208
Total Exclusive District Space	2,308
Total Shared Space	770
Ratio of Charter to District Space	0.9396
Shared Space Allocated to Charter	723
Total Square Feet to be reflected in Facilities Use Agreement	
Space Exclusively for Charter	38,208
Shared Space	723
FUA Total	38,931

EXHIBIT D

The Charter School shall pay the District for custodial services, at the Facilities, that 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, labor and supplies to provide the custodial services for the Facilities. The Charter School shall also release the employee, performing the custodial services, to allow him/her to attend mandatory training provided by the District.

The Charter School shall bear; (1) the actual cost of such custodial services and mandatory trainings, including the salary and benefits of the Custodian; and (2) the cost of any cleaning supplies and tools including but not limited to toilet paper, soap and paper towels, necessary for the Custodian to provide these services.

However, for the 2013-2014 school year, the reimbursement, owed to the District, in-lieu of the actual time for labor, will be at the minimum rate of 3.5 hours per day of custodial services (0.4375 FTE).

The District will invoice the Charter School quarterly for the costs of these custodial services, supplies and tools. The Charter School will pay said invoice within thirty (30) days of receipt.

The District shall inspect the facility at least once annually for compliance with the District's standard of care and cleaning of the facility. The Parties shall meet and confer at least sixty (60) days before July 1 to review the inspection and determine whether an increase in the hours of daily custodial service is necessary for subsequent school years. Should the Parties be unable to agree on the necessary increase, the District may increase the hours to a reasonable and necessary amount to correspond with either: (1) any increase in the amount of students served by the Charter School; (2) any increase in the amount of facilities the custodian must maintain on behalf of the Charter School; or (3) the need to ensure proper care of the facility. The District reserves the right to increase the level of service by replacing the custodian with a Plant Manager if the Charter School does not adequately maintain the facility. The Charter School will pay the Plant Manager's rate under the terms of this Exhibit D.

Additional Services: Should the Charter School require additional custodial services, in any year covered in this agreement including 2013-2014, that are 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 6th grade in the 2013-2015 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 2013-2014 and 2014-2015 school year.

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 31, 2013, to July 31, 2015 (“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, 2013, 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 2013-2014 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 2013-2014 school year, and upon which the Facilities are provided, is **300.3**.

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 2013-2014 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: Teresa Cummings, Chief Accountability Officer
5735 47th Ave
Sacramento, CA 95824
Facsimile: 916-399-2020

To Non-Profit or Charter School:

Attn: Dennis Mah, 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: _____
Dennis Mah
Superintendent

By: _____
Jonathan P. Raymond,
Superintendent

Date: _____

Date: _____

Approved and ratified this _____ day of _____, 2013, by the Board of Education of the Sacramento City Unified School District by the following vote:

AYES:

NOES:

Abstentions:

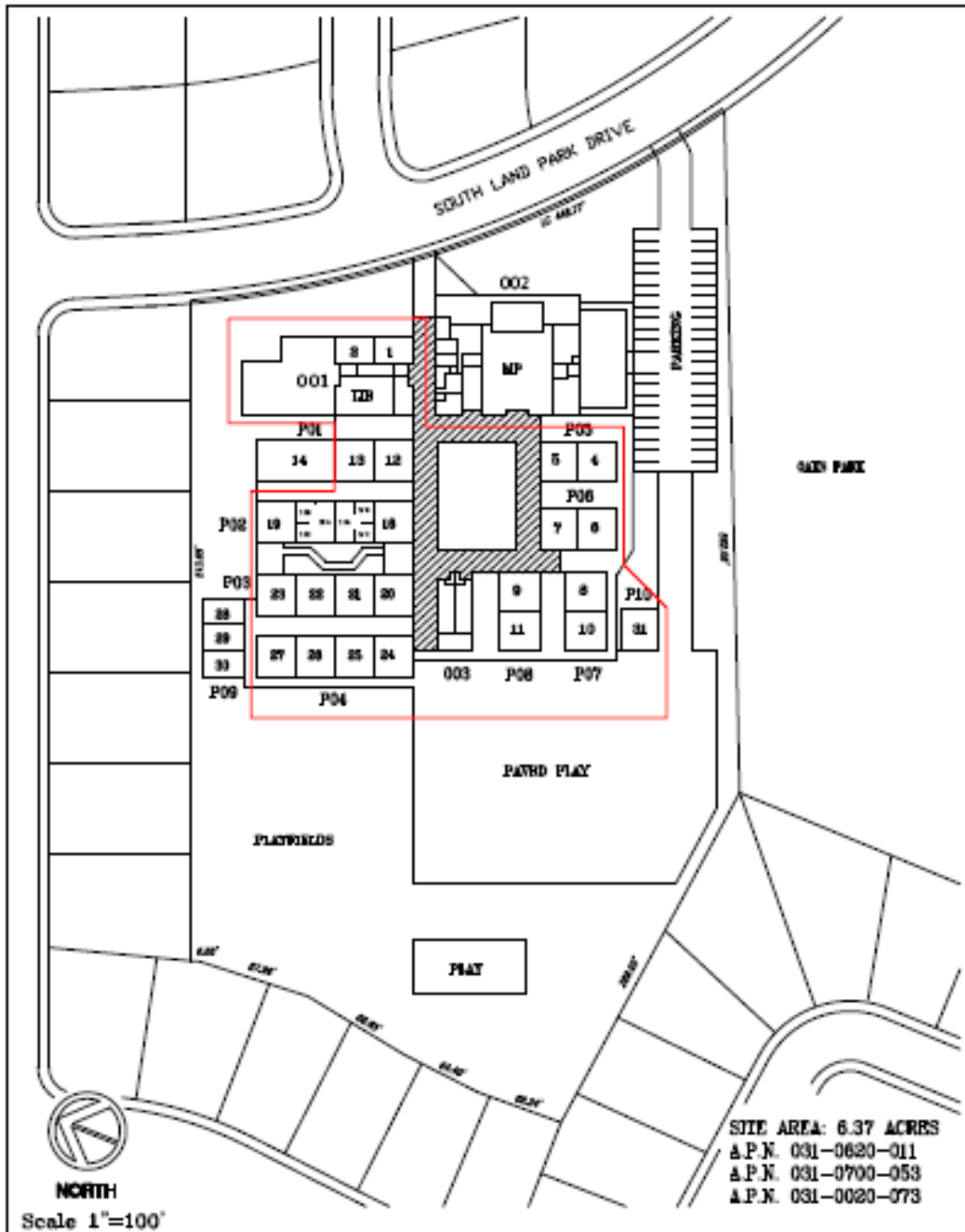
Secretary to the Board of Education

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.

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 2013-2014 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, 2013, 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.

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 #
PERMANENT BUILDINGS						
Bldg. 001					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
 CLASSROOMS 2

1,089

Bldg. 002					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

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

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 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.