

REHABILITATED/NEW CONSTRUCTION SCHOOL FACILITY USE AGREEMENT

This Rehabilitated/New Construction School Facility Use Agreement (“Agreement”) is made by and between Sacramento City Unified School District (“District”) and Language Academy of Sacramento, a California non-profit public benefit corporation (“Non-Profit”), which operates Language Academy of Sacramento, a charter school (“Charter School”). The Non-Profit and District are collectively referred to as the “Parties.”

RECITALS

- A. WHEREAS, Charter School has applied to the State Allocation Board and the California School Finance Authority (individually or collectively referred to as the “State”) for financing of modernization and rehabilitation of certain school facilities owned by the District at Marian Anderson Elementary School, (“School Site”) located on 2850 49th Street, Sacramento, CA 95817. The modernized, rehabilitated and newly constructed portions of the School Site will be referred to as the “Project Facilities”, a map and further description of which is attached hereto as Exhibit A, ; and
- B. WHEREAS, the District shall provide the use of portions of the School Site to the Charter School for the operation of its charter school program; and
- C. WHEREAS, the Charter School is operated by the Non-Profit, and all obligations imposed hereby on the Charter School are equally imposed on the Non-Profit; and
- D. WHEREAS, the District and Charter now desire to enter into an agreement for the design, rehabilitation and construction of the Project Facilities (“Project”) and the use and occupancy of portions of the School Site (“Non-Project Facilities”) subject to the terms and conditions contained in this Agreement under the relevant statutes and regulations and intend this Agreement to satisfy their obligations under Education Code section 17078.52, et seq. (“Charter School Program”), which among other things requires a written agreement between the District and Charter School regarding use of the School Site facilities for the Charter School to receive eligible funding; and
- E. WHEREAS, the Project shall be defined as and limited to the design, rehabilitation and construction of existing and additional facilities located on the School Site and further described with more particularity in Exhibit B; and
- F. WHEREAS, the Office of Public School Construction has notified the Charter School that it is eligible for the charter school preliminary apportionment under the School Rehabilitated School Facility Program; and
- G. WHEREAS, the Parties anticipate that the Charter School will initiate the necessary steps to commence design and construction of the Project at the School Site, including submission of this executed agreement and Form 50-05 to the State of California, as well as SCUSD Board approval and execution of all necessary agreements with the State within the State’s mandatory time lines; and

- H. WHEREAS, the parties intend that this Agreement shall operate in conjunction with the “Resolution No. 2663 Declaration That The Sacramento City Unified School District Has Authorized Language Academy Of Sacramento (Charter) To Reside At Marian Anderson Elementary School And That The Facilities Will Be Dedicated To The Language Academy Of Sacramento (Charter) & That Charter Will Rehabilitate Existing Facilities As Well As Build New Classrooms And Other Support Facilities” dated June 23, 2011.
- I. WHEREAS, the Parties intend that this Agreement supplements the previous Facility Use Agreement, May 5, 2011 between the District and Charter School, and that this Agreement constitutes full and complete satisfaction of the District’s obligation to provide Rehabilitated School Facility to the Charter School under Education Code section 47614 and the Proposition 39 regulations (CCR, Title 5, Section 11969.9) (“Proposition 39”) for the entire term of the Agreement. The Parties further agree that any reconfiguration of the Project Facilities at the School Site related to the Project shall not confer upon Charter School any additional rights under Education Code section 47614 and the Proposition 39 regulations (CCR, Title 5, section 11969.9) for the entire term of the Agreement. Charter School also agrees that the Project shall not give rise to any additional obligation on the part of the District to provide furnishings and equipment under proposition 39 to those classrooms contained within the Project.
- J. WHEREAS, the District and the Charter’s missions and Strategic Plans delineates a commitment to high quality public education that seeks to accelerate student achievement for students in high needs areas and create innovative educational programs.
- K. WHEREAS, The Parties will work together in good faith with community partners UC Davis Medical Center, Shriners Hospital, MIND Institute, UC Davis Center for Health Disparities and other government agencies. The District preserves their ability to form these community partnerships to create innovative programs to serve the needs of all students.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereby agree as follows:

ARTICLE 1 USE OF SCHOOL SITE

- 1.1. **Recitals.** The recitals set forth above are incorporated herein and made part of this Agreement.
- 1.2. **Use of the School Site.** Pursuant to the California Education Code section 17078.62, the District shall make the Project Facilities available to the Charter School for the operation of a charter school program, subject to the terms and conditions set forth in this Agreement. Separate and apart from the terms and conditions set forth in Education Code section 17078.62, the District shall make Non-Project Facilities available to the

Charter School for the operation of a charter school program subject to this Agreement. Charter School shall not have exclusive use of the School Site. The Project Facilities and Non-Project Facilities are described in Exhibit A.

- 1.3. **Term.** The term of this Agreement shall commence on June 23, 2011 (“Effective Date”) for one year, and shall automatically renew and continue so long as the Charter School remains eligible to receive and/or occupy the Facilities under the Charter School Facilities Program, or unless the Agreement is otherwise earlier terminated as provided herein. If the State of California does not make funds available to charter schools statewide under the Charter School Facilities Program Fund within two years from the Effective Date, a new agreement shall be negotiated. The Project is determined to be completed when the Office of Public School Construction (“OPSC”) audit has been finalized and the Department of the State Architecture (“DSA”) close out of the project has been completed. The target date for completion is June 2013.

- 1.4. **Design and Construction of the School site.**

Responsibility for Construction of the Project. Charter school shall fund all design, construction and improvements on the Project Facilities as well as pay for any and all cost related to infrastructure upgrades in accordance with the Project, as well as all applicable laws, rules and regulations. In the event that the District intends to expand, beyond the Project scope, it shall be the sole responsibility of the District to pay for any and all costs related to the design, construction, improvement and infrastructure upgrades related to the building, as well as all applicable laws, rules and regulations. The Charter School is not responsible for any infrastructure upgrades to the portion of the School Site to which it is not rehabilitating or adding new construction.

Alterations and Repairs. Charter School shall have the right to make additions, repairs, alterations, changes or improvements, in, on or to the Project; and provided further, that the Charter School shall pay, prior to delinquency, for all work done by it or upon its order. Charter School shall make, at its own expense, any and all necessary repairs to, or replacement placed by it upon the Project Facilities in order to comply with all the applicable regulation, laws or ordinances of the State. In no event shall Charter School’s alterations, repairs modification or changes adversely affect the value of the School Site. Charter School shall not have the right to make additions, repairs, alterations, changes or improvements to any Non-Project Facilities or School Site. The District shall not under any circumstances be required to make any improvements or install any equipment on the Project Facilities, make any repairs, alterations or replacements of any nature to the Project Facilities, or make any expenditures whatsoever in connection with this Agreement. The District shall not be required to repair or rebuild all or any part of the Project Facilities.

District/DSA Review and Approval District acknowledges and agrees that the DSA is the agency that has the formal project review and approval function for the construction of charter schools. The parties acknowledge DSA shall receive and approve Charter

School's plans and specifications for the Project and that the Charter School shall provide a copy of said approved plans and specifications to the District. Due to the fact that the Project is being constructed on the District's School Site, the District will approve all Project designs.

Charter School shall require all contractors and subcontractors to maintain contractors insurance and performance bonds for the duration of the Project, as well as any other work performed at the School Site. Charter School and the 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 School Site and protection of minor students as required by law.

Charter School shall, at its sole expense, ensure that all workers on the project, as well as any construction project at the School Site, shall be paid prevailing wage rates as those rates are set in accordance with Labor Code Section 1770, *et seq.*

Fingerprinting. Charter School shall be responsible for ensuring compliance with all applicable fingerprinting and criminal background investigation requirements.

Government Approvals. Charter School, at its sole expense, shall obtain all licenses and permits required to perform the work related to the Project and shall comply with all applicable laws affecting the work.

- 1.5. **Installation of Charter School's Equipment.** Charter School may at any time, and from time to time, in its sole discretion and at its own expense, install or permit to be installed other items of equipment in or upon the Project Facilities. All such items shall remain the sole property of the Charter School and may be removed or modified by the Charter School at any time, provided that the Charter School shall repair and restore any and all damage to the School Site resulting from the installation, modification and removal of said items.
- 1.6. **District's Disclaimer of Warranties.** The District is not aware of any defect in or condition of the School Site that would prevent their use for the Charter School's purpose or for the Project. The District has not received any notices of any violation, statute, ordinance, regulation, order or holding from any state or federal agency with jurisdiction over the School Site that calls into question the appropriateness or sufficiency of the premises for their intended purpose. The Charter School acknowledges that neither the District nor Districts agents have made any representation or warranty as to the suitability of the School Site premises for the Project or to the conduct of the Charter School's business.

ARTICLE 2 REPRESENTATION AND WARRANTIES OF CHARTER SCHOOL; REPRESENTATION AND WARRANTIES OF THE DISTRICT

- 2.1. **Representations and Warranties of Charter School.** Charter school represents and warrants for the benefit of the District and its assignees as follows:

2.1.1. Valid Existence. Charter School is a nonprofit public benefit corporation duly organized and validly existing under the laws of the State of California.

2.1.2. Authority to Enter into Agreement. Charter School is authorized under organizational documents and the laws of the State of California to enter into this Agreement and perform all of its obligations hereunder.

2.1.3. Due Authorization. Charter School has been duly authorized to execute and deliver this Agreement under the terms and provisions of a resolution of Charter School approving the form and authorizing the execution of this agreement.

2.1.4. Enforceability of Agreement. Charter School represents and warrants that all requirements have been met and procedures have occurred in order to ensure the enforceability of this Agreement (except as such enforceability may be limited by bankruptcy insolvency or other laws affecting creditors' rights generally and by the application of equitable principles) and Charter School further represents and warrants that this Agreement is a valid and binding obligation of Charter School, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy insolvency or other laws affecting creditors' rights generally and by the application of equitable principles.

2.1.5. Limitation on Use of School Site. During the term of this Agreement, the Project Facilities will be used by the Charter School for the purposes of performing those activities and services consistent with the operation of the Charter School Program, Civic Center Act and consistent with the permissible scope of the Charter School's organizational documents.

2.1.6. Essential Project. Charter School represents and warrants that the Project is essential to the fulfillment of its role as a provider of educational services through the charter school program.

2.2. **Representations and Warranties of District.** The District represents and warrants for the benefit of the Charter School and its assignees as follows:

2.2.1. Valid Existence. The District is a school district duly organized and validly existing under the laws of the State of California.

2.2.2. Authority to Enter into Agreement. The District is authorized under organizational documents and the laws of the State of California to enter into this Agreement and perform all of its obligations hereunder.

2.2.3. Due Authorization. The District has been duly authorized to execute and deliver this Agreement under the terms and provisions of a resolution of Board of Directors of the District approving the form and authorizing the execution of this Agreement.

- 2.2.4. **Enforceability of Agreement.** District represents and warrants that all requirements have been met and procedures have occurred in order to ensure the enforceability of this Agreement (except as such enforceability may be limited by bankruptcy insolvency or other laws affecting creditors' rights generally and by the application of equitable principles) and the District further represents and warrants that this Agreement is a valid and binding obligation of District, enforceable in accordance with its terms, except a such enforceability may be limited by bankruptcy insolvency or other laws affecting creditors' rights generally and by the application of equitable principles.
- 2.2.5. **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.

ARTICLE 3 PAYMENTS

- 3.1. **Payments.** Pursuant the Funding Agreement with the State of California, Charter School has agreed to pay its fifty percent (50%) share of the Local Matching Share obligation to the State Allocation Board (the "Payments") in consideration for the State financing the Project. The parties to this Agreement hereby acknowledge and agree that the District is not liable to the State for the Payments (except as provided in California Education Code section 17078.62 (b) (4), which section requires the District to notify the California School Finance Authority and take possession of the School Facility and make the School Facility available for continued use as a public school facility before the District is liable to the State), and that the District is not a guarantor or warrantor of Charter School's Payments. The Parties agree that the terms of California Education Code section 17078.62 apply only to the Project Facility.
- 3.2. **Facility Use Fee**
Charter School shall pay District both a Project Facility Use Fee and a Non-Project Facility Use Fee, as further described with more particularity in Exhibit C, attached hereto and incorporated herein. These fees will be calculated annually by the District. The Non-Project Facility Use Fee shall be based on a pro rata cost estimate per square foot for the use of the portion of the School Site that is not part of the Project in the approximate square foot amount identified in Exhibit C and in the amounts per square foot identified therein during the Term of the Agreement. The dollar amount to be paid by Charter School, per square foot, for use of the Non-Project 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 the Term of the Agreement begins. Therefore, for each fiscal year, the District will provide an initial estimated fee, subject to amendment when the preceding fiscal year figures become final. Within ninety (90) days of the beginning of the 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 Charter School of any amended Non-Project Facilities Use Fee calculations based on the actual data for the prior fiscal year. Amounts owed to or by the Charter School due to this calculation will be credited or added to subsequent remaining monthly installment payments of the Non-Project Facilities Use Fees.

The Project Facility Use Fee shall be based on the actual costs to the District, including costs to provide labor salary and benefits, for maintenance and operations, to the Project Facilities. The District and Charter School will work in good faith to mutually agree upon a fee schedule for provision of these services. To calculate the fee, the District must determine actual 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 the Term of the Agreement begins. Therefore, for each fiscal, the District will provide an initial estimated fee, subject to amendment when the preceding fiscal year figures become final. Within ninety (90) days of the beginning of the 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 Charter School of any amended Project Facilities Use Fee calculations based on the actual data for the prior fiscal year. Amounts owed to or by the Charter School due to this calculation will be credited or added to subsequent remaining monthly installment payments of the Project Facilities Use Fees.

The District will provide documentation to the Charter School of these calculations.

Both Fees shall be paid out in equal installments each month throughout the Term. Beginning on August 1, 2011, payments shall be payable on or in advance on the first day of each month (“Due Date”), offset, prior notice or demand, in lawful money of the United States.

ARTICLE 4

CHARTER SCHOOL’S OBLIGATIONS

- 4.1. **Licensing; Accreditation.** Charter School shall, at its own cost and expense, maintain all accreditations, licenses, permits and governmental approvals necessary for the operation of the Project Facilities, design and construction of the Project Facilities, and the Charter School program.
- 4.2. **Duty to Maintain Interim Facilities.** In the event that Charter School installs or causes to be installed any interim facilities related to, or as a consequence of the Project Charter School shall assume full responsibility for the cost of installation, maintenance, insurance, repair and removal of the interim facilities, including deferred maintenance under Education Code section 17582. The obligations set forth in Section 9 of the Agreement with respect to installation of improvements shall apply with equal force to the installation of interim facilities..

4.3. **Taxes and Other Governmental Charges; Utility Charges.**

4.3.1. **Taxes and Other Governmental Charges on the School Site.** The parties to this Agreement contemplate that the Rehabilitated School Facility will be used for the nonprofit public benefit related purposes of Charter School and, therefore, that the Project Facilities will be exempt from all taxes presently assessed and levied with respect to property. In the event that the use, possession, or acquisition by Charter School of the Project Facilities is found to be subject to taxation in any form, Charter School will pay during the term of this Agreement, as the same respectively become due, all taxes and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Project Facilities, and any equipment or other property acquired by Charter School in substitution for, as a renewal or replacement of, or a modification, improvement or addition to the Project Facilities.

4.3.2. **Agreement-Related Taxes Imposed on Charter School.** Charter School shall also pay directly or pay as additional Payments hereunder such amounts, if any, in each year as shall be required by the District for the payment of all license and registration fees and all taxes (including, without limitation, income, excise, license, franchise, capital stock, recording, sales, use, value-added, property, occupational, excess profits and stamp taxes), levies, imposts, duties, charges, withholdings, assessments, and governmental charges of any nature whatsoever, together with any additions to tax, penalties, fines or interest thereon, including, without limitation, penalties, fines, or interest arising out of any delay or failure by Charter School to pay any of the foregoing, hereinafter levied or imposed against the District with respect to the Project Facilities and/or this Agreement by any governmental authority.

4.3.3. **Utility Charges.** District agrees to furnish or cause to be furnished to the Project 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 School 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 to the District.

The Charter School shall reimburse the District for the actual cost of utilities at the School Site, as charged to the District by its utility providers. Thirty (30) days prior to the commencement of this agreement, the District shall endeavor to notify the Charter School of its estimated monthly charge for utilities. This will be revised annually based on the District's estimated costs. 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 Article 3 of this Agreement. Within one hundred twenty (120) days after the end of each school year or earlier if this Agreement is terminated, 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. Such fees and charges shall not become an obligation of the District

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

4.4. **Liens on School Site or Rehabilitated School Facility.** In the event Charter School shall at any time during the term of this Agreement cause any alterations, additions, improvements, renovations, modifications, expansions, or any repair, reconstruction or rehabilitation or other work to be done or performed, or materials to be supplied, in or upon the Project Facilities (collectively and generally referred to as "Future Work"), Charter School shall pay, when due, all sums of money that may become due for, or purporting to be for, any labor, services, materials, supplies, or equipment furnished or alleged to have been furnished to or for Charter School in, upon or about the Project Facilities for future work and shall keep the Project Facilities free of any and all mechanics' or material men's liens or other liens against the Rehabilitated School Facility other than those liens, if any, already in place as of the date hereof. In the event any such lien attaches to or is filed against the Project Facilities, Charter School shall cause each such lien to be fully discharged and released at the time the performance of any obligation secured by any such lien matures or becomes due, except that if Charter School desires to contest any such lien it may do so in good faith. If any such lien is reduced to final judgment and such judgment or such process as may be issued for the enforcement thereof is not promptly stayed, or if so stayed and said stay thereafter expires, Charter School shall forthwith pay (or cause to be paid) and discharge such judgment. Charter School agrees to and shall, to the maximum extent permitted by law, indemnify and hold the District, its governing board, agents, successors and assigns, harmless from and against, and defend each of them against, any claim, demand, loss, damage, liability or expense (including attorney's fees) as a result of any such lien or claim of lien against the Project Facilities resulting from said future work.

4.5. **Environmental Covenants.**

4.5.1. **Compliance with Laws; No Hazardous Substances.** Charter School is responsible to the extent required by law and by funding agencies and the State of California to comply with all Applicable Environmental Laws, including but not limited to: the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 USC Sections 9601 et seq.; the Resource Conservation and Recovery Act ("RCRA"), 42 USC Sections 6901 et seq.; the Federal Water Pollution Control Act,

33 USC Sections 1251 et seq.; the Clean Air Act, 42 USC Sections 7401 et seq.; the California Hazardous Waste Control Law (“HWCL”), California Health & Safety Code Sections 25100 et seq.; the Hazardous Substance Account Act (“HSAA”), California Health & Safety Code Sections 25300 et seq.; the Porter-Cologne Water Quality Control Act (the “Porter-Cologne Act”), California Water Code Sections 1300 et seq.; the Air Resources Act, California Health & Safety Code Sections 3900 et seq.; the Safe Drinking Water & Toxic Enforcement Act, California Health & Safety Code Sections 25249.5 et seq. and the regulations under each thereof; and any other local, state, and/or federal laws or regulations, whether currently in existence or hereafter enacted, that govern: (i) the existence, cleanup, and/or remedy of contamination on property; (ii) the protection of the environment from spilled, deposited, or otherwise emplaced contamination; (iii) the control of hazardous wastes; or (iv) the use, generation, transport, treatment, removal, or recovery of Hazardous Substances, including building materials. (“Applicable Environmental Laws”) With respect to the Project Facilities Charter School agrees to not use, store, generate, treat, transport, or dispose of any Hazardous Substance thereon or in a manner that would cause any Hazardous Substance to later flow, migrate, leak, leach, or otherwise come to rest on or in the Project Facilities or School Site in violation of said Applicable Environmental Laws. Charter School shall not engage in any commercial or manufacturing activity or uses on the School Site. In the event Charter School breaches this provision, Charter School shall indemnify the District for any injury or loss associated therewith.

4.5.2. Hazardous Substance; Applicable Environmental Laws. For purposes of this Agreement,

4.5.2.1. “Hazardous Substance” means any substance that shall, at any time, be listed as “hazardous” or “toxic” in any Applicable Environmental Law or that has been or shall be determined at any time by any agency or court to be a hazardous or toxic substance regulated under Applicable Environmental Laws; and also means, without limitation, raw materials, building components, the products of any manufacturing, or other activities on the Project Facilities, wastes, petroleum, and source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (42 USC Sections 3011 et seq.).

4.5.3. Notification. Charter School will transmit copies of all notices, orders, or statements received from any governmental entity concerning violations or asserted violations of Applicable Environmental Laws with respect to the School Site or Project Facilities and any operations conducted thereon or any conditions existing thereon to the District and the State, and Charter School will notify the District and the State in writing immediately of any release, discharge, spill, or deposit of any Hazardous Substance that has occurred or is occurring that in any way affects or threatens to affect the Project Facilities or School Site, or the people, structures, or other property thereon, provided that no such notification shall create any liability or obligation on the part of the District or the State.

- 4.5.4. Access for Inspection. Charter School will permit the State and the District, its successors, assigns, agents, or any experts designated by the State and/or the District to have full access to the School Site, including Project Facilities with prior written notice to Charter School or the school principal during reasonable business hours for purposes of such independent investigation of compliance with all Applicable Environmental Laws, provided that the District and the State have no obligation to do so, or any liability for any failure to do so, or any liability should it do so.
- 4.5.5. Compliance with California Environmental Quality Act: Except as set forth in Section 4.5.6, Charter School shall assume all costs and responsibility for compliance with the terms of California Public Resources Code section 21000 et seq. (California Environmental Quality Act) that result from its use, occupancy, modification or repair of the Project Facilities and shall hold harmless the District against all costs, expenses, and liability for doing so. Charter School shall not be responsible for legal compliance or for environmental conditions that existed prior to Charter School's occupancy of the Project Facilities and the School Site.
- 4.5.6. Release of all Claims and Demands. Charter School hereby releases the District, its governing board, employees and agents (collectively, the "released parties"), from any and all claims, demands, debts, liabilities, and causes of actions of whatever kind or nature which Charter School or any of its employees or agents may have, claim to have, or which may hereafter accrue against the released parties or any of them, arising out of or relating to or in any way connected with Hazardous Substances presently in, on or under, or now or hereafter emanating from or migrating onto or under the Project Facilities. In connection with such release, Charter School hereby waives any and all right conferred upon it by the provisions of section 1542 of the California Civil Code, which reads as follows: A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.
- 4.6. Title to the Property. Charter School will at all-time protect and defend, at its own cost and expense, the title to the Project Facilities from and against all claims, liens, and legal processes of creditors, and keep the Project Facilities and the title free and clear of all such claims, liens and processes except for the liens created or expressly permitted by the terms of the Funding Agreement and the Charter School Facility Program. The parties acknowledge that title to the School Site is held by the District, in trust for the State of California, and shall remain in the District at all times.
- 4.7. Right of Entry. Charter School shall permit District, its agents, representatives or employees, to enter upon the Project Facilities for the purpose of inspecting same or to make repairs, alterations, or additions to any portion of the Site. District shall attempt to give reasonable notice where practicable but shall not be obligated to do so in the event of emergency or imminent threat to health or safety of occupants. Charter School shall provide the District with a master key so that the District may access the School Site only in the event of an emergency. The Charter School shall not, without prior written

approval of the District, change any locks to not match the District master. Should the Charter School change a lock, Charter School shall provide District with keys to unlock all necessary doors in the School Site, excluding the Charter School's vaults and safes. The District may erect emergency 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 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 Project Facilities related to District's entry for the purposes identified in this Section.

- 4.8. Assignment and Subleasing by Charter School. This Agreement shall not be mortgaged, pledged, assigned, sublet, encumbered, or transferred by Charter School by voluntary act or by operation of law or otherwise, except with the prior written consent of the District, which consent shall not be unreasonably withheld. No such mortgage, pledge, assignment, sublease or transfer shall in any event affect or reduce the obligation of Charter School to make the Payments and Additional Payments required hereunder. Nothing in this Agreement is intended to negate charter schools ability to partnership with surrounding community organizations.
- 4.9. 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 Project Facilities accessible to members of the community. The Parties understand that the Project Facilities are to be primarily used for school programs and activities and as such any use of the Project 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 Project Facilities by members of the public. For purposes of compliance with the Civic Center Act with respect to the Project Facilities only, the Non-Profit board of Trustees shall hold the same powers and obligations applicable to the School District Board of Trustees under Education Code sections 38130-38139 and shall also follow District Board Policy and Administrative Regulations in making use of the Rehabilitated School Facilities accessible to members of the community. The District will remain in control of scheduling, use and collection of fees related to use of all Non-Project Facilities.
- 4.9.1. Alarms. The Charter School shall have access to activate burglar alarms and intruder alerts corresponding to the Project Facilities provided at the School 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.
- 4.10. Furnishings and Equipment. The District shall provide, in accordance with the Proposition 39 regulations, furnishings and equipment at the Non-Project Facilities. These furnishings and equipment shall remain the property of the District. The furnishing and equipment provided are "reasonably equivalent" to other District "comparison schools" established under Title 5, California Code of Regulations § 11969.3 subd. (a). The furnishings and equipment to be provided by the District for the

Non-Project Facilities are those furnishings and equipment that exist at the Non-Project Facilities as of July 1, 2011. Any disputes regarding whether or not the District has met its obligations to provide furnishings and equipment which are reasonably equivalent shall be resolved pursuant to the dispute resolution procedures identified in the Charter School's charter. 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.

4.11. Proposition 39/Conditions Reasonably Equivalent.

a. Charter School agrees that upon execution of this Agreement, that by providing the Facilities and adopting the duties and obligations set forth in this Agreement, the District is meeting its obligations under Proposition 39 during the Term of this Agreement. The Charter School waives its right to make any Proposition 39 requests for the Charter School while this Agreement is in effect.

b. The Charter School shall not be responsible for hazardous environmental conditions that existed prior to the Charter School's original occupancy of the Non-Project Facilities. The District shall retain the responsibilities of a real property owner in connection with compliance with the ADA, FEHA, and other applicable buildings codes and standards, including District policy regarding facilities. The Charter School shall assume responsibility for compliance with the ADA, FEHA, and other applicable buildings codes and standards, including District policy regarding facilities, as to any improvements performed by the Charter School, during this or any prior facilities use agreement term. The Charter School shall operate the Non-Project and Project Facilities in compliance with the above statutes, standards and policies.

c. Should any discharge, leakage, spillage, emission, or pollution of any type occur upon or from the School Site due to the Charter School's use and occupancy thereof, Charter School, at its expense, shall be obligated to clean all the property affected, to the satisfaction of District and any governmental agencies having jurisdiction over the School Site. Should any discharge, leakage, spillage, emission, or pollution of any type occur upon or from the District facilities due to the condition of the District's property, the District, at its expense, shall be obligated to clean all the property affected, to its satisfaction and the satisfaction of any governmental agency having jurisdiction over District facilities.

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

4.13. **Signage.** The Charter School shall be allowed to place signage on the exterior of the Project Facilities. The District may keep its own signage exhibited at the Project Facilities, 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 Non-Project 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.

4.14. **Illegal Uses.** The Charter School shall not use the Project Facilities or School Site or permit anything to be done in or about the Project Facilities or School Site 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 School Sites. .

4.15. **Security Badges.** The District or Charter school will provide security badges to 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.

4.16. **Operations and Maintenance.**

4.16.1. The cost for the ongoing operations and maintenance of the Project Facilities and Non-Project and furnishings and equipment is calculated into the Project Facilities and Non-Project Facilities Use Fees of section 3 of this Agreement, and in accordance with Exhibit C. The District shall be responsible for providing all maintenance and operations at the School Site. Charter School will reimburse District for the costs to provide these services pursuant to Section 3. The School Site will remain on the same deferred maintenance schedule.

4.16.2. The District shall be responsible for any modifications necessary to maintain the Project Facilities in accordance with Education Code sections 47610(d) or 47610.5 and shall be charged to the charged to the charter school based on an agreed upon fee structure. 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.

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

ARTICLE 5 DISTRICT'S OBLIGATIONS

- 5.1. **Title to the Rehabilitated School Facility.** The District's sole obligation with respect to the Project Facilities' title is to hold title to the Project Facilities in trust for the benefit of the State public school system in accordance with Education Code section 17078.62. In the event Charter School ceases to use the Project Facilities for its charter school purposes, the District shall apply the usage and priority provisions of Education Code section 17078.62. Charter School shall cooperate and assist with any transition that may take place pursuant to the priority provisions. The parties agree that the provisions of Education Code section 17078.62 shall apply solely to the Project Facilities and not to any other structure, building, improvement, encumbrance, easement at the School Site, or to the real property contained therein.
- 5.2. **Funding the School Site.** The District shall have no obligation to provide funding to Charter School for the planning, design, construction, operation and/or maintenance of the Project Facilities.
- 5.3. **Future Work.** Any Future Work performed by, at the direction of, or for the benefit of Charter School shall be subject to Section 9 of the Project Facilities Use Agreement by and between Sacramento City Unified School District," After completion of the Project, Charter School shall not construct or install any improvements (as defined in Civil Code 660) on the Project Facilities or otherwise alter the School Site without the prior written consent of District, and if required, the DSA.

ARTICLE 6 INDEMNIFICATION

- 6.1. **Indemnification of the District.** 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 School Site or Project 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 School Site or Project 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 School Site or Project Facilities, each Party to this Agreement shall give prompt written notice thereof to the other Party. This section shall survive termination of the Agreement.

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.

- 6.2. **Liens.** Charter School shall keep the Project 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.

6.3. **Holding Over.** Charter School shall not remain in possession of the Non-Project Facilities or Project 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 Non-Project 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.

6.4. **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 Project Facilities and School Site, and the Non-Project Facilities'' and School Site's furnishings and equipment, and shall comply with all applicable laws. The Parties agree to meet and confer in good faith within 30 days of completion of the Project regarding compliance expectations.

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

ARTICLE 7 INSURANCE

7.1. **Insurance Coverage.** The Charter School shall comply with insurance provisions contained within its charter and any Memoranda of Understanding between the Parties.

7.1.1. **Insurance Risk.** The District shall maintain first party property insurance for the School Site. The Charter School shall not do or permit anything to be done in or about the Project Facilities or Non-Project 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 School Site, or any of the contents of the School Site(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 Project 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 Project Facilities or Non-Project 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 Project Facilities and Non-Project Facilities.

- 7.1.2. Charter School shall, at all time during the term of this Agreement, and at its own cost and expense procure and continue the following insurance coverage: Bodily Injury and Property Damage Liability insurance with a combined single limit for bodily injury and property damage of not less than \$5,000,000. Such minimum limits of policies shall in no event limit the liability of the Charter School hereunder. Such insurance shall name the District as an additional insured. Insurance shall be with companies having a rating of not less than A- in “Best’s Insurance Guide.” The Charter School shall furnish from the insurance companies or cause the insurance companies to furnish certificates of coverage to the District.

ARTICLE 8 MISCELLANEOUS.

- 8.1. **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.
- 8.2. **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.
- 8.3. **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.

- 8.4. **Amendment.** No provision of this Agreement may be amended or modified except by an agreement in writing signed by the Parties hereto.
- 8.5. **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.
- 8.6. **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.
- 8.7. **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.
- 8.8. **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.
- 8.9. **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.
- 8.10. **No Admission.** Except as expressly agreed herein, nothing contained herein shall constitute an admission of fact or law.
- 8.11. **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.
- 8.12. **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.
- 8.13. **Subject to Approval by Governing Board.** This Agreement shall

become effective upon ratification by the District's Governing Board.

- 8.14. **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: Jonathan P. Raymond, Superintendent
5735 47th Avenue
Sacramento, CA 95824
Facsimile 916-643-9480

To Non-Profit or Charter School:

Attn: Judy Morales, Business Manager
Language Academy of Sacramento
2850 49th Street
Sacramento, CA. 95824
Facsimile 916-277.7141

- 8.15. **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.

- 8.16. **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

Judy Morales
Business Manager

Jonathan P. Raymond
Superintendent

Date: _____

Date: _____

Approved and ratified this _____ day of _____, 2011, by the Board of Education of the Sacramento City Unified School District by the following vote:

AYES:

NOES:

Abstention:

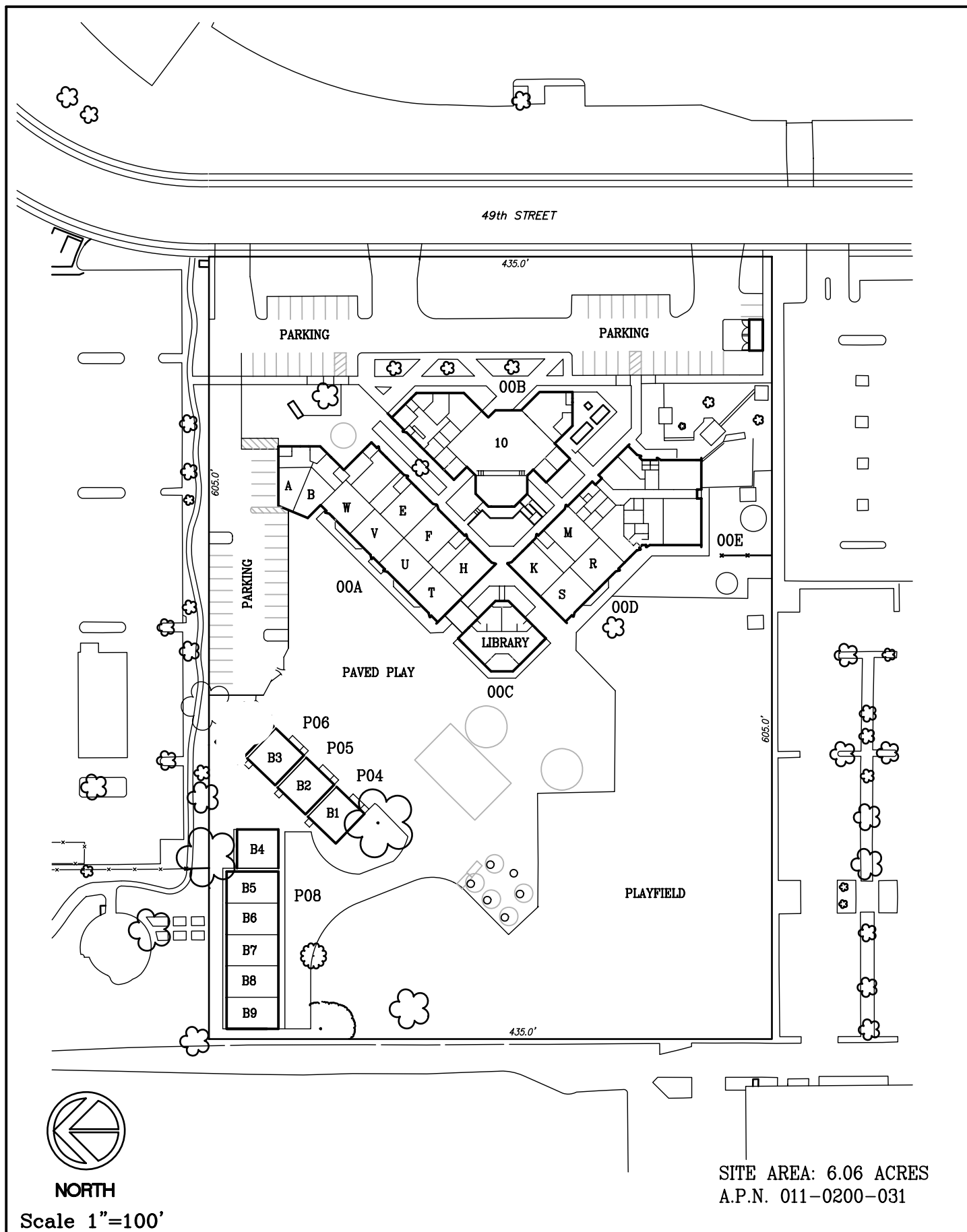
Secretary to the Board of Education

Exhibit A-Description and Map of School Site Detailing Project Facilities and Non-Project Facilities

Non-Project Facilities include: Buildings 00A, 00B, 00C and 00D, portables labeled B5-B9 and all common areas.

Project Facilities include: Portables labeled B1-B4, as well as the anticipated new construction areas on the south side of the School Site.

Map depicting new construction areas will be finalized upon joint collaboration with LAS and District Architects.



Marian Anderson Elementary School (111)
2850 49th Street
SACRAMENTO CITY UNIFIED SCHOOL DISTRICT

EXISTING SITE DIAGRAM
DECEMBER 2003

Exhibit B – Definition of “Project”

Charter School is planning to create new space to be located on the south side of the Marian Anderson campus. The additional space would provide opportunity for the following project plan to be implemented: house eight (8) additional classrooms, resource Specialist Room with full capacity classroom, wet-Lab Science Room, computer and interactive media room, K-8 gymnasium with a boys and girls changing room and parent university center. The rehabilitation, will involve remodeling and modernizing four (4) portable classrooms on the Marian Anderson site, remodeling and creating a permanent middle school/staff bathroom.

Exhibit C –Project and Non-Project Facility Use Fees

Project Facilities Fee

Charter School shall pay District an amount to cover direct maintenance and operations or other administrative costs for the Project Facilities, including the salary and benefits of these District employees. This amount will be paid in monthly installments based on actual costs incurred by the District each month throughout the Term, beginning on August 1, 2012- 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.

Non-Project Facilities Fee

For the 2011-2012 school year, Charter School shall pay District an initial estimated Non-Project Facility Use Fee of Eighty-Two Thousand, Eighty Dollars and Sixty Cents (\$82,080.60), based on a pro rata Non-Project Facilities cost estimate of Two Dollars and Ten Cents (\$2.10) per square foot for the use of approximately Thirty-Nine Thousand, Eighty-Six (39,086) square feet of the Non-Project Facilities during that time. The initial estimated Non-Project Facility Use Fee shall be paid out in equal installments of Six Thousand, Eight Hundred Forty Dollars (\$6,840) each month throughout the fiscal year. Beginning on August 1, 2011-the term of the loan, 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 the 2012-2013 school year, Charter School shall pay District an initial estimated Non-Project Facility Use Fee of Sixty-Three Thousand, Nine Hundred Thirty-Six Dollars (\$63,936), based on a pro rata Non-Project Facilities cost estimate of Two Dollars and Ten Cents (\$2.10) per square foot for the use of approximately Thirty Thousand, Four Hundred Forty-Six (30,446) square feet¹ of the Non-Project Facilities during that time. The initial estimated Non-Project Facility Use Fee shall be paid out in equal installments of Five Thousand, Three Hundred Twenty-Eight Dollars and Five Cents (\$5,328.05) each month throughout the fiscal year. Beginning on August 1, 2012-the term of the loan, 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 these fees annually for the remaining years for the Term of this Agreement.

¹ This square footage assumes that the Charter School will be including portable buildings B5-B9 into the Project, and thus considered “Project Facilities”. If the Charter School does not include buildings B5-B9 into the Project, then the District will re-calculate the actual square footage used as “Non-Project Facilities” to include those portable buildings.

Exhibit D – Custodial Services

The District shall be responsible for providing and paying directly for custodial services for the Project and Non-Project Facilities. The Charter School shall reimburse the cost of such custodial services, including the salary and benefits of the personnel performing custodial services and the costs of any cleaning supplies and tools necessary for that personnel to provide services. The District shall purchase, store and provide all consumable materials which the custodian shall use in provisioning the Project Facilities' restrooms, including but not limited to toilet paper, soap, and paper towels. Charter School will participate, with the District, regarding the selection, number, and supervision of custodial and operations personnel to the extent consistent with the District's union contracts.