



## SACRAMENTO CITY UNIFIED SCHOOL DISTRICT BOARD OF EDUCATION

Agenda Item# 9.2

**Meeting Date:** June 23, 2011

**Subject:** Approve Language Academy of Sacramento's Amended Application  
To The Charter School Facilities Program and Related Actions

- ☐ 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 Required Documents for Language Academy of Sacramento's Application for Charter School Facilities Program (CSFP) and Preliminary Apportionment

**Background/Rationale:** The Language Academy of Sacramento (LAS) is a Two-Way Spanish Immersion Charter School located in South Sacramento. They have completed their seventh year of operation as an independent charter school, yet the program began sixteen years ago and formed as part of Fruit Ridge Elementary School. LAS is a K-8 school projecting to serve 419 students in the 2011-2012 school year. The Charter is designed to incorporate a growth pattern that will eventually accommodate approximately 590 students. LAS has out grown a shared campus with Fruit Ridge Elementary. As such, the District has approved a two-year Facilities Use Agreement (FUA) for the Marian Anderson site for the 2011-2013 school years.

The Language Academy of Sacramento (LAS) has applied and been awarded funding from the Charter Schools Facilities Program (CSFP) of the Office of Public School Construction (State of California/State Consumer Services Agency). The amount granted is approximately \$4.27 million, which requires the Charter School to match that grant by obtaining a \$4.27 million loan, paid over thirty years, from the State.

In support of LAS the application for CSFP funding, the District passed Resolution No. 2589 on October 15, 2009. The Resolution supported LAS's rehabilitation of existing facilities occupied and build new classrooms at Fruit Ridge Elementary School.

Since the District's Board of Education has approved LAS's occupancy at Marian Anderson for the next two years, LAS has explored the option of moving their CSFP grant to Marian Anderson with the Office of Public School Construction and California School Finance Authority. After conducting site reviews, both state agencies support moving the grant from Fruit Ridge to Marian Anderson pending SCUSD Board approval.

In order to receive an advance fund release, the Charter School must submit to the State Form SAB 505-05 by July 6, 2011. In order for the Charter School to submit this form, the ratified documents must accompany it.

**Financial Considerations:** LAS will be required to obtain 50 percent or approximately \$4.27 million in a loan from the State in order to receive an estimated \$4.27 million grant from the Office of Public School Construction to rehabilitate existing classrooms and build new classrooms at Marian Anderson. So long as the Charter School continues to make payments on the loan, the District holds title to the property, but the Charter School will use the site for the duration of their charter's existence.

In the 2011-2012 school year, the Charter School will occupy 39,086 square feet of the Marian Anderson campus, and the District will generate \$82,080.60 in pro rata share fees. Rehabilitation/new construction at the site is expected to begin for the 2012-2013 school year. At that time, the District may not charge pro rata share fees for the square footage that was rehabilitated or newly constructed. However, the District intends to charge a pro-rata share for the remaining 30,446 square feet. Further, the District does intend to recover from the Charter School the costs of providing custodial and maintenance services for all of the facilities provided to the Charter School.

**Documents Attached:**

1. Executive Summary
2. Resolution No. 2663: Approving the Amended Application for Charter Schools Facilities Program for Language Academy of Sacramento
3. Memorandum of Understanding (MOU) between Language Academy of Sacramento, California School Finance Authority, and Sacramento City Unified School District.
4. Facilities Use Agreement (Long Term) for Language Academy of Sacramento

<b>Estimated Time of Presentation:</b> 5 Minutes
<b>Submitted by:</b> Chiem-Seng Yaangh, Ph.D., Coordinator
<b>Approved by:</b> Mary C. Shelton, Chief Accountability Officer

# Board of Education Executive Summary



## Accountability Office

June 23, 2011

### **Approve Language Academy of Sacramento's Amended Application To The Charter School Facilities Program and Related Actions**

#### **I. Overview / History:**

The Language Academy of Sacramento (LAS) is a Two-Way Spanish Immersion Charter School located in South Sacramento. They have completed their seventh year of operation as an independent charter school, yet the program began sixteen years ago and formed as part of a strand in the Fruit Ridge Elementary School academic program. LAS is a K-8 school projecting to serve 419 students in the 2011-2012 school year. The Charter is designed to incorporate a growth pattern that will eventually accommodate approximately 590 students. LAS has outgrown a shared campus with Fruit Ridge Elementary and is currently located on two sites. As such, the District has approved a two-year Facilities Use Agreement (FUA) for the Marian Anderson site for 2011-2013 school years.

Since LAS continues to grow, they have actively sought out facilities funding. In 2002, Assembly Bill (AB) 14 created the Charter Schools Facilities Program (CSFP). Through the passage of Propositions 47, 55, and 1D, \$900 million has been made available for the new construction of Charter School facilities or the rehabilitation of existing District facilities for Charter School use. This program allows Charter Schools that provide site based instruction to access State facility funding directly or through the District where the project will be physically located.

On May 27, 2009 the State Allocation board approved a new filing round for the CSFP to disburse approximately \$50.9 million that has returned to the program. The CSFP permits a charter school or the school district (filing on behalf of a charter) to apply for a preliminary apportionment (reservation of funds) for new construction projects and rehabilitation of district owned existing facilities that are at least 15 years old. If the application is successful, the charter school that applies independently would receive the funding. In the event that the District applies on behalf of a Charter School, the school district would receive the funding. In either case, title to any CSFP project will be held in trust for the State by the school district in which the charter school is physically located. Also, to qualify for funding, a charter school must be deemed financially sound by the California School Finance Authority (CSFA).

The preliminary apportionment for a CSFP project must be converted within a four-year period to an adjusted grant apportionment meeting all the School Facilities Program (SFP) criteria, unless a single one-year extension is granted.

LAS approached the District in 2009 to support their application for facilities funding from the Office of Public School Construction (OPSC). In support of LAS application for CSFP funding, the District passed Resolution No. 2589 on October 15, 2009. The Resolution supported LAS's rehabilitation of existing occupied facilities and build new classrooms at Fruit Ridge Elementary School. Through a competitive process, in 2010, LAS succeeded in their grant application and was awarded \$6,662,240 for new construction and \$1,878,376 for the rehabilitation in 2010. However, the State funding just became available in February 2011 and LAS has until July 6, 2011 to submit a valid Fund Release Authorization to receive the Preliminary Apportionment of design and site acquisition of \$1.2 million.

# Board of Education Executive Summary



## Accountability Office

June 23, 2011

### **Approve Language Academy of Sacramento's Amended Application To The Charter School Facilities Program and Related Actions**

Since the District's Board of Education has approved LAS's occupancy at Marian Anderson for the next two years, LAS has explored the option of moving the CSFP grant from Fruit Ridge to the Marian Anderson site with the Office of Public School Construction and California School Finance Authority. After conducting reviews, both state agencies support the move of the grant from Fruit Ridge to Marian Anderson. In fact, they indicated that Marian Anderson provides more space for the proposed new construction and estimated growth.

In order to move the funding from Fruit Ridge to Marian Anderson, there are three documents from the District that LAS is required to provide for its July 6, 2011 allocation deadline.

1. Resolution No. 2663: Approving the Amended Application for Charter Schools Facilities Program for Language Academy of Sacramento. The Resolution indicates that the District approves LAS moving its CSFP and funding from Fruit Ridge to Marian Anderson.
2. Memorandum of Understanding (MOU) between the Language Academy of Sacramento, California School Finance Authority and Sacramento City Unified School District. This MOU is intended to tie together two (2) separate legal agreements: (i) a Funding Agreement by and between the State and the Charter School; and (ii) a Facilities Use Agreement by and between the School District and the Charter School. In accordance with the CSFP, the State is the lender of certain monetary funds to the Charter School to enable the Charter School to acquire real property and/or construct improvements thereon. This loan transaction is set forth in the Funding Agreement of which the School District is not a party to because it is not a lender and does not have obligations under said Funding Agreement. In accordance with Section 17078.57(a)(3)(A) of the California Education Code, the School District must hold title to the Project, acquired with the funds loaned by the State under the CSFP, in trust for the benefit of the state public school system. Pursuant to the CSFP, the School District as the holder in trust of the Project must provide the use of the Project to the Charter School for a charter school educational program and, hence, is the basis for the Facilities Use Agreement between the School District and the Charter School.

The School District's duties and obligations under the CSFP shall be limited to the following:

- a. Accept title to the Facilities, as defined below, as trustee for the State of California public school system. Title shall be conveyed by an instrument acceptable to the School District; and
  - b. In the event the Charter School, or any subsequent charter school, ceases to use the Facility or an Event of Default occurs, the School District shall observe the requirements of Section 17078.62 of the California Education Code as set forth in Section 4.2 below.
3. Facilities Use Agreement (Long Term) for Language Academy of Sacramento. The long term Facilities Use Agreement (FUA) is between LAS and the District, allowing the Charter School long term use and discussing the maintenance fee structure the District may charge the Charter School. The life of the loan the Charter School is taking from the State is for thirty years. So

# Board of Education Executive Summary



## Accountability Office

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### **Approve Language Academy of Sacramento's Amended Application To The Charter School Facilities Program and Related Actions**

long as the Charter School makes payments to the State, the Charter School is entitled to occupy the facility.

## **II. Driving Governance:**

- Assembly Bill (AB) 14 created the Charter Schools Facilities Program (CSFP)
- Propositions 47, 55, and 1D provide the funding resources
- Office of Public School Construction Administrative Regulations require a copy of the Board of Education Resolution authorizing the transfer of the CSFP funding from Fruit Ridge to Marian Anderson as part of LAS's request for Preliminary apportionment due July 6, 2011.

## **III. Budget:**

The Charter School's Application for preliminary apportionment for the Project has been approved by the State. The Charter School's Apportionment ("Apportionment") is contingent upon the Charter School paying its 50% Local Matching Share obligation, which will be paid to the State by way of payments pursuant to the Funding Agreement.

The State will provide as a grant funding for fifty percent (50%) of the approved costs for the Project and the Charter School will be responsible for fifty percent (50%) of the approved costs for the Local Matching Share for the Project. The Final Apportionment Amount will be reduced by any amounts received by the Charter School through an Advance Apportionment(s). The amounts of the Preliminary, Advance, and Final Apportionments are set forth in Exhibit C of the MOU.

The Charter School will receive initial funding from the State for the Local Matching Share, less any lump sum payments made by, or on behalf of, the Charter School.

The District has no fiduciary responsibility for the Charter School's Application for or receipt of Preliminary, Advance or Final Apportionment for the Project which has been approved by the State, as long as the Charter School occupies the site.

The District can charge pro rata share fees for the existing District facilities on the campus. The maintenance fees of the new construction and rehab facilities will be determined based on the actual cost or agreed upon fee structure. While LAS is in operation at Marian Anderson, the District is legally obligated to allow LAS to remain at the site. The District cannot move LAS to another school site, sell the property nor lease the space to other entities occupied by LAS.

## **IV. Goals, Objectives and Measures:**

It is consistent with the District's mission and strategic plan to create high quality public education to accelerate student achievement for students in high need areas and create innovative educational programs. The District and LAS will provide, at the Marian Anderson school site, such a place of

# Board of Education Executive Summary



## Accountability Office

June 23, 2011

### **Approve Language Academy of Sacramento's Amended Application To The Charter School Facilities Program and Related Actions**

innovation, surrounded by UC Davis Medical Center, Shriners Hospital, MIND Institute, UC Davis Center for Health Disparities and other government agencies. This geographic location lends itself to collaborative community partnerships. The District, LAS, and community partners will work collaboratively to create an innovative program that will serve the needs of students with autistic or autistic-like behaviors while servicing as a training and research facility for teachers. This facility will be a beacon in Oak Park and South Sacramento area, providing transformative programs and services to serve students and families.

#### **V. Major Initiatives:**

The District's *Putting Children First*, Strategic Plan (2010-2014) provides the overarching framework for developing collaborative partnerships with Charter Schools. The District posits that improving school facilities is one of the key strategies to transform the District. The State's Charter School Facilities Program (CSFP) provides a unique opportunity for the District and LAS to think innovatively about redesigning Marian Anderson campus to improve education and do so in a green and sustained way that provides classrooms conducive to learning that saves energy, resources and more.

LAS plans to use the rehabilitation funding to remodel four classrooms. In addition, LAS is planning to use the funding 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:

- 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 sports facilities
- Parent University Center

#### **VI. Results:**

Upon the approval of the District's Board of Education, the District agrees to allow LAS to move their CSFP grant to Marian Anderson and provide long term usage of the facilities at the site, including new construction. The District will provide the required documents for LAS's request for preliminary funding from the State's Office of Public School Construction.

#### **VII. Next Steps:**

Staff will monitor the progress of LAS's request for funding from the CSFP grant through the Office of Public School Construction and provide any necessary technical assistance to LAS to ensure successful grant funding.

Staff will work collaboratively with LAS to ensure legal compliance pertaining to rehabilitation and new construction at Marian Anderson campus.

**SACRAMENTO CITY UNIFIED SCHOOL DISTRICT  
BOARD OF EDUCATION**

**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  
PURSUANT TO THE LEROY F. GREENE SCHOOL FACILITY ACT OF 1998**

**WHEREAS**, the Sacramento City Unified School District (District) previously authorized the Language Academy of Sacramento (Charter) to continue to utilize the Fruit Ridge Elementary School site through Resolution 2589; and

**WHEREAS**, the District and the Superintendent have been notified by the Charter that it filed an application for a Preliminary Charter School apportionment (Proposition 1D) with the State Allocation Board for Charter School Facilities Program funding to rehabilitate facilities and to build new facilities at the Marian Anderson Elementary School in order to house its students; and

**WHEREAS**, the District is designating the Marian Anderson Elementary School facility for the purpose of housing Charter school students; and

**WHEREAS**, the Charter currently houses 376 K-8 students. The Charter is requesting authorization to expand the current facility in order to accommodate additional students (590 students);

**WHEREAS**, the Charter intends to build additional classrooms and other support facilities to house students that reside within the District's boundaries; and

**WHEREAS**, it is understood that this new construction project, as well as the rehabilitation of existing classrooms, will not have an impact on the District's new construction eligibility for the purpose of the School Facility Program administered by the State Allocation Board; and

**WHEREAS**, the Charter will be responsible for securing funding for this project through the State Allocation Board and the District will provide technical support throughout the application process; and

**WHEREAS**, the Charter will provide the District with progress updates and will coordinate any facilities issues through the District; and

**WHEREAS**, this Resolution amends and supersedes Resolution No. 2589.

**NOW, THEREFORE, BE IT RESOLVED** that the District does hereby include this resolution as authorization that the Charter be housed at the Marian Anderson Elementary School, that it be allowed to rehabilitate the current facility and be allowed to add new facilities (classrooms and subsidiary

facilities) in order to house students in the surrounding community. The Charter has submitted a Charter School Facility application to the State Allocation Board for rehabilitation of the existing facilities and the construction of new facilities. The construction of new facilities has no effect on the District's new construction eligibility as the District has no eligibility or unhoused students.

**PASSED AND ADOPTED** by the Sacramento City Unified School District Board of Education on this 23rd day of June, 2011 by the following vote:

AYES: \_\_\_\_\_  
NOES: \_\_\_\_\_  
ABSTAIN: \_\_\_\_\_  
ABSENT: \_\_\_\_\_

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Gustavo Arroyo  
President of the Board of Education

ATTESTED TO:

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Jonathan P. Raymond, Superintendent  
Secretary of the Board of Education



## MEMORANDUM OF UNDERSTANDING

By and Among:

Language Academy of Sacramento, a California Charter School;

and

Sacramento City Unified School District, a California Public School District;

and

The State of California,  
State Allocation Board and California School Finance Authority

### **ARTICLE I – PURPOSE AND LIMITATION**

- A. This Memorandum of Understanding (“MOU”) is made and entered into as of \_\_\_\_\_, 2011 (“Effective Date”) by and among the State Allocation Board and the California School Finance Authority (individually or collectively referred to as the “State”); Language Academy of Sacramento, a California Charter School (“Charter School”); and the California Public School District identified above (“School District”). The provisions of this MOU shall be effective from and after the Effective Date until all duties and obligations of the parties are carried out.
- B. The Charter School has applied to the State for financing of its charter school facilities project (“Project”) under the Charter School Facilities Program (“CSFP”) established pursuant to Article 12 of Chapter 12.5 of Part 10 of the California Education Code and the regulations for its implementation provided in Title 4, Cal. Code Regs., Section 10151, et seq., and Title 2 Cal. Code Regs., Section 1859.160, et seq. A copy of the Charter School’s application is attached hereto as Attachment 1, and incorporated herein by reference as a means of defining the Project.
- C. This MOU is intended to tie together two (2) separate legal agreements: (i) a Funding Agreement by and between the State and the Charter School; and (ii) a Facilities Use Agreement by and between the School District and the Charter School. In accordance with the CSFP, the State is the lender of certain monetary

funds to the Charter School to enable the Charter School to acquire real property and/or construct improvements thereon. This loan transaction is set forth in the Funding Agreement of which the School District is not a party to because it is not a lender and does not have obligations under said Funding Agreement. In accordance with Section 17078.57(a)(3)(A) of the California Education Code, the School District must hold title to the Project, acquired with the funds loaned by the State under the CSFP, in trust for the benefit of the state public school system. Pursuant to the CSFP, the School District as the holder in trust of the Project must provide the use of the Project to the Charter School for a charter school educational program and, hence, is the basis for the Facilities Use Agreement between the School District and the Charter School.

A copy of the Funding Agreement, attached hereto as Exhibit A, and the School District's standard Facilities Use Agreement, attached hereto as Exhibit B, are attached hereto and incorporated into this MOU solely for the purpose of setting forth the separate instruments for this transaction and not for the purpose of making the State a party to the Facilities Use Agreement and the School District a party to the Funding Agreement. This MOU, the Funding Agreement and the Facilities Use Agreement (collectively, the "Agreements") set forth the entire agreements between the parties regarding the loan of funds and use of the real property pursuant to the CSFP. There are no understandings, agreements, representations, or warranties, express or implied, not specified herein regarding this MOU, the Funding Agreement and the Facilities Use Agreement; provided, that in the event any portion of this MOU, the Funding Agreement and/or the Facilities Use Agreement is held unenforceable by a court of competent jurisdiction, the remainder of the applicable agreement shall remain in full force and effect and shall not nullify the intent of the CSFP.

- D. This MOU is being entered into in accordance with the requirements of the CSFP. To the extent this MOU is inconsistent or in conflict with the provisions of the CSFP and the implementing regulations, the CSFP and implementing regulations shall prevail.
- E. Notwithstanding any provision contained herein, the duties and obligations of the State and the School District shall be limited to the following:
  - (1) The State. The State shall be responsible to administer the CSFP and determine eligibility of and compliance by the Charter School to the requirements of the CSFP. The School District shall have no duty or obligation to administer, monitor or enforce any requirements imposed upon the Charter School under the CSFP.
  - (2) The School District. The School District's duties and obligations under the CSFP shall be limited to the following:

(a) Accept title to the Facilities, as defined below, as trustee for the State of California public school system. Title shall be conveyed by an instrument acceptable to the School District; and

(b) In the event the Charter School, or any subsequent charter school, ceases to use the Facility or an Event of Default occurs, the School District shall observe the requirements of Section 17078.62 of the California Education Code as set forth in Section 4.2 below.

Other than the duties set forth in this Article I, E(2), no duties or responsibilities shall be imposed upon the School District as the result of it holding title to the Facility in trust for the California public school system except for that which is expressly contained in this Agreement.

(3) Securing Approvals, Permits and Other Entitlements. Notwithstanding State supplied bond funds, the State and the School District shall have no duty or obligation to secure, or expend funds or incur costs to secure, any approvals, permits and other entitlements for the Facility and operation of the Charter School. This limitation on duty and obligation shall apply to any repair, maintenance, modification, renovation, addition, expansion, re-construction or rehabilitation occurring after the completion of initial construction of the Facility ("Future Work").

(4) Construction. The State and the School District shall have no duty or obligation to construct all or any portion of the Facility or any Future Work. In the event of abandonment or any failure to complete the construction of the Facility or any Future Work for any reason, the School District, as trustee, will secure the site while it observes the requirements of Section 4.2 below.

(5) Additional Funds. Other than the grant and the loan approved and provided under the CSFP, the State shall not be obligated to provide additional funds or financing for the planning, design, construction (including change orders and completion of construction), operation or maintenance of the Facility. The School District, by virtue of holding title to the Facility as trustee for the California public school system, shall not be obligated to provide additional funds or financing for the planning, design, construction (including change orders and completion of construction), operation or maintenance of the Facility.

(6) Cooperation. In the event Charter School fails to complete construction or rehabilitation of the Facilities for any reason or fails to operate a school at the Facilities for any reason, the School District agrees that as the owner in trust of the Facilities for the public school system, the School District shall cooperate with the State in its efforts to complete the construction of the Facilities or its effort to have a charter school operate from the Facilities; provided, that nothing in this MOU, the Funding Agreement, if applicable, and the Facilities Use Agreement shall require the School District to incur any costs or liabilities, or increase the

School District's duties, obligations or exposure to liability, unless agreed to in writing by the School District.

## **ARTICLE II – FINANCING OF THE CHARTER SCHOOL'S PROJECT**

### **2.1 Fifty Percent Local Matching Share**

- A. The Charter School's Application for preliminary apportionment for the Project has been approved by the State. The Charter School's Apportionment ("Apportionment") is contingent upon the Charter School paying its 50% Local Matching Share obligation, which will be paid to the State by way of payments pursuant to the Funding Agreement.
- B. The Charter School's Application for Preliminary, Advance or Final Apportionment for the Project has been approved by the State. The State will provide as a grant funding for fifty percent (50%) of the approved costs for the Project and the Charter School will be responsible for fifty percent (50%) of the approved costs for the Local Matching Share for the Project. The Final Apportionment Amount will be reduced by any amounts received by the Charter School through an Advance Apportionment(s). The amounts of the Preliminary, Advance, and Final Apportionments are set forth in Exhibit C of this MOU.
- C. The Charter School will receive initial funding from the State for the Local Matching Share, less any lump sum payments made by, or on behalf of, the Charter School.

### **2.2 Conditions for Release of Funding**

- A. The following conditions must be satisfied before the State will release funding:
  - (1) The Charter School shall comply with all funding release conditions contained in the Funding Agreement to the satisfaction of the State.
  - (2) If the funding shall be used to acquire real property, the Charter School, at its sole cost and expense, shall structure the closing of escrow for the acquisition of the real property for a back-to-back conveyance of title from the seller to the Charter School and simultaneously in the same closing of escrow, from the Charter School to the School District. The Charter School, at its sole cost and expense, shall cause to prepare a conveyance instrument, acceptable to the School District and the State, which shall convey title to the real property from the Charter School to the School District as trustee on behalf of the public school system.
  - (3) The Charter School agrees to utilize its apportionment for purposes consistent with the CSFP, and consistent with the purposes for which it was approved. The Charter School shall comply with any and all requirements and

conditions imposed upon it for the development and operation of the Facility by any applicable governmental agency.

(4) Each party is duly authorized to enter, deliver, and perform this MOU, the Funding Agreement, as applicable to the appropriate parties, and the Facilities Use Agreement, as applicable to the appropriate parties.

## **2.3 Charter School Facilities**

- A. The Charter School's Project includes the real property and all improvements, repairs, replacements, substitutions, and modifications located or to be constructed on the property as described in its application for funding under CSFP ("Facilities").
- B. The Charter School's Facilities are located or will be located at 2850 49<sup>th</sup> Street in the City of Sacramento, Sacramento County, California, and are more particularly described on Exhibit D of this Agreement.
- C. The Facilities are physically located within the geographical jurisdiction of the School District and the high school attendance area generating eligibility for funding, if applicable.
- D. The Charter School has satisfied itself as to the suitability of the Facilities by its own inquiries and tests. The Charter School shall, by entering into and occupying the Facilities, be deemed to have accepted the Facilities and to have acknowledged that they are in good order, condition and repair.
- E. The Charter School represents and warrants that it, by and through its officers, employees, agents and consultants, has made a thorough and independent examination of the Facilities and all matters related to its decision to enter into this Agreement. The Charter School is thoroughly familiar with all aspects of the Facilities and is satisfied that they are in an acceptable condition and meet its needs. The Charter School is solely responsible for identifying the real property, evaluating the condition of the title and suitability of the land for the Charter School's intended purpose, and negotiating and closing the acquisition of the real property. In addition, the Charter School is solely responsible for the construction of all improvements, repairs, replacements, substitutions, and modifications located or to be constructed on the real property.

The State and/or the School District shall not have any obligation for construction work or improvements on or to the Facilities, to insure completion of construction, or provide additional funding in the event the Charter School determines it has insufficient funds to complete construction or operate the charter school. Pursuant to the CSFP, the School District is obligated to take title to the Project in trust for the benefit of the state public school system but such obligation does not make the School District a guarantor or warrantor of the Project and shall not

impose any duty upon the School District to administer or oversee the construction of the Facilities by the Charter School, or in the event of any default prior to completion of construction, demolish all or any portion of the Facilities.

## **2.4 Payments**

- A. The Charter School shall make payments to the State, as provided in the Funding Agreement in satisfaction of the requirements of the CSFP.
- B. This MOU, the Funding Agreement and the Facilities Use Agreement shall not be deemed to constitute a debt or liability or obligation of the State, the School District, or any political subdivision thereof, or a pledge of the faith and credit or taxing power of the State or any political subdivision thereof, but shall be a special obligation payable solely from the payments made by the Charter School. The obligation to make payments does not constitute an indebtedness of the Charter School or the School District, within the meaning of any constitutional or statutory debt limitation or restriction and in all cases shall be made solely from legally available funds.

## **ARTICLE III – SECURITY PROVISIONS**

- A. The Charter School will convey to and the School District will accept conveyance of the good, absolute and marketable title to the Project in fee simple, free and clear of any mortgage, deeds of trust, liens (monetary or otherwise), claims, charges or other encumbrances or matters of any nature what so ever other than those included in any other provisions of this Agreement upon satisfaction of all of the following conditions:
  - (1) If the funding shall be used to acquire real property, the Charter School, at its sole cost and expense, shall structure the closing of escrow for the acquisition of the real property for a back-to-back conveyance of title from the seller to the Charter School and then immediately from the Charter School to the School District. The Charter School, at its sole cost and expense, shall cause to prepare a conveyance instrument, acceptable to the School District and the State, which shall convey title to the real property from the Charter School to the School District as trustee on behalf of the public school system.
  - (2) The Charter School shall provide proof satisfactory to the State and the School District that all liens and encumbrances that may arise from the construction of the Facilities have been released and/or satisfied.
  - (3) The Charter School shall provide to the State and the School District for its review and acceptance a title report and a copy of each instrument listed in said title report. The title report shall be issued no more than 30 days prior to the date of submittal.

(4) The Charter School shall provide to the State and the School District for its review and acceptance an ALTA survey, which together with (3) above, shall be sufficient for the Charter School, at its sole cost and expense, to provide the School District with a ALTA owner's policy for the benefit of the School District and the State.

(5) The Charter School shall provide to the School District for its review and files the original Final California Department of Education ("CDE") approval or Final CDE approval subject to waivers and/or exemptions to the use of real property as a school facility; provided, that if CDE has provided the Charter School any waivers and/or exemptions the Charter School shall obtain from CDE and provide to the School District a valid assignment of such waivers and/or exemptions. The purpose of the assignment is to insure that the conveyance of fee title from the Charter School to the School District will not result in a situation whereby the Facilities then become non-compliant because of the transfer of fee simple title to the School District due to those requirements and standards that are typically imposed upon the School District.

(6) The Charter School shall provide to the School District for its files the original "No Further Action" or "Further Action Letter" from the California Department of Toxic Substance Control ("DTSC"); provided, that if DTSC has issued a Further Action Letter, the Charter School shall provide to the School District proof satisfactory to the School District that all requirements of the Further Action Letter have been satisfied. Simultaneously with the delivery of the foregoing, the Charter School shall deliver to the State a copy of the documents delivered to the School District.

(7) The Charter School shall provide to the School District for its review and files the final approval issued by DTSC for the final Preliminary Environmental Assessment ("PEA") for the real property, if applicable.

(8) The Charter School shall provide to the School District for its files the final approval of any applicable Federal, State, City or County agency necessary for the acquisition and construction of the Project, and the operation of the Facilities for an educational program conducted by the Charter School. As an example, and not as means of limitation, a charter school may require approval from the California Coastal Commission if a project will be located within its jurisdiction.

Simultaneously with the delivery of the documents and instruments required in this Article III.A, the Charter School shall delivery to the State a copy of the same documents and instruments delivered to the School District.

Title to the Facilities shall be conveyed to the School District by a Grant Deed agreed to and accepted by the School District. Title to the Facilities shall be held solely by the School District in whose boundaries the Facilities is to be located, in trust, for the benefit of the state public school system.

- B. Any person or entity providing a substantial contribution that is applied to the costs of the project in excess of the state share and the local matching share may be granted a security interest, as approved and memorialized in a written instrument executed by the State, to be satisfied from the proceeds, if any, realized when the property is ultimately disposed of. If the contribution was made for the explicit purpose of purchasing any asset with a normal life expectancy of less than twenty years, the security interest will be adjusted to reflect the depreciation of the assets. Contributions used solely to assist the applicant in meeting its local matching share shall not be entitled to a security interest. Where a contribution results in total project funding beyond the state and local matching shares, the contributor's security interest shall be limited to the amount in excess of the state share and local matching share.
- C. If a default occurs and all payments have not been made, the security interest of any person or entity providing a substantial contribution to the costs of the project shall be satisfied only after the account is reimbursed for any remaining unpaid local matching share and the School District has been reimbursed for any costs and expenses incurred, if any, as the result of such default.
- D. *Intentionally deleted.*
- E. Simultaneously with the execution of the Grant Deed, the Charter School and the School District shall enter into a Facility Use Agreement, which shall be in a form substantially similar to that attached in Exhibit "B". The Facilities Use Agreement shall contain as standardized provisions the following, which must be addressed to the satisfaction of the State:
- (1) The acquisition and maintenance of all required licenses or permits. Any costs associated with licenses or permits shall not become an obligation of the State or School District.
  - (2) The payment of all fees, and public charges of whatever nature accessed against the Facilities, including the payment of all taxes, and costs associated with telephone, water, sewer, gas, heat, electricity, garbage disposal, trash disposal, and all other services and utilities. Such fees and charges shall not become an obligation of the State or School District.
  - (3) Prohibited uses of the Facilities, and provisions for the maintenance and repair of the Facilities. The State and the School District shall not under any circumstance be required to make any improvements or install any equipment on the Facilities, make any repairs, alterations or replacements of any nature to the Facilities, make any expenditures whatsoever in connection with this Agreement or maintain the Facilities in any manner. The State and the School District shall not be required to maintain, repair or rebuild all or any part of the Facilities, and the Charter School waives the provisions of Civil Code Sections 1941 and 1942 and any other law that would require the maintenance of the Facilities in a leaseable condition or



would provide the Charter School with the right to make repairs and deduct the cost of those repairs from its payments.

(4) The handling of hazardous materials.

(5) Insurance requirements, in addition to those specified in this Agreement, for all risk (special-causes-of-loss) property and fire insurance; commercial general liability insurance; rental value insurance; worker's compensation insurance; flood and earthquake insurance as necessary; and such other types of insurance or endorsements to existing insurance as may be required by the School District.

#### **ARTICLE IV – DEFAULT AND REMEDIES**

##### **4.1 Events of Default**

The occurrence of any of the following shall constitute a "Default" or "Event of Default":

- (1) Failure by the Charter School to commence to use and occupy the Facilities for the operation of a charter school as required.
- (2) Failure by the Charter School to make any payment when due, and such failure continues for a period of Thirty (30) calendar days after receiving written notice by the State or the School District;
- (3) Failure by the Charter School to maintain insurance on the Facilities or to provide reasonable evidence of insurance as required by the Funding Agreement and the Facilities Use Agreement, and where such failure continues for a period of thirty (30) calendar days after receiving written notice by the State or the School District;
- (4) Failure by the Charter School to provide reasonable evidence of compliance with all requirements whether expressly stated in this MOU, the Funding Agreement, or the Facilities Use Agreement or otherwise imposed by the State under the CSFP or other applicable law, or failure to observe or perform any other applicable covenant, condition or agreement, where such failure continues for thirty (30) calendar days after receiving written notice of the failure. If thirty (30) calendar days is insufficient, and the Charter School has instituted corrective action, the State, in its discretion, may extend this period up to one hundred and eighty (180) calendar days;
- (5) The Charter School shall be or become insolvent, or admit in writing its inability to pay its debts as they mature, or make an assignment for the benefit of creditors; or the Charter School shall apply for or consent to the

appointment of any receiver, trustee or similar officer for it or for all or any substantial part of its property; or such receiver, trustee or similar officer shall be appointed without the application or consent of the Charter School, as the case may be, where possession is not restored in sixty (60) calendar days; or the Charter School shall institute (by petition, application, answer, consent or otherwise) any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, liquidation or similar proceeding relating to it under the laws of any jurisdiction; or any such proceeding shall be instituted (by petition, application or otherwise) against the Charter School (unless, in the case of a petition filed against the Charter School, the same is dismissed in sixty (60) days) or any judgment, writ, warrant of attachment or execution or similar process shall be issued or levied against a substantial part of the Charter School's Facilities; provided, however, in the event that any provision of this paragraph is contrary to any applicable law, it shall be of no force and effect, and not affect the validity of the remaining provisions;

- (6) The determination by the State that any representation or warranty made by the Charter School was untrue in any material respect when made;
- (7) The Charter School's charter is not renewed or is revoked, or the Charter School ceases to use the Facilities for a charter school purpose; and/or
- (8) The Charter School shall abandon the Facilities or breach the Facilities Use Agreement.

## **4.2 Remedies on Default**

The parties acknowledge and agree that this MOU, the Funding Agreement and the Facilities Use Agreement represent a unique situation that is not limited by the standard landlord's remedies provided by Sections 1951.2 and 1951.4 of the California Civil Code. The parties agree that if any Event of Default shall have occurred, any one or more of the following respective remedies, which are not exclusive but cumulative, may be pursued:

- A. If an Event of Default occurs and the Charter School continues to occupy and/or possess the Facilities, the Charter School shall remain liable for the performance of all of the obligations of the Charter School under and subject to the Funding Agreement, as amended, and the Facilities Use Agreement, as amended, including, without limitation, the obligation to make payments to the State when due under the Funding Agreement.
- B. If the Event of Default is solely because the School District has revoked or declined to renew the Charter School's charter, in accordance with Section 17078.62(b)(1) of the Education Code, the Charter School shall:

- (1) have that time period specified in Section 17078.62 of the Education Code, as may be amended, to complete the review process contemplated in Section 47607 or 47607.5 of the Education Code, as may be amended; and
  - (2) so long as the Charter School continues to use and occupy the Facilities, remain liable for the performance of all of the obligations of the Charter School under the Funding Agreement, as may be amended, and the Facilities Use Agreement, as may be amended, including, without limitation, the obligation to make payments to the State when due under the Funding Agreement.
- C. If the Event of Default is solely because the School District has revoked or declined to renew the Charter School's charter, the Charter School shall not be liable under the Facilities Use Agreement, as may be amended, on the effective date of the last to occur of all of the following:
- (1) the Charter School completes the review process provided in Section 47607 or 47607.5 of the Education Code, as may be amended, and the Charter School fails to obtain a renewal of its charter, or the Charter School relinquishes all rights to pursue or complete the review process provided in Section 47607 or 47607.5 of the Education Code, as may be amended, and the Charter School notifies the State and the School District of its election; and
  - (2) the Charter School vacates the Facilities and relinquishes to the School District all right, title and interest in the occupancy and use of the Facilities.
- D. Upon the occurrence of Subsection C of this Section 4.2, the School District shall permit the Facility to be used in its "as is" and "where is" condition by another charter school:
- (1) that the State deems as qualified;
  - (2) whose charter petition is approved and is in good standing with the School District; and
  - (3) that has agreed to a Funding Agreement with the State and a Facilities Use Agreement with the School District.
- E. In the event a successor charter school cannot be identified as provided in Subsection D of this Section 4.2, the School District may:
- (1) in accordance with Section 17078.62(b)(3) of the Education Code, take possession of and use the Facility as a public school facility;

provided, that the School District shall be required to make payment to the State in accordance with Section 17078.62(b)(4) or the payments shall be reduced or eliminated if the School District satisfies the conditions set forth in Section 17078.62(b)(4)(A) and (B). In the event the payments do not qualify for reduction or elimination in accordance with Section 17078.62(b)(4)(A) and (B), the State and the School District shall enter into an agreement for the School District's assumption of the payment obligation under the Funding Agreement. Assumption of the payment obligation shall in no way release the Charter School from its payment obligations that accrued prior to the termination of the Funding Agreement or from the Charter School's obligations for any holdover; or

(2) in accordance with Section 17078.62(b)(5) of the Education Code, decline to take possession of the Facilities or if the Facility is no longer needed for public school purposes, the School District shall dispose of the Facilities in accordance with requirements for the disposal of surplus public school sites. The monetary proceeds from the disposal of the Facilities shall be applied in the following priority: (i) reimburse the School District for reasonable costs and expenses incurred by the School District in disposing of the Facilities; (ii) reimburse the State for reasonable costs and expenses incurred by the State in pursuing the collection of the balance of any unpaid Local Matching Share due and owing under the Funding Agreement; (iii) repay any unpaid Local Matching Share in favor of the State; (iv) repay any security interest granted pursuant to Section 17078.57(a)(3)(B); and (v) in the event any proceeds remain, equally prorated between the State and the school District.

- F. The State may proceed by appropriate court action to enforce specific performance by the Charter School of its covenants under the Funding Agreement and this MOU and under the terms of accepting funding under the CSFP, or to recover damages for the breach thereof, including without limitation for the recovery of all past due payments together with interest and late charges, and all other sums due the State. The Charter School shall pay or repay to the State all costs of such action or court action, including, without limitation, reasonable attorneys' fees and costs. The School District may proceed by appropriate court action to enforce this MOU and the Facilities Use Agreement against the Charter School.
- G. In the event of the Charter School's default and the recovery of the Facilities by the School District, the State shall have the right to recover from the Charter School (i) the amount of all outstanding payments or other obligations (whether direct or indirect owed by the Charter School to the State), if any, which are then due and owing, together with interest and late charges, and (ii) any other amounts due from the Charter School to the State, including indemnity payments, taxes, charges, reimbursement

of any advances and other amounts payable by the Charter School to the State.

- H. Notwithstanding anything to the contrary, the State, the Charter School and/or the School District may take whatever action at law or in equity that may appear necessary or desirable to enforce its respective rights with respect to this MOU, the Funding Agreement, or the Facilities Use Agreement or the Facilities, and the party or parties prevailing in the action shall have all of their respective costs of such action or court action, including, without limitation, reasonable attorneys' fees and costs as provided in this MOU, the Funding Agreement, and/or the Facilities Use Agreement or as otherwise permitted by law, paid by the parties against whom the action was brought.
- I. No remedy herein conferred upon or reserved to the parties is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this MOU, the Funding Agreement and the Facilities Use Agreement or existing at law or in equity. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle either party to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice other than such notice as may be required under the Agreements. All remedies herein conferred upon or reserved to the parties shall survive the termination of this MOU, the Funding Agreement and/or the Facilities Use Agreement.

## **ARTICLE V – MISCELLANEOUS**

### **5.1 Release of Liability**

The State and the School District are hereby released from any and all claims, demands, debts, liabilities, and causes of action of whatever kind or nature, whether known or unknown or suspected or unsuspected which the Charter School or any of the Charter School's 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 the Facilities or the Charter School's Project, including those in any way connected with any materials or substances defined as hazardous under any applicable statute, ordinance, rule or regulation, presently in, on or under, or now or hereafter emanating from or migrating onto or under the Facilities. In connection with this release, the Charter School hereby waives any and all rights 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 or her 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.”

## **5.2 Non-waiver**

No waiver of any provision of this MOU, the Funding Agreement and/or the Facilities Use Agreement shall be implied by any failure to enforce any remedy for the violation of that provision, even if that violation continues or is repeated. Any waiver of any provision contained in this MOU, the Funding Agreement and/or the Facilities Use Agreement must be in writing and executed by the applicable parties and will affect only the provision specified and only for the time and in the manner stated in the writing.

## **5.3 Indemnity**

- A. Memorandum of Understanding. To the fullest extent permitted by law the Charter School shall at the Charter School's sole cost and expense with counsel acceptable to the School District and/or the State as applicable, indemnify, defend and hold the School District and the State harmless from and against any and all losses, costs, liabilities, claims, judgments, liens, damages (including consequential damages), actions, causes of action (whether in tort or contract law or equity or otherwise), charges, assessments, fines, penalties and expenses, including, without limitation, reasonable attorneys' fees and costs, and reasonable investigation costs (collectively "Claims"), incurred in connection with or arising from: (a) any breach or default by the Charter School in the observance or performance of any of the terms, covenants or conditions of this MOU on the Charter School's part to be observed or performed; (b) the construction, operation, maintenance, alteration, use or occupancy of the Facilities by the Charter School; (c) the condition of the Facilities, and any occurrence on the Facilities, from any cause whatsoever, and (d) any acts omissions or negligence of the Charter School or the Charter School's employees, agents or contractors in, on or about the Facilities.
- B. Facilities Use Agreement. The State is not a party to the Facilities Use Agreement and, as a result, to the fullest extent permitted by law the Charter School shall at the Charter School's sole cost and expense with counsel acceptable to the State as applicable, indemnify, defend and hold the State harmless from and against any and all Claims incurred in connection with or arising from any breach or default by the Charter School in the observance or performance of any of the terms, covenants or conditions of the Facilities Use Agreement on the Charter School's part to be observed or performed.

- C. Funding Agreement. The School District is not a party to the Funding Agreement and, as a result, to the fullest extent permitted by law the Charter School shall at the Charter School's sole cost and expense with counsel acceptable to the School District as applicable, indemnify, defend and hold the School District harmless from and against any and all Claims incurred in connection with or arising from any breach or default by the Charter School in the observance or performance of any of the terms, covenants or conditions of the Funding Agreement on the Charter School's part to be observed or performed.
- D. The Charter School will at all times protect and defend, at its own cost and expense, the title to the Facilities from and against all claims, liens and legal processes of creditors and keep all the Facilities and the title free and clear of all such claims, liens, and processes except for the liens created or expressly permitted under the Agreements and the CSFP.

#### **5.4 Applicable Law**

This MOU shall be governed by and construed in accordance with the laws of the State of California.

#### **5.5 Amendments**

- A. The terms of this MOU may not be waived, altered, modified, supplemented or amended in any manner except in writing, upon the agreement of all of the parties, or except as otherwise permitted by law.
- B. The terms of this MOU may be amended, or new agreements executed, as necessary, upon the application of the Charter School and the approval by the State and the School District of a final apportionment.

#### **5.6 Force Majeure**

The time for the State, the Charter School or the School District to perform any obligation or assert any right under this MOU or the CSFP shall be extended on a day for day basis for any Force Majeure event, which shall include but not be limited to: (1) Acts of God or of the public enemy; and (2) Acts of the federal or State government in either its sovereign or contractual capacity.

THE STATE:

STATE ALLOCATION BOARD:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

CALIFORNIA SCHOOL FINANCE AUTHORITY:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

THE SCHOOL DISTRICT: SACRAMENTO CITY UNIFIED SCHOOL DISTRICT:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

THE CHARTER SCHOOL: LANGUAGE ACADEMY OF SACRAMENTO:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



Attachment 1

Charter School's Application

**Exhibit A**

Funding Agreement

(attached)

**Exhibit B**

Facilities Use Agreement

(attached)

**Exhibit C**

<b>Apportionment</b>	<b>Purpose</b>	<b>Date</b>	<b>Amount</b>
Preliminary	Reservation of Funds (Rehab and NC)	May 26, 2010	\$1,878,376 and 6,662,240
Advance	Design (Rehab and NC)	TBD	\$187,837.60 and \$620,824
Advance	Site (NC)	TBD	\$454,000
Final	TBD	TBD	TBD

## Exhibit D

### **Project Description and Location**

LAS originally requested funding for new construction of a school facility located on the south side of its current campus which is shared with Fruit Ridge Elementary. The location of the project has been moved, with the approval of OPSC, to the Marian Anderson Elementary school site, which is also located within the boundaries of Sacramento City Unified School District (2850 49<sup>th</sup> Street, Sacramento, CA 95817).

The Marian Anderson site currently houses 12 classrooms, main office, small multipurpose/cafeteria and small library which LAS plans to use. The north-east corner of the campus houses 8 portables classrooms and two single stall restrooms which LAS also plans to use. Although, the campus will have sufficient housing for LAS students for the 2011-12 year, it does not allow for long-term growth or middle school program accommodations such as a gym. Thus, LAS is planning to use the funding 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.

Moreover, the rehabilitation, which would involve remodeling and modernizing existing classrooms, would allow for student growth delineated within the charter and the in the Prop 1D proposal. Proposed changes to the current site include the following: project would support a K-8 academic program on one site instead of a continued split program, through “abandon and replace” the project would allow for rehabilitation of the four (4) portable classrooms on the Marian Anderson site, remodel and create a permanent middle school/staff bathroom.

LAS anticipates funding its 50% local matching share of the OPSC calculated project cost of \$8.5 million through a 30-year lease agreement with the State. No upfront commitment is expected; LAS anticipates project occupancy by 2012-13.

## FUNDING AGREEMENT

Between the State of California,  
  
and  
  
Language Academy of Sacramento,  
  
a California Charter School

### **ARTICLE I – PURPOSE**

- A. This Funding Agreement (“Agreement”) is made and entered into as of June \_\_, 2011 (“Effective Date”) by and between the State Allocation Board and the California School Finance Authority (individually or collectively referred to as the “State”) and Language Academy of Sacramento, a California Charter School (collectively referred to as a “Charter School”). The provisions of this Agreement shall be effective from and after the Effective Date until the termination of the Agreement as provided herein.
- B. The Charter School has applied to the State for financing of its charter school facilities project (“Project”) under the Charter School Facilities Program (“CSFP”) established pursuant to Article 12 of Chapter 12.5 of Part 10 of the California Education Code and the regulations for its implementation provided in Title 4, Cal. Code Regs., Section 10151, et seq., and Title 2 Cal. Code Regs., Section 1859.160, et seq.
- C. The Charter School’s Project may involve the purchase of real property or the purchase of real property and construction of all improvements, repairs, replacements, substitutions, and modifications located or to be constructed on the property, or the construction of all improvements, repairs, replacements, substitutions, and modifications located or to be constructed on real property that the Charter School has acquired previously (“Facilities”).
- D. This Agreement is being entered into in accordance with the requirements of the CSFP. To the extent the Agreement is inconsistent with or in conflict to the provisions of the CSFP and the implementing regulations, the CSFP and implementing regulations shall prevail.
- E. The terms of this Agreement may not be waived, altered, modified, supplemented or amended in any manner except in writing, upon the agreement of the parties, or except as otherwise permitted by law. This

Agreement may be amended, or a new agreement executed, as necessary, upon the application of the Charter School and the approval by the State of a final apportionment.

## **ARTICLE II – FINANCING OF THE CHARTER SCHOOL’S PROJECT**

### **2.1 Fifty Percent Local Matching Share Obligation**

#### **A. Payments**

1. The Charter School’s Application for preliminary, advance, and/or final apportionment for the Project has been approved by the State. The State will provide as a grant funding for fifty percent (50%) of the approved costs for the Project, and the Charter School is responsible for a Local Matching share of fifty percent (50%) of the approved costs for the Project. The Final Apportionment Amount will be reduced by any amounts received by the Charter School through any Advance Apportionment(s). The amounts of the Preliminary, Advance and/or Final Apportionment are set forth in Exhibit C of the Memorandum of Understanding.
2. The Charter School’s Final Apportionment (“Apportionment”) is contingent upon the Charter School paying its 50% Local Matching Share obligation by making payments to the State pursuant to this Agreement.
3. The Charter School will repay the State by making annual or semi-annual payment installments, in arrears, as provided for in the Payment Schedule, developed in compliance with section 2.1(D). The amount shall include interest on the unpaid principal balance at the interest rate prescribed in Section 17078.57(a)(1)(D) and (E) of the Education Code.
4. Payments will be applied first to accrued but unpaid interest, then to the unpaid principal balance. The early or late date of making a payment will be disregarded for purposes of allocating the payment between interest and the principal balance. For this purpose, the payment will be treated as though made on the due date.
5. Payments may be prepaid in whole or in part at any time before the end of the payment term without penalty.
6. Payments shall be made directly to the State Allocation Board for deposit into the respective 2002, 2004 or 2006 Charter School Facilities Account, or as otherwise directed by the State in writing.

#### **B. Late Payments**

The failure to make a payment on time will cause the State to incur costs not contemplated by the parties when entering into this Agreement, the exact nature and amount of which would be extremely difficult and impracticable to ascertain. Accordingly, on the fifteenth day after a payment is due, the Charter

School may be assessed, by way of damages, a late charge in an amount equal to five percent (5%) of the past due amount. The parties agree that this late charge represents a fair and reasonable estimate of the costs incurred by the State as the result of a late payment, and the Charter School agrees to immediately pay the late charge. The State's acceptance of late charges will not constitute a waiver of default with respect to the overdue payment, and will not prevent the State from exercising any other rights available under this Agreement. The Charter School will pay a late charge only once on any late payment. The late charges will be deposited into the 2002, 2004, or 2006 Charter School Facilities Account.

C. Payment Period

The payment period shall commence upon the later to occur: (1) the Effective Date; or (2) after one full year of the Project being open and the Charter School commences its educational program ("Commencement Date"). The period shall end 30 years following the Commencement Date, or when paid in full.

D. Payment Schedule

1. Within thirty (30) days of the start of the Charter School's operations, the parties will execute a letter confirming the Commencement Date, the Expiration Date, the payment terms, and other such terms, including a schedule of payments ("Payment Schedule") which shall be attached to this Agreement and incorporated herein as Exhibit "A".
2. The State shall establish the Payment Schedule in accordance with Education Code section 17078.57 and California Code of Regulations, title 4, Section 10160. The Payment Schedule may be amended, at the State's sole discretion, where the Charter School has demonstrated financial hardship to the State's satisfaction and the State has determined that the Charter School continues to be financially sound. The Payment Schedule shall not be extended beyond 30 years from the date of disbursement of funds.

E. Payments To Be Unconditional

Except as expressly provided for in this Agreement, any present or future law to the contrary notwithstanding, this Agreement shall not terminate, nor shall the Charter School be entitled to any abatement, suspension, deferment, reduction, setoff, counterclaim, or defense with respect to the payments, nor shall the obligations of the Charter School be affected (except as expressly permitted) by reason of:

1. any failure of the Facilities or any part thereof to be delivered or installed, any defects, malfunctions, breakdowns or infirmities in the Facilities, any



accident or unforeseen circumstances, or any damage to or destruction of the Facilities, or any part thereof;

2. any taking of the Facilities, or any part thereof, or interest therein by condemnation or otherwise;
3. any prohibition, limitation, restriction or prevention of the Charter School's use, occupancy or enjoyment of the Facilities, or any part thereof, or any interference with such use, occupancy or enjoyment by any person for any reason;
4. any title defect, lien or any other matter affecting title to the Facilities;
5. any eviction by paramount title or otherwise;
6. any default by the Charter School;
7. any action for bankruptcy, insolvency, reorganization, liquidation, dissolution or other proceeding relating to or affecting this Agreement or the Charter School;
8. the impossibility or illegality of performance by the Charter School;
9. any action of any governmental authority or any other person;
10. the Charter School's acquisition of ownership of all or part of the Facilities;
11. breach of any warranty or representation with respect to the Facilities;
12. any defect in the condition, quality, or fitness for use of the Facilities;
13. Any other cause or circumstance similar or dissimilar to the foregoing, and whether or not the Charter School has notice or knowledge of any of the foregoing; or
14. Notwithstanding the above, nothing in this section shall affect a Charter School's rights and obligations pursuant to Education Code Section 17078.62 if the Charter School ceases to use the facility after a revocation and/or non-renewal.

F. Acceptance and Application of Payment; Not Accord and Satisfaction

1. No receipt by the State of a lesser payment than the payment required under this Agreement shall be considered to be other than on account of the earliest amount due, and no endorsement or statement on any check or letter accompanying a payment or check shall be considered an accord and satisfaction. The State may accept checks or payments

without prejudice to its right to recover all amounts due and pursue all other remedies provided for in this Agreement.

2. Acceptance of monies from the Charter School after the Charter School has received notice of termination shall in no way reinstate, continue, or extend the term or affect the termination notice. The State may receive and collect any payment due, and payment shall not waive or affect any prior notice, action, or judgment.

## **2.2 Conditions for Release of Funding**

The Charter School must satisfy the following conditions, and such others as may be reasonably required by the State, before the State will release any funding:

1. The Charter School shall have satisfied all of the requirements for such funding under the CSFP, including that it shall have a current, valid charter.
2. The Charter School shall have entered into this Agreement and the State shall have received an original of this Agreement properly executed on behalf of the Charter School, with each of the Exhibits hereto properly completed.
- (3)(a) If the funding shall be used to acquire real property, the Charter School, at its sole cost and expense, shall structure the closing of the escrow for the acquisition of the real property for a back-to-back conveyance of title from the seller to the Charter School, and simultaneously in the same closing of escrow, from the Charter School to the school district ("School District") as trustee of the real property on behalf of the state public school system. The Charter School must notify the State and the School District when CSFP funds are received by the Charter School. Within 30 days of receipt of CSFP funds, the Charter School shall provide evidence to the State and the School District that title to the real property has been transferred to the School District. If the Charter School fails to meet this requirement, the Charter School will be in default of this Agreement.
- (3)(b) If title to the property is already held by the Charter School, the Charter School, at its sole cost and expense, shall cause to prepare a conveyance instrument, acceptable to the School District and the State, which shall convey title to the real property from the Charter School to the School District as trustee on behalf of the public school system. The Charter School must notify the State and the School District when CSFP funds are received by the Charter School. Within 30 days of receipt of CSFP funds, the Charter School must provide evidence to the State that title to the real property has been transferred to the School District. If Charter School fails to meet this requirement, Charter School will be in default of this Agreement.

4. The Charter School and the School District, in whose geographical jurisdiction the Charter School is located, will enter into an agreement governing the use of the Facilities ("Use Agreement") and which said Use Agreement shall be expressly contingent upon substantial completion of construction of the Facilities and the conveyance from the Charter School to the School District the fee simple title to the Facilities, including the real property. The phrase "substantial completion of construction" shall mean that standard of construction generally recognized by California construction law. The State shall have the right to review and approve the Use Agreement if there will be any modifications to the standard provisions. The State reserves the right to communicate directly with either the Charter School or the School District regarding amendments to the Use Agreement. If the standard form of Use Agreement or any modification to the State Standard Provisions are not approved by the State, the State may elect not to release the advance or final apportionment. The Charter School shall be in full compliance with the terms of the Use Agreement.
5. If the Charter School is required to have a Guarantor for its project, it shall have entered into a guaranty with an acceptable Guarantor and the State shall have received an executed original of the agreement.
6. The State shall have received a certificate of the secretary of the Charter School as to (i) the resolution of the board of directors of the Charter School, or authorizing the execution, delivery and performance of this Agreement, (ii) the bylaws of the Charter School, (iii) signatures of the officers or agents of the Charter School authorized to execute and deliver this Agreement on behalf of the Charter School and, if applicable, attaching thereto a copy of the Charter School's certificate or articles of incorporation or partnership or limited liability company formation document certified by the Office of the Secretary of State for the State of California.
7. Certificate of good standing issued to the Charter School by the California Secretary of State not more than 30 days prior to the Effective Date of this Agreement, if applicable.
8. Upon acquisition of real property for the Project by the Charter School and prior to conveyance of title to the School District, the Charter School will contemporaneously with said acquisition record a lien or covenant against the title of the real property acceptable to and in favor of the State such that fee title cannot be conveyed free and clear unless the State is paid in full for all money due and owing by the Charter School under the CSFP. The Charter School shall deliver to the State a standard preliminary title report issued by a title company with respect to the Facilities, and legible copies of all documents referred to in the title report. (Exhibit "B"). The Charter School shall comply with the title requirements of section 3.4 of this Agreement, and shall provide to the State, upon request, all documents and materials relating to the Facilities and the title to the Facilities.

9. The Charter School represents that it has a minimum debt service coverage ratio determined by the State to be sufficient, but in no event to be less than 1.0x.
10. The Charter School represents that it is financially sound, and will demonstrate to the satisfaction of the State, its continued financial soundness. If the Charter School's chartering authority revokes or declines to renew the Charter School's charter, this Agreement will be in default and the provisions of Education Code section 17078.62 shall be invoked. Nothing in this section shall affect a Charter School's rights and obligations pursuant to Education Code Section 17078.62 if the Charter School ceases to use the facility after a revocation and/or non-renewal.
11. The Charter School shall establish a restricted reserve amount of \$10,000 in order to meet debt service coverage in the first year of debt service payments as prescribed in the June 2011 Staff Summary Report that was approved by the California School Finance Authority's Board members at its June 8, 2011 Board meeting. The report shall be attached to this Agreement and incorporated herein as Exhibit "C."

### **2.3 This Section Intentionally Left Blank**

### **2.4 Payment During Dispute Period**

Notwithstanding any dispute between the Charter School, its chartering authority, the State, or any vendor under any purchase agreement or any other person, the Charter School shall make all payments when due and shall not withhold any payments pending final resolution of a dispute, nor shall the Charter School assert any right of set-off or counterclaim against its obligation to make payments, and the Charter School waives any and all rights now or hereafter available by statute or otherwise to modify or to avoid strict compliance with its obligations under this Agreement.

### **2.5 Force Majeure**

The time for the Charter School or the State to perform any obligation or assert any right under this Agreement or the CSFP shall be extended on a day for day basis for any Force Majeure event, which shall include but not be limited to: (1) Acts of God or of the public enemy; and (2) Acts of the federal or State government in either its sovereign or contractual capacity.

### **2.6 No Debt or Liability/Obligation of the State**

- A. This Agreement shall not be deemed to constitute a debt or liability or obligation of the State or any political subdivision thereof, or a pledge of the faith and credit or taxing power of the State or any political

subdivision thereof, but shall be a special obligation payable solely by the Charter School.

- B. The obligation to make payments does not constitute an indebtedness of the Charter School or its chartering authority, within the meaning of any constitutional or statutory debt limitation or restriction and in all cases shall be made solely from legally available funds.
- C. The parties intend that the obligations of the Charter School shall be covenants, agreements and obligations that are separate and independent from any obligations of the State, and shall continue unaffected unless modified or terminated in accordance with an express provision of this Agreement.

### **ARTICLE III – CHARTER SCHOOL’S FACILITY**

#### **3.1 Utilization of Apportionment for Facility**

The Charter School agrees to utilize its apportionment for purposes consistent with the CSFP, and for the acquisition of real property and the installation, construction, retrofitting and improvement of said real property in order to allow a charter school educational program to be conducted. To the extent that the apportionment is insufficient in any way, the Charter School must pay additional amounts as necessary to complete the acquisition, installation, construction, retrofitting and improvement of the Facilities and to ensure that all elements of the Facilities, including the property and improvements, are operational. The State shall have no obligation to provide additional funding beyond the apportionment provided for in this Agreement.

#### **3.2 Use of Facilities for Charter School**

- A. The Charter School may use and occupy the Facilities during the term of the Agreement solely for the operation of a charter school, as authorized under the California Education Code and subject to the terms of the Use Agreement. The foregoing statement shall not constitute a representation or guaranty that the operation of a charter school may be conducted in the Facilities or is lawful or permissible under any certificates of occupancy issued for the Facilities, or is otherwise permitted by law. Use of the Facilities shall in all respects comply with all applicable legal requirements.
- B. The general terms of the Charter School’s use of the Facilities shall be governed by the Use Agreement between the Charter School and the School District.

- C. Prior to commencing operations in the school, the Charter School shall provide the State and the School District with a copy of a valid certificate of occupancy issued by the appropriate governmental agency for the Facilities, if applicable, or the equivalent issued by the California Division of the State Architect.
- D. In the event the Charter School no longer is using the Facilities, the usage and priority provisions of Education Code section 17078.62 shall apply. The Charter School shall reasonably cooperate and assist with any transition that may take place pursuant to the priority provisions.
- E. The State shall not have any obligation for construction work or improvements on or to the Facilities. The Charter School has made a thorough and independent examination of the Facilities and all matters related to its decision to enter into this Agreement. The Charter School is thoroughly familiar with all aspects of the Facilities and is satisfied that they are in an acceptable condition and meet its needs.
- F. The Charter School, its officers, members, partners, agents, employees and contractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religion, creed, national origin, culture, physical disability (including HIV and AIDS), mental disability, medical condition (cancer or genetic characteristics), sexual orientation, political affiliation, position in a labor dispute, age, marital status, and denial of statutorily-required employment-related leave. The Charter School, its officers, members, partners, agents, employees and contractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, title 2, section 7285 et seq.).

### **3.3 Facility Location and Suitability**

- A. The Charter School's Facilities are located in Los Angeles County, California, and are more particularly described on Exhibit "D" of the Memorandum of Understanding.
- B. The property is physically located within the geographical jurisdiction of the Sacramento City Unified School District and the high school attendance area generating eligibility for funding, if applicable.
- C. The Charter School has satisfied itself as to the suitability of the Facilities by its own inquiries and tests. The Charter School shall, by entering into and occupying the Facilities, be deemed to have accepted the Facilities

and to have acknowledged that they are in good order, condition and repair.

### **3.4 Title to the Facilities**

- A. The Charter School has obtained or will obtain upon release of funds from the State, good, absolute and marketable title to the Facilities in fee simple, free and clear of any mortgage, deeds of trust, liens (monetary or otherwise), claims, charges or other encumbrances or matters of any nature what so ever other than those included in the title report on the terms and conditions of this Agreement. The Charter School agrees to obtain and transfer title in accordance with the requirements of Article III Section A of the Memorandum of Understanding.
- B. Title to the Facilities shall be conveyed to, and vested in the School District in trust for the benefit of the California State public school system.
- C. The Charter School will at all times protect and defend, at its own cost and expense, the title from and against all claims, liens and legal processes of creditors, and keep all the Facilities and the title free and clear of all such claims, liens and processes except for the liens created or expressly permitted by the Security Provisions of this Agreement and the CSFP.
- D. Any sale, contract to sell, option to purchase, conveyance or other transference of the Facilities must first be approved by the State in writing.
- E. The Charter School will execute, acknowledge and record all documents, certificates and agreements, including without limitation any grant deed, bill of sale or assignment as necessary to effectuate a transfer to the School District title to the Facilities, as provided herein, and provide copies of all documents, certificates and agreements to the State as required by this Agreement or as otherwise requested by the State.

### **3.5 Insurance Requirements**

- A. Types of Insurance
  - 1. The Charter School shall, at its sole cost and expense, obtain and maintain at all times during the construction and occupancy of the Facilities, the following types of insurance on the Facilities, naming the State and School District loss payee and additionally insured:

- (a) All Risk (special-causes-of-loss) property and fire insurance (with extended coverage endorsement including malicious mischief and vandalism and sprinkler).
  - (b) All Risk (special-causes-of-loss) property and fire insurance (with extended coverage endorsement including sprinkler leakage, malicious mischief, vandalism and plate glass).
  - (c) Commercial general liability insurance (broad form) covering claims for bodily injury, personal injury, death and property damage based on or arising out of the ownership, use, occupancy or maintenance of the Facilities and all areas appurtenant thereto.
  - (d) Rental value insurance.
  - (e) Worker's compensation insurance
  - (f) Other types of insurance or endorsements to existing insurance as may be reasonably required from time to time by the School District or the State.
- B. The Charter School shall not do anything, or permit anything to be done, in or about the Facilities that would: (i) invalidate or be in conflict with the provisions of or cause any increase in the applicable rates for any fire or other insurance policies covering the Facilities (unless it pays for such increased costs); (ii) result in a refusal by insurance companies of good standing to insure the Facilities in amounts reasonably satisfactory to the School District; (iii) result in injury to any person or property by reason of the Charter School's operations being conducted in the Facilities; or (iv) result in the cancellation of or assertion of any defense by the insurer to any claim under any policy of insurance maintained by or for the benefit of the School District.
- C. The Charter School, at its own expense, shall comply with all rules, orders, regulations or requirements of the American Insurance Association (formerly the National Board of Fire Underwriters) and with any similar body that shall hereafter perform the function of such Association.
- D. All of the insurance policies required shall be issued by corporate insurers licensed or qualified to do business in the State of California and rated A:X or better by A.M. Best Company, and shall be in form acceptable to the School District and the State.



- E. All certificates of insurance shall be delivered to the School District and the State, along with evidence of payment in full of all premiums required. All such certificates shall be in form acceptable to the State and shall require the insurance company to endeavor to give to the State at least thirty (30) days' prior written notice before canceling the policy for any reason. Certificates evidencing all renewal and substitute policies of insurance shall be delivered to the State, along with evidence of the payment in full of all premiums, at least thirty (30) days before termination of the policies being renewed or substituted.
- F. The State and School District shall be entitled to assignment and payment of all claims, causes of action, awards, payments, proceeds and rights to payment arising under or derived in connection with any insurance policy required to be maintained by the Charter School and any other insurance policies payable because of loss sustained to all or part of the Facilities, together with all interest which may accrue on any of the foregoing, provided, however, if the loss sustained to the Facilities can be repaired or constructed with the proceeds of the insurance policy (plus any additional funds needed and supplied by the Charter School), then, provided the Charter School is not in default hereunder, upon request of the Charter School, the proceeds of the insurance policy and such additional funds may be used for such repair and reconstruction of the Facilities, if agreed to by the State and the School District.
- G. The State and the School District shall immediately be notified in writing if any damage occurs or any injury or loss is sustained to all or part of the Facilities, or any action or proceeding relating to any such damage, injury or loss is commenced. The State and the School District may, but shall not be obligated to, in its own name appear in or prosecute any action or proceeding to enforce any cause of action based on warranty, or for damage, injury or loss to all or part of the Facilities, and may make any compromise or settlement of the action or proceeding, provided that no compromise or settlement of any action or proceeding that materially affects the Charter School shall be entered into or agreed to without the Charter School's prior written consent, which may not unreasonably be withheld.
- H. Waiver of Subrogation
  - 1. Notwithstanding anything to the contrary in this Agreement, the Charter School releases the School District and the State and their respective agents, employees, successor, assignees and subtenants from all liability for injury to any person or damage to any property that is caused by or results from a risk (i) which is actually insured against, to the extent of receipt of payment under such policy (unless the failure to receive payment under any such

policy results from a failure of the Charter School to comply with or observe the terms and conditions of the insurance policy covering such liability, in which event, such release shall not be so limited), (ii) which is required to be insured against under this Agreement, or (iii) which would normally be covered by the standard form of "all risk-extended coverage" casualty insurance, without regard to the negligence or willful misconduct of the entity so released.

2. The Charter School shall obtain from its insurers under all policies of fire, theft, and other property insurance maintained by it at any time during the term insuring or covering the Facilities, a waiver of all rights of subrogation which the Charter School's insurers might otherwise, if at all, have against the State, and the Charter School shall indemnify the State against any loss or expense, including reasonable attorneys' fees, resulting from its failure to obtain such waiver.
- I. No approval by the School District or the State of any insurer, or the terms or conditions of any policy, or any coverage or amount of insurance, or any deductible amount shall be construed as a representation by the State of the solvency of the insurer or the sufficiency of any policy or any coverage or amount of insurance or deductible and the Charter School assumes full risk and responsibility for any inadequacy of insurance coverage or any failure of insurers.
- J. The Charter School is liable for all duties and obligations with respect to its purchase and development of the Facilities, and it shall bear the risk of any loss or claim relating to the Facilities. The State and the School District shall assume no liability or risk of loss.

### **3.6 Consent for Assignment**

- A. The State's and the School District's (in accordance with the California Education Code) written consent shall be required before the Charter School may directly or indirectly, voluntarily or by operation of law, sell, assign, encumber, pledge or otherwise transfer or hypothecate all or any part of its interest in or rights with respect to the Facilities or permit all or any portion of the Facilities to be occupied by anyone other than itself or sublet all or any portion of the Facilities. Such consent shall not be unreasonably withheld. No sublease or assignment nor any consent by the State and the School District shall relieve the Charter School of any obligation to be performed under this Agreement or under the CSFP.
- B. The Charter School shall not be permitted to assign any of its rights or liabilities under this Agreement without the written consent of the State. A transfer of control shall be deemed to have occurred if there shall be

any of the following: (i) a transfer of the ultimate beneficial ownership of fifty percent (50%) or more of the equity or other ownership interests in the Charter School or of any class of equity interests in the Charter School, including, without limitation, by the issuance of additional shares or other equity interests or other ownership interests in the Charter School, (ii) a transfer of the right to receive fifty percent (50%) or more of any category of distributions made by the Charter School, or (iii) a transfer of the right to direct the management, policies or operations of the Charter School, by contract or otherwise.

- C. Except as provided in Education Code Section 17078.62, in no event shall this Agreement be assigned or assignable by operation of law or by voluntary or involuntary bankruptcy proceedings or otherwise and in no event shall this Agreement or any rights or privileges hereunder be an asset of the Charter School under any bankruptcy, insolvency, reorganization or other debtor relief proceedings.

#### **ARTICLE IV – REPORTING**

A. The Charter School shall:

1. Report to the State any material adverse change in its financial and/or operational condition that could adversely affect its ability to make its payments under this Agreement and the CSFP;
2. Report to the State if the Charter School's charter has been revoked or has not been renewed within 30 days of notification of such action, including providing a copy of the document provided by the chartering authority notifying the Charter School of such action;
3. Provide audited financial statements within 120 days of the end of each fiscal year. Charter School may submit a written request for an extension from the State;
4. Notify the State when the Charter School incurs any borrowing of \$50,000 or more, with a duration of over one year. At its discretion, the State may conduct a financial soundness review; and
5. Comply with the State's requirements for reporting any civil or criminal matters.

#### **ARTICLE V – DEFAULT AND REMEDIES**

##### **5.1 Events of Default**

The occurrence of any of the following shall constitute a "Default" or "Event of Default" under this Agreement:

1. Failure by the Charter School to transfer title of the real property to the School District within 30 days of receipt of CSFP funds for site acquisition or final apportionment.
2. Failure by the Charter School to commence to use and occupy the Facilities for the operation of a charter school within one (1) year of receipt of the certificate of occupancy.
3. Failure by the Charter School to make any payment when due, and such failure continues for a period of thirty (30) calendar days after receiving written notice by the State;
4. Failure by the Charter School to maintain insurance on the Facilities or to provide reasonable evidence of insurance as required, and where such failure continues for a period of thirty (30) calendar days after receiving written notice by the State;
5. Failure by the Charter School to provide reasonable evidence of compliance with all legal requirements whether expressly stated under this Agreement or otherwise imposed by the State under the CSFP or other applicable law, or failure to observe or perform any other applicable covenant, condition or agreement, where such failure continues for thirty (30) calendar days after receiving written notice by the State. If thirty (30) calendar days is insufficient, and the Charter School has instituted corrective action, the State, in its discretion, may extend this period up to one hundred and eighty (180) calendar days;
6. The Charter School shall be or become insolvent, or admit in writing its inability to pay its debts as they mature, or make an assignment for the benefit of creditors; or the Charter School shall apply for or consent to the appointment of any receiver, trustee or similar officer for it or for all or any substantial part of its property; or such receiver, trustee or similar officer shall be appointed without the application or consent of the Charter School, as the case may be, where possession is not restored in sixty (60) calendar days; or the Charter School shall institute (by petition, application, answer, consent or otherwise) any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, liquidation or similar proceeding relating to it under the laws of any jurisdiction; or any such proceeding shall be instituted (by petition, application or otherwise) against the Charter School (unless, in the case of a petition filed against the Charter School, the same is dismissed in sixty (60) days) or any judgment, writ, warrant of attachment or execution or similar process shall be issued or levied against a substantial part of the Charter School's Facilities; provided, however, in the event that any provision of this paragraph is contrary to any applicable law, it shall be of no force and effect, and not affect the validity of the remaining provisions;

7. The determination by the State that any material representation or warranty made by the Charter School was untrue in any material respect when made;
8. The Charter School's charter is not renewed or is revoked, or the Charter School ceases to use the Facilities for a charter school purpose. Nothing in this section shall affect a Charter School's rights and obligations pursuant to Education Code Section 17078.62 if the Charter School ceases to use the facility after a revocation and/or non-renewal;
9. The Charter School shall abandon the Facilities; and/or
10. If the performance of the payment obligations of the Charter School is guaranteed, the actual or anticipatory failure or inability, for any reason, of the Guarantor to honor the guarantee as required, and the Charter School's failure to provide written alternative assurance or security, which when coupled with the Charter School's then-existing resources, equals or exceeds the combined financial resources that existed at the time this Agreement is executed. The Charter School shall have sixty (60) calendar days following written notice by the State, to provide the written alternative assurance or security.

## **5.2 Remedies on Default**

- A. The parties acknowledge and agree that this Agreement represents a unique situation that is not limited by the landlord's remedies provided by Sections 1951.2 and 1951.4 of the California Civil Code. Whenever any Event of Default shall have occurred, any one or more of the following respective remedies, which are not exclusive but cumulative, may be pursued:
  1. If the Event of Default is solely because the School District has revoked or declined to renew the Charter School's charter, the Charter School shall remain liable for the performance of all of the obligations of the Charter School including, without limitation, the obligation to make payments to the State when due, so long as the Charter School continues to use and occupy the Facilities.
  2. On the termination of this Agreement for any reason, any steps the School District takes to comply with Education Code section 17078.62 shall in no way release the Charter School from its payment obligations that accrued prior to the last date upon which the Charter School had beneficial ownership and use of the facility ("Termination Date") or from the Charter School's obligation for any holdover. Assumption of this Agreement shall in no way release the Charter School from its payment obligations that accrued prior to the Termination Date or from the Charter School's obligations for any holdover.

3. The State may proceed by appropriate court action to enforce specific performance by the Charter School of its covenants under this Agreement and under the terms of accepting funding under the CSFP, or to recover damages for the breach thereof, including without limitation for the recovery of all past due payments together with interest and late charges, and all other sums due the State. The Charter School shall pay or repay to the State all costs of such action or court action, including, without limitation, reasonable attorneys' fees and costs.
- B. In the event of the Charter School's default, the State shall have the right to recover from the Charter School via the intercept mechanism described in Section 17199.4 of the Education Code (i) the amount of all unpaid payments or other obligations (whether direct or indirect owed by the Charter School to the State), if any, which are then due and owing, together with interest and late charges, and (ii) any other amounts due from the Charter School to the State, including indemnity payments, taxes, charges, reimbursement of any advances and other amounts payable by the Charter School to the State.
- C. Notwithstanding anything to the contrary, the State may take whatever action at law or in equity that may appear necessary or desirable to enforce its rights with respect to this Agreement or the Facilities, and the Charter School, as applicable, shall pay or repay to the State all costs of such action or court action, including, without limitation, reasonable attorneys' fees and costs as provided in this Agreement or as otherwise permitted by law.
- D. No remedy herein conferred upon or reserved to the parties is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or existing at law or in equity. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle either party to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice other than such notice as may be required under this Agreement. All remedies herein conferred upon or reserved to the parties shall survive the termination of this Agreement.
- E. No waiver of any provision of this Agreement shall be implied by any failure to enforce any remedy for the violation of that provision, even if that violation continues or is repeated. Any waiver of any provision of this Agreement must be in writing and will affect only the provision specified and only for the time and in the manner stated in the writing.

## **ARTICLE VI – RELEASE OF LIABILITY AND INDEMNIFICATION**

### **6.1 No Liability**

- A. To the fullest extent permitted by law, the Charter School, on its behalf and on behalf of its officers, members, partners, agents, employees, and contractors, waives all claims it may have now or in the future (in law, equity, or otherwise) against the State, officials, directors, officers, attorneys, accountants, financial advisors, staff and employees arising out of, knowingly and voluntarily assumes the risk of, and agrees that the State shall not be liable for any of the following:
  - 1. Injury to or death of any person; or
  - 2. Loss of, injury or damage to, or destruction of any tangible or intangible property, including the resulting loss of use, economic losses, and consequential, incidental, punitive or penal or resulting damage of any kind from any cause.
- B. The State shall not be liable under this clause regardless of whether the liability results from any active or passive act, error, omission, or negligence of any party; or is based on claims in which liability without fault or strict liability is imposed or sought to be imposed.
- C. The State shall not be liable for any latent, hidden, or patent defect of the Facilities, or any part thereof, or any failure of the Facilities or any part thereof to comply with any legal requirement.

### **6.2 No Representations/Warranties**

The Charter School does not rely on, and the State does not make any express or implied representations or warranties as to any matters including, without limitation, (a) the physical condition of the Facilities, (b) the existence, quality, adequacy or availability of utilities serving the Facilities, (c) the use, habitability, merchantability, fitness or suitability of the Facilities for the intended use, (d) the likelihood of deriving business from the location or the economic feasibility of the business, (e) Hazardous Materials on, in under or around the Facilities, (f) zoning, entitlements or any laws, ordinances or regulations which may apply to the use of the Facilities, or (g) any other matter relating to the Facilities or Project.

### **6.3 Release of All Claims and Demands**

The Charter School releases the State from any and all claims, demands, debts, liabilities, and causes of action of whatever kind or nature, whether known or unknown or suspected or unsuspected which the 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 Materials presently in, on or under, or now or hereafter emanating from or migrating onto or under the Facilities. In connection with such release, the Charter School hereby waives any and all rights 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 must have materially affected his settlement with the debtor.

#### **6.4 Indemnification**

- A. To the fullest extent permitted by law the Charter School shall at the Charter School's sole cost and expense with counsel acceptable to the State as applicable, indemnify, defend and hold the State harmless from and against any and all losses, costs, liabilities, claims, judgments, liens, damages (including consequential damages), actions, causes of action (whether in tort or contract law or equity or otherwise), charges, assessments, fines, penalties and expenses, including, without limitation, reasonable attorneys' fees and costs, and reasonable investigation costs (collectively "Claims"), incurred in connection with or arising from: (a) any breach or default by the Charter School in the observance or performance of any of the terms, covenants or conditions of this Agreement on the Charter School's part to be observed or performed; (b) the construction, operation, maintenance, alteration, use or occupancy of the Facilities by the Charter School; (c) the condition of the Facilities, and any occurrence on the Facilities, from any cause whatsoever; (d) any acts omissions or negligence of the Charter School, its employees, agents or contractors in, on or about the Facilities; and (e) any breach in the Charter School's representations or warranties provided under this Agreement.
- B. The indemnification provided in this section shall apply regardless of the active or passive negligence of the State and regardless of whether liability without fault or strict liability is imposed or sought to be imposed; provided, however, that the right of indemnification shall not apply to the extent that a final judgment of a court of competent jurisdiction establishes that a claim was proximately caused by gross negligence or willful misconduct.
- C. In case any action or proceeding be brought, made or initiated against any of the State relating to any matter covered by the Charter School's indemnification obligations, the Charter School, shall at its sole cost and expense, resist or defend such claim, action or proceeding by counsel



approved by the State. Notwithstanding the foregoing, the State may retain its own counsel to defend or assist in defending any claim, action or proceeding, and the Charter School shall pay the reasonable fees and disbursements of such counsel. The Charter School's obligations to indemnify the State shall survive the expiration or earlier termination of this Agreement. The State is an intended third-party beneficiary of this article, and shall be entitled to enforce the provisions hereof.

- D. The Charter School's obligation to indemnify the State may not be construed or interpreted as in any way restricting, limiting, or modifying the Charter School's insurance or other obligations under this Agreement and is independent of the Charter School's insurance and other obligations. The Charter School's compliance with the insurance requirements and other obligations under this Agreement shall not in any way restrict, limit or modify the Charter School's indemnification obligations under this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Funding Agreement on the dates set forth below adjacent to their respective signatures. The effective date of this Funding Agreement shall be the last date set forth below.

THE STATE:

STATE ALLOCATION BOARD:

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

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

CALIFORNIA SCHOOL FINANCE AUTHORITY:

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

By: \_\_\_\_\_

Name: Katrina Johantgen

Title: Executive Director

THE CHARTER SCHOOL:

LANGUAGE ACADEMY OF SACRAMENTO

BY: LANGUAGE ACADEMY OF SACRAMENTO

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

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Exhibit A

**Payment Schedule**

(to be attached)

Exhibit B

**Preliminary Title Report**

(to be attached)

Exhibit C

**Staff Summary Report**

(to be attached)

## **REHABILITATED/NEW CONSTRUCTION SCHOOL FACILITY USE AGREEMENT**

This Rehabilitated 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 49<sup>th</sup> 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 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 Proposition 1D 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 construction of 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 90-120 days of LAS and SCUSD Board approvals. However, in the event that the

charter school is unable to submit the 50-05 forms to the State within this times period, it shall notify the District as soon as practical and the parties shall agree on a deadline; 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 supersedes 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) 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 and Non-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. 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 the Effective Date for one year, and shall automatically renew and continue until the Project has been completed, 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 Proposition 1D Charter School Facilities Program Fund, at which time 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 \_\_\_\_.

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.

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; REPRESENATION 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 School 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 the District will provide an initial estimated fee, subject to amendment when the preceding fiscal year figures become final.

The Project Facility Use Fee shall be based on the costs to provide district labor (salary, benefits) for maintenance, operations, custodial services or other administrative services to the Project Facilities. These 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 Rehabilitated School Facility, design and construction of the Rehabilitated School Facility, 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 annual 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 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. This does not prohibit the Non-Profit from its right to make a Proposition 39 request for another charter school within its organization.

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 in the form of salary and benefits of these District employees. Charter School 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 \$\_\_\_\_\_. 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 49<sup>th</sup> 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.

## 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 Term. 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 feet<sup>1</sup> 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 Term. 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.

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<sup>1</sup> 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 Custodian and the cost of any cleaning supplies and tools necessary for the Custodian 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. The District will allow a dialogue as to the number of required operations plant managers or custodial staff and allow Charter School to be involved in the selection and supervision of these staff to the extent practicable.