



# SACRAMENTO CITY UNIFIED SCHOOL DISTRICT BOARD OF EDUCATION

Agenda Item# 11.1h

**Meeting Date:** April 21, 2022

**Subject:** Approve Five Year Facilities Use Agreement with Capitol Collegiate Academy

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

**Division:** Continuous Improvement and Accountability

**Recommendation:** Approve a Five Year Facilities Use Agreement between Sacramento City Unified School District and the Capitol Collegiate Academy.

**Background/Rationale:** The District is a partner with its charters in the public education of students. The District intends to ensure that its facilities are shared equally with all of its students, including those students who attend its charter schools housed in District facilities.

Capitol Collegiate Academy is seeking private financing to fund the construction of portables, a multipurpose building, an administrative office, restrooms, a lunch pavilion, and a collaborative space. Capitol Collegiate Academy desires to occupy additional real property located at the Freeport Site that is not part of the District's facilities offered under Proposition 39. The Parties have agreed to enter into a ground lease for that additional leased real property.

The District intends this Agreement to satisfy its obligations for the 2022- 2023 through 2026-2027 school years under Education Code Section 47614 and Title 5 of the California Code of Regulations Section 11969, *et seq.*, adopted by the State Board of Education ("Proposition 39"), which among other things require a written agreement regarding the allocation of facilities.

**Financial Considerations:** The Non-Profit shall pay the District a Facilities Use Fee that is calculated by adding the total of (a) a pro-rata fee rate multiplied by that percentage of the square footage that is equivalent to the percentage of enrollment that comprises the Charter School's in-district students; plus (b) the fair market rate multiplied by that percentage of the square footage that is equivalent to the percentage of enrollment that comprises the Charter School's out-of-district students.

In addition to the Facilities Use Fees, the Non-Profit shall pay the District an annual rent of twenty-three thousand and ninety-five dollars (\$23,095).

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

**Documents Attached:**

1. Five Year Facility Use Agreement with Capitol Collegiate Academy

<p><b>Estimated Time of Presentation:</b> N/A <b>Submitted by:</b> Lisa Allen, Deputy Superintendent and Jesse Ramos, Director of Innovative Schools <b>Approved by:</b> Jorge A. Aguilar, Superintendent</p>
---

## FACILITIES USE AND GROUND LEASE AGREEMENT

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

### RECITALS

- A. WHEREAS, the District and its charter schools are partners in the public education of students and it is the District’s intent to ensure that its facilities are shared equally with all of its students, including those students who attend its charter schools housed in District facilities.
- B. WHEREAS, the District is the owner of real property located at 2118 Meadowview Road, Sacramento, CA 95832 (“Freeport Site”).
- C. WHEREAS, Charter School is a charter school duly formed and approved by the District under the laws of the Charter Schools Act of 1992 (Education Code §§ 47600, *et seq.*) serving students in grades transitional kindergarten through eighth grade.
- D. WHEREAS, Non-Profit desires to use certain District facilities for the Charter School and its public charter school program.
- E. WHEREAS, the Parties intend this Agreement to satisfy their obligations for the 2022-2023 through 2026-2027 school years, under Education Code Section 47614 and Title 5 of the California Code of Regulations Section 11969, *et seq.*, adopted by the State Board of Education (“Proposition 39”), which among other things require a written agreement regarding the allocation of facilities.
- F. WHEREAS, the Charter School desires to occupy additional real property located at the Freeport Site that is not part of the District’s facilities offer under Proposition 39, and the Parties have agreed to enter into a ground lease for that additional leased real property as depicted on Exhibit E (the “Leased Land”).
- G. WHEREAS, the Charter School intends to construct portables, a multipurpose building, an administrative office, restrooms, a lunch pavilion, and collaborative space on the Leased Land.
- H. WHEREAS, the Charter School is seeking private financing to fund the above referenced construction.

- I. WHEREAS, this Agreement, together with the accompanying exhibits, constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations and agreements related to the Charter School's use of the Freeport Site, whether oral or written, including but not limited to the prior Facilities Use Agreement (effective on June 22, 2015) and the Amendment Extending the Term of Facilities Use Agreement (effective October 18, 2018).

## **AGREEMENT**

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

**1. Recitals.**

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

**2. Term of this Agreement.**

The term of this Agreement shall be from the date this Agreement is ratified by the District's Board of Education ("Effective Date"), through June 30, 2027 ("Term"), unless earlier terminated as provided herein.

**3. Facilities.**

The District grants use of portions of the Freeport Site, as described and/or depicted in Exhibits A and B ("Facilities"), which are attached hereto and incorporated herein by reference, to the Charter School under the terms and conditions set forth in this Agreement. The District reserves the right to use facilities, or assign facilities, at the Freeport Site that have not been designated or assigned to the Charter School. Use of the Facilities shall be for the purposes set forth in the Charter School's charter and on the terms and conditions set forth herein. The Charter School shall not have exclusive use of the Freeport Site.

**4. Facilities Use Fee.**

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

The calculation for the 2022-2023 school year, and terms of Facilities Use Fee payments, are further described with more particularity in Exhibit C, attached hereto and incorporated herein. The Facilities Use Fee will be calculated and adjusted annually by the District.

The dollar amount to be paid by Non-Profit for facilities provided to in-District students, per square foot, for use of the Facilities during the Term will be calculated by the District pursuant to Title 5, California Code of Regulations, section 11969.7 ("pro-rata fee"). To calculate the fee, the District must determine actual facilities costs and total space figures in the year preceding the fiscal year in which the Facilities are provided. Such amounts may only become available to the District after each fiscal year ends. Therefore, within ninety (90) days of the beginning of each fiscal year, or as soon as the actual facilities costs and total space figures for the prior fiscal year become available, whichever is later, the District shall provide notice to the Non-Profit of any amended Facilities Use Fee calculations based on the recalculated pro-rata fee. Amounts owed to or by the Non-Profit due to this calculation will be credited or added to subsequent remaining monthly installment payments of the Facilities Use Fees.

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

**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. Notwithstanding the foregoing, if any such dispute concerns facts or circumstances that may be cause for revocation of the Charter School's charter, the District shall not be obligated by the terms of any dispute resolution procedures as a precondition to revocation.

**6. Use.**

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

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

insurance. The Charter School shall provide adequate and appropriate supervision for Charter School students and employees using the Facilities/Leased Land.

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

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

(e) COVID-19. The Charter School must take all steps and actions necessary or required to comply with all current and future orders, laws and recommendations issued by any applicable government agency (including the California Department of Public Health, the California Department of Education, the Sacramento County Public Health Officer and the State or the Federal Government) related to COVID-19 that are applicable to the Charter School's use of the Freeport Site and Facilities/Leased Land.

(f) Security Badges. The Charter Schools will provide identification cards to its staff. The identification cards will be pictured with school name, logo, staff names, and titles. All Charter School staff shall carry and have visible their identification card at all times while at the Freeport Site. This will assist District security and other staff to identify Charter School staff as needed. In the event a Co-location with a District program occurs, both the Charter Schools' staff and District staff shall carry their respective identification cards at all times that they are at the Freeport Site.

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

reasonable use of the Freeport Site shall take priority over any requested Civic Center Act, joint-use agreement, or recreational program use. The District shall confirm whether the Charter School has scheduled any use of the Freeport Site prior to scheduling any such requested use.

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

The District shall be responsible, at its sole cost, for any and all fire-related materials or testing at the Facilities/Leased Land required by law or local enforcement agency, including but not limited to any costs associated with fire hoses, fire extinguishers, fire hydrants, suppression units, drop-down doors, standpipe inspections, and fire alarms, except that the Charter School shall be responsible for fire-related testing and materials for the Improvements. The Charter School shall immediately notify the District when said materials are required, and/or if testing other than the scheduled annual testing is required. The District shall perform the necessary testing or maintenance, and may do so utilizing District personnel or by hiring a third party. The District shall be responsible for the cost of any such work, including but not limited to the cost to the District of any District employees' time spent performing such repair or maintenance.

#### **7. Furnishings and Equipment**

The furnishings and equipment to be provided by the District for the Facilities are those furnishings and equipment that exist at the Facilities as of the Effective Date. Said furnishings and equipment will be provided pursuant to Proposition 39. The Charter School is responsible to furnish and equip the structures of the Improvements, defined in Provision 11, below. The District is not responsible to furnish and/or equip the Improvements.

The Charter School will provide the District with an inventory, including the mutually agreed upon condition of items, of the furnishings and equipment existing at the Facilities as of the Effective Date; provided, however, that if the Parties disagree on the condition of any item(s), the Parties shall promptly meet and confer in good faith to cooperate to agree on the condition of the item(s). The replacement of furnishings and equipment supplied by the District in accordance with school district schedules and practices, shall remain the responsibility of the District. 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 District-provided 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.

**8. Utilities.**

The Charter School shall reimburse the District for the cost of utilities at the Facilities/Leased Land, as charged to the District by its utility providers, pro-rated to reflect use by other users of the Freeport Site. Utilities include, but are not limited to, are electrical, natural gas, sewer, waste disposal/recycling and water services. Due to cost containment efforts by the District, the number of bins associated with the Freeport Site, the bin capacities and the number of removals per week shall not increase during the Term without the District's prior written consent, which may be withheld in the District's sole discretion.

The District shall endeavor to notify the Charter School of its estimated monthly charge for utilities prior to the start of every school year. The Charter School shall pay such charge to the District throughout the Term on a monthly basis concurrent with the Charter School's payment of the Facilities Use Fee to the District pursuant to Section 4 of this Agreement.

Within one hundred twenty (120) days after the expiration or earlier termination of this Agreement, the District shall endeavor to provide the Charter School with a reconciliation of the Charter School's outstanding utility costs over the Term, if any. The District may invoice the Charter School for any underpayment. The Charter School shall reimburse the District for such underpayment, if any, within thirty (30) days after receipt of said invoice.

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

The District's failure to furnish or cause to be furnished necessary utilities when such failure is caused by (i) Acts of God or other acts beyond the control or fault of the District; (ii) strikes, lockouts, or other labor disturbances or labor disputes of any kind; (iii) any laws, rules, orders, ordinances, directions, regulations, requirements, or any other action by federal, state, county or municipal authority; (iv) inability despite the exercise of reasonable diligence by the District to obtain electricity, water, or fuel; or (v) any other unavoidable delay, shall not cause the District to be in default and shall not result in any liability of the District.

Prior to the installation of any new Improvements on the Facilities/Leased Land, the District may conduct an inspection to determine the impact of the Improvement and occupancy on current utilities. Any and all upgrades to utilities necessary to accommodate the Improvements are the responsibility and at the cost of the Charter School.

**9. Proposition 39/Conditions Reasonably Equivalent.**

(a) Charter School acknowledges by execution of the Agreement that the Facilities provided by the Agreement are deemed to be "reasonably equivalent," meeting all the requirements of Proposition 39 (Ed. Code § 47641) for the Term of this Agreement. Charter School further agrees that upon execution of this Agreement, all obligations of the District to the Charter School under Proposition 39 will be satisfied over the Term of this Agreement. Charter School and Non-

Profit waive their right to bring any claim or legal action for the Term of the Agreement based on any claims arising out of or relating to alleged compliance or noncompliance with Proposition 39. This waiver does not extend to the obligations set forth in the Agreement. Notwithstanding the foregoing, the Charter School preserves the right to argue that a similar allocation of facilities for a future academic year does not satisfy the obligations of Proposition 39 and the Implementing Regulations.

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

#### **10. Ground Lease.**

(a) Ground Leased Land. The District hereby leases to the Charter School the “Leased Land” depicted in Exhibit E, which is attached hereto and incorporated herein by reference, under the terms and conditions set forth in this Agreement. Use of the Leased Land shall be for the purposes set forth in the Charter School’s charter and on the terms and conditions set forth herein.

The District shall deliver the Leased Land to the Charter School within thirty (30) calendar days of the Effective Date of this Agreement, clear of all tenancies and occupancies not addressed in this Agreement.

The Leased Land is leased to the Charter School on an “as is” basis. The District shall not be required to make or construct any alterations including structural changes, additions or improvements to the Leased Land. By entry and taking possession of the Leased Land pursuant to this Agreement, the Charter School accepts the Leased Land in “AS IS” condition. The Charter School acknowledges that neither the District nor District’s agents have made any representation or warranty as to the suitability of the Leased Land to the conduct of the Charter School’s business.

(b) Rent. For the term of this Agreement, and in addition to the Facilities Use Fees (Exhibit C) and other costs per this Agreement, Non-Profit shall pay District an annual rent of twenty-three thousand and ninety-five dollars (\$23,095) (“Rent”), which has been calculated by multiplying one dollar per square foot per year (\$1.00/sq ft/yr) by approximately twenty-three thousand and ninety-five (23,095) square feet of the property. The first school year’s Rent shall be paid on or before the Effective Date of this Agreement, and annually thereafter for each school year of the Term. Beginning on the Effective Date, payments shall be payable on or in advance of the Due Date, without deduction, offset, prior notice or demand, in lawful money of the United States.

(c) Surrender. No act or thing done by the District or any agent or employee of District during the Term shall be deemed to constitute an acceptance by District of a surrender of the Freeport Site, Facilities, or Leased Land.

## 11. Improvements.

(a) Project. The Charter School currently intends to construct portables, a multipurpose building, an administrative office, restrooms, a lunch pavilion, and collaborative space (collectively, the “Project”) on the Leased Land. The scope of the Project may include up to the following, as shown in Exhibit E, but the scope of the Project may be reduced by the Charter School in its sole determination:

- 1) (6) new 24x40 portable classroom buildings
- 2) (1) new 12x40 portable restroom building
- 3) (1) new 48x40 portable classroom building
- 4) (1) new 24x40 portable administration building
- 5) (2) 30x44 steel lunch shelters
- 6) All associated site work with above items including water/sewer and electrical
- 7) Landscaping and concrete pathways for path-of-travel between portables
- 8) Renovate (2) existing portables with cosmetic upgrades and low voltage upgrades as well as path-of-travel improvements

(b) Improvements. The Charter School shall only make alterations, additions, or improvements (“Improvements”) to the Facilities/Leased Land after obtaining the prior written consent of the District’s Superintendent or his designee. Any Improvements to the Leased Land or Facilities, including the aforementioned “Project,” made by the Charter School shall be paid for by the Charter School, and shall be contracted for and performed in accordance with federal, state and local law, and all applicable building code standards, including without limitation, Title 24 of the California Code of Regulations, the Field Act, the Americans with Disabilities Act, the Fair Employment and Housing Act and all applicable District standards, specifications, prevailing wages, and policies relating to facilities construction and as required by the Division of State Architect (the “Construction Standards”). The District Superintendent or his designee will identify persons with whom the Charter School can communicate to seek information regarding District policies and to obtain consent for Improvements.

The District may impose as a condition to the aforesaid consent such requirements as the District may deem necessary in its sole discretion, including without limitation, the manner in which the work is done, a right of approval of the contractor by whom the work is to be performed, and the times during which it is to be accomplished. The District reserves the right to require approval of all terms, including but not limited to plans and specifications, construction schedule, work hours, as well as requiring licensing and bonding of contractors (including performance and payment bonds covering 100% of contract price), as well as compliance with applicable prevailing wage

laws in relation to public works projects. District's grounds for disapproval of any plans and specifications shall be limited to a determination that Charter School's proposed plans or specifications would allow for construction of Improvements that do not substantially comply with the general appearance and design of existing improvements on the Site or the Construction Standards, cause a conflict with applicable law, place the District at risk of third party liability, or subject the District to out-of-pocket costs. District shall endeavor to review all plans and specifications within a reasonable time, and not unreasonably delay its response to Charter School's preliminary plans and specifications; provided, that, after approval by District of the documents pertaining to the Improvements, any substantial change in the plans or specifications for the Improvements shall be subject to approval by District. All consents required by the District pursuant to this section will be provided in writing by the District no later than fifteen (15) calendar days after receipt of a written request for consent by the Charter School. A failure by the District to respond to a written request for consent within this timeline shall be deemed to be the District consenting to the request.

Charter School agrees to name the District as an intended third party beneficiary of any contract for the construction of Improvements made by Charter School. Any and all contractors or individuals installing, maintaining, or attending to Improvements on the Freeport Site shall maintain all appropriate licensure to conduct said work.

Should the Charter School fail to obtain the prior written consent of the District's Superintendent, or the Superintendent's designee, for Improvements, the Charter School shall, upon written request by the District, immediately cease making Improvements until such written consent is obtained, and the Charter School shall bear any costs, expenses and liabilities associated with the work stoppage.

Should the Charter School fail to contract and perform the Improvements in accordance with the Construction Standards or fail to adhere to the conditions on the District's consent as described above, the District may, at its sole option, direct that the Charter School immediately cease making such Improvements, and the District may, at its sole discretion alter, repair, or improve the Facilities/Leased Land, to bring the Facilities/Leased Land into compliance with the Construction Standards and/or the conditions on the District's consent, and the Charter School shall be responsible for all such costs and expenses incurred by the District for such alterations, repairs or improvements. No Improvement shall be made which reduces or otherwise impairs the value of the Facilities/Leased Land. No Improvements shall be commenced until the Charter School has first obtained and paid for all required permits and authorizations of all governmental authorities having jurisdiction with respect to such Improvements. All Improvements shall be made in a good workmanlike manner and in compliance with all laws, ordinances, regulations, codes and permits.

All Improvements to the Facilities/Leased Land other than the portable buildings that were permitted to be made consistent with this Section 11 shall, at the expiration or earlier termination of this Agreement, become the property of the District and remain upon and be surrendered with the Leased Land, unless the District requests their removal, and only if such removal requirement is set forth in writing at the time of District's approval of the Improvement to be removed; provided, however, that the ownership of any Improvements that have not been deemed completed in the District's reasonable discretion by the expiration of the Term or earlier termination of this

Agreement shall remain the property of Charter School, and Charter School shall be required to remove such Improvements at the termination of this Agreement and restore the Leased Land to its original condition, which existed prior to construction or installation of the Improvements, at the Charter School's sole expense. The portable buildings shall promptly be removed by the Charter School at the expiration or earlier termination of this Agreement and the Charter School shall restore the Leased Land to its original condition, which existed prior to construction or installation of the Improvements, at the Charter School's sole expense; provided, however, that Charter School's obligation to restore the Leased Land may be later waived or modified in writing if the District and Charter School enter into a separate agreement for the District to take over the lease of the portable buildings from the Charter School. In the event of charter revocation or closure of the Charter School, all property shall be disposed of in accordance with the provision of the approved Charter School charter, unless the Parties agree otherwise.

(c) CEQA and Administrative Costs. For any project related to the Charter School's construction of Improvements, the District agrees to act as "lead agency" for any required compliance with the CEQA (Pub. Resources Code, §§ 21000, *et seq.*, Cal. Code Regs., tit. 14, §§ 15000, *et seq.*), including any determination that the project qualifies for an exemption under CEQA, using all appropriate and necessary documents which will be prepared by the Charter School or its consultants. District shall retain authority over review and approval of such documents, and shall not be responsible or liable for errors in and/or omissions from such documents by Charter School or its consultants. In reviewing and approving the aforementioned documents, District may choose to require that a District consultant provide consulting services in overseeing the construction ("Consulting Services"), in its reasonable discretion. The District will invoice the Charter School for the reasonable costs of any Consulting Services and the Charter School will reimburse the District in accordance with the reimbursement procedure set forth in Section 15 below, and the fees for services by a District employee and / or Consulting Services by a District consultant shall be based on hourly rates as follows:

1. Program Records Technician: \$42.42 hourly rate
2. Facilities Project Technician: \$69.72 hourly rate
3. GIS/Facilities Manager: \$80.56 hourly rate
4. Facilities Project Manager: \$81.79 hourly rate
5. Director I, Facilities: \$91.56

Sub consultants shall be billed and payable monthly with no mark up and billing shall include detailed costs fully explained. Charter School further agrees to enter into a reimbursement agreement with the District, if necessary, and fund all reasonable costs of third party professionals and consultants necessary to comply with CEQA. In the event of any legal challenge to the project under CEQA, District agrees to tender its defense of such challenge to Charter School. Charter School agrees to indemnify and defend the District from any challenge to any determination made by the District under CEQA related to the project. Charter School agrees to indemnify, defend by counsel approved by the District in writing (such approval not being unreasonably withheld or delayed), and hold harmless the District, its employees, officers, governing board and members thereof, agents, and representatives, from and against any claims, liabilities, losses, costs, or damages arising out of or resulting from any claim or contention arising out of this Agreement, or Charter School's use of the Freeport Site or construction of any improvements thereon, including

but not limited to, any third party challenge or contention based on CEQA except where caused by the negligence or misconduct of District.

Charter School will give reasonable written notice, and will allow a District representative to be present at each regular meeting regarding construction of the project held throughout the course of a project.

(d) Private Funding. The Parties acknowledge that the Charter School is seeking private funding to finance its planned improvements on the Leased Land. The Charter School is solely responsible for financing any Improvements on the Leased Land. The District is not responsible for the repayment of any loans or liabilities incurred by the Charter School to fund the Improvements.

**12. Reserved.**

**13. Custodial Services.**

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

**14. Signage.**

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

**15. Operations and Maintenance.**

(a) The District shall maintain the Facilities/Leased Land, furnishings and equipment, in good order, condition, and repair. The Non-Profit will reimburse the District for the costs, including time, labor and materials, to maintain the Facilities/Leased Land in good order, condition and repair. Said costs to the Non-Profit will be the sum total of: 1) The Facilities Use Fee of Section 4 and Exhibit C of the Agreement; 2) the costs of custodial services per Section 13 and Exhibit D of the Agreement; and 3) the actual costs, including salary, benefits and payroll taxes, of the equivalent of one full time (1.0 FTE) District-employed appropriate level Plant Manager (SPOM I, II, or III) assigned to the Freeport Site for all 12 months of the year. The District will invoice the Non-Profit quarterly for these costs. The Non-Profit will pay said invoice within thirty (30) days of receipt.

The Charter School will provide reasonable workspace for the Plant Manager assigned to the Site.

(b) The wiring/MIS infrastructure at the Freeport Site will be provided in a strictly "AS-IS" condition, as of the Effective Date. Charter School agrees that other than set forth in this Agreement, no representations, statements, or warranties have been made by the District, or the District's agents, as to the physical condition, quality, or quantity of the wiring/MIS infrastructure, and that Charter School has performed its own evaluation of the condition of the wiring/MIS infrastructure and its sufficiency for Charter School's intended use. In addition, any upgrades or improvements to the wiring/MIS infrastructure shall be the responsibility of the Charter School, in compliance with Section 11, and the Charter School is responsible for the cost of internet service provided at the commercial rate.

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

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

#### **16. Entry by District.**

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

#### **17. Employees, Contractors and Independent Contractors.**

The Charter School and the District, their employees, agents, contractors and subcontractors shall comply with the requirements of Education Code Sections 45125.1 and 45125.2 related to access to the Facilities/Leased Land and protection of minor students. Any volunteer or visitor having unsupervised student contact is required to undergo a fingerprint scan and criminal background

check under the supervision and/or responsibility (financial and otherwise) of the Charter School. The Charter School shall also ensure that its employees are in compliance with the tuberculosis testing requirements set forth in Section 49406 of the California Education Code.

**18. Indemnity.**

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

The Non-Profit 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 Non-Profit, its trustees, officers, and agents against and from any and all claims, demands, actions, suits, losses, liabilities, expenses and costs for any injury, death or damage to any person or property arising from the District's conduct of business at the Facilities/Leased Land, excepting those claims, demands, actions, suits, losses, liabilities, expenses and costs arising from the negligent, misconduct or intentional acts of the Charter School, its employees, agents, officers and invitees.

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

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

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

The provisions of this Section shall survive the expiration or earlier termination of this Agreement.

**19. Insurance.**

(a) Insurance. The District shall maintain first-party property insurance on the Facilities other than the Improvements. Charter School, at the Charter School's sole cost and expense, shall obtain and keep in full force and effect, beginning on or before the Effective Date, and continuing throughout the Term, the following insurance:

i. *Liability Insurance.* Commercial general liability insurance with respect to the Freeport Site and the operations of or on behalf of the Charter School in, on or about the Freeport Site, including but not limited to: bodily injury, product liability (if applicable), blanket contractual, broad form property damage liability coverage in an amount not less than Three Million Dollars (\$3,000,000) per occurrence and Five Million Dollars (\$5,000,000) in the aggregate, and excess liability coverage on a basis consistent with coverage for schools or a type similar to the Charter School as required by District as a public school district. In addition, the Charter School shall procure, pay for and keep in full force and effect primary automobile liability insurance in an amount not less than Three Million Dollars (\$3,000,000) per occurrence covering owned, hired, and non-owned vehicles used by the Charter School. Such commercial general and automobile policies shall contain (i) severability of interest, (ii) cross liability, and (iii) an endorsement stating "Such insurance as is afforded by this policy for the benefit of Sacramento City Unified School District shall be primary with respect to any liability of claims arising out of the occupancy of the Freeport Site by the Charter School, or out of the Charter School's operations, and any insurance carried by Sacramento City Unified School District shall be excess and non-contributory."

ii. *Workers' Compensation, Employer Liability.* Workers' Compensation insurance as required by law and Employer's Liability insurance in an amount not less than One Million Dollars (\$1,000,000).

iii. *Property Insurance.* Property Insurance protecting against fire, vandalism, malicious mischief and such other perils as are included in "special form" coverage insuring the Improvements and all of the Charter School's trade fixtures, furnishings, equipment and other personal property. The property policy shall include "extra expense" coverage and shall be in an amount not less than one hundred percent (100%) of the replacement value.

(b) Insurance Policy Criteria. All policies of insurance required to be carried by the Charter School shall be written by responsible insurance companies authorized to do business in the State of California, rated no less than the standard that the District requires for the schools within its boundaries (A.M. Best, A-, VII, or better), or the equivalent provided through a risk-pooling joint powers authority operating pursuant to Government Code section 6500, *et seq.* Any insurance required of the Charter School hereunder may be furnished by the Charter School pursuant to a blanket policy carried by it or under a separate policy.

A true and exact copy of each paid-up policy evidencing insurance or a certificate of the insurer, certifying that a policy has been issued, providing the coverage required and containing the

provisions specified herein, shall be delivered to District prior to Effective Date, and upon renewals, not less than thirty (30) days prior to the expiration of such coverage. Any policy provided by the Charter School under this Agreement shall be occurrence based, not "claims made." In addition, District shall be named as an additional insured on the liability policies. District may, at any time and from time to time, upon reasonable notice to the Charter School and at no cost to the Charter School, inspect and/or copy any and all insurance policies required hereunder.

In no event shall the policies required hereunder be considered as limiting the liability of the Charter School under this Agreement.

**20. Damage to or Destruction of Freeport Site.**

(a) Cost. The cost of restoring the Facilities/Leased Land under this Section shall be borne by the Non-Profit if the cause of the casualty is the negligence or intentional act of the Charter School, its employees, agents, students, or invitees. The cost of restoring the Facilities/Leased Land under this Section shall be borne by the District if the cause of the casualty is the gross negligence or willful misconduct of the District, its employees, agents, or invitees. The Parties shall tender the cost of restoring the Facilities/Leased Land to their respective insurance carriers if the casualty is caused by a third party not invited onto the Freeport Site by the Parties.

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

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

**21. Taxes.**

Charter School shall pay before delinquency (but in any event, no later than thirty (30) days after receipt of invoice from District, if applicable) any and all taxes, assessments, levies, possessory interest taxes, and other charges and governmental fees, general and special, ordinary and extraordinary, unforeseen, as well as foreseen, of any kind or nature whatsoever, including, but not limited to, assessments for public improvements or benefits, which prior to or during the term of this Agreement are laid, assessed, levied, or imposed upon or become due and payable and a lien upon or represent an escape assessment from (i) the Freeport Site and/or any improvements situated thereon or any part thereof or any personal property, equipment or other facility used in the operation thereof; or (ii) the rent or income received from assignees, subtenants or licensees; or (iii) any use or occupancy of the Freeport Site and of any rights, obligations, easements and franchises as may now or hereafter be appurtenant, or appertain to the use thereof. Notwithstanding the foregoing, in the case of any special assessment levied upon the Freeport Site or any part thereof during the Term of this Agreement, with the exception of that balance or remainder portion of the Freeport Site that is occupied/leased hereunder, Charter School shall be obligated to pay in full the amount of such special assessment upon its inception (or provide District sufficient funds which, together with the accrual of investment yield thereon, shall be sufficient to pay to maturity all installments thereunder). Nothing in this Section shall limit District's right to recover, as additional rent, any taxes and/or assessments payable by District after termination of this Agreement. The provisions of this Section shall survive the expiration or earlier termination of this Agreement; provided, however, that nothing herein shall obligate Charter School to pay the required taxes and/or assessments which are both (i) imposed upon the Freeport Site prior to the commencement or subsequent to the termination of this Agreement and (ii) applicable to a period or periods prior to the commencement or subsequent to the termination of this Agreement.

Notwithstanding anything in this Agreement, Charter School shall not be required to pay any increase in real estate taxes or assessments imposed on the underlying fee interest of the Freeport Site resulting from a voluntary or involuntary transfer of District's fee interest in all or any portion of the Freeport Site unless the purchaser is Charter School or Non-Profit.

**22. Liens.**

The Non-Profit shall keep the Freeport Site, including the Facilities/Leased Land, free from any liens arising out of any work performed, materials furnished, or obligations incurred by or on behalf of the Non-Profit or the Charter School. Notwithstanding anything stated herein to the contrary, if the Non-Profit and/or 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 the Non-Profit and Charter School, each having joint and several liability for the lien amount and all expenses incurred by District in pursuit of satisfaction and removal of the lien, including attorneys' fees and costs.

**23. Mechanic's Lien.**

Charter School shall: (i) pay for all labor and services performed for, materials used by or furnished to Charter School of any contractor employed by Charter School with respect to the Freeport Site, including the Facilities/Leased Land, (including, but not limited to, any Improvements); and, (ii) indemnify, defend, and hold District harmless and free and clear from any liens, claims, demands, encumbrances or judgments created or suffered by reason of any labor or services performed for, materials used by or furnished to Charter School or any contractor employed by Charter School with respect to the Freeport Site, including the Facilities/Leased Land, as long as the work was not performed by or at the direction of the District; and, (iii) give notice to District in writing fifteen (15) days prior to employing any laborer or contractor to perform services related to, or receiving materials for the use upon the Freeport Site, including the Facilities/Leased Land; and, (iv) permit District to post a notice of nonresponsibility in accordance with the statutory requirements of California Civil Code Section 8444 or any amendment thereof. In the event Charter School is required to post an improvement bond with a public agency in connection with the above, Charter School agrees to include District as an additional obligee.

**24. Condemnation.**

In the event of the taking or condemnation of all or substantially all of the Freeport Site, including the Facilities/Leased Land, for public or quasi-public use under any statute or by right of eminent domain or by voluntary sale to the condemning authority either under a threat of or in lieu of condemnation (a "Taking"), this Agreement shall terminate and Charter School may receive compensation only for the taking and damaging of Charter School installed or constructed Improvements, if any, and immediately upon the effective date of the termination, the District must provide a reasonably equivalent school facility to the Charter School as soon as reasonable so as to avoid any interruption in the educational program of the Charter School. In the event of a Taking of less than substantially all of the Freeport Site, including the Facilities/Leased Land, this Agreement shall remain in effect.

**25. Holding Over.**

Charter School shall not remain in possession of the Freeport Site 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 Non-Profit and Charter School shall pay one hundred twenty-five percent (125%) of the monthly Facilities Use Fee and Rent each month, plus all other charges payable required by this Agreement. Any holdover by Charter School requires the Non-Profit and 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.

**26. Assignment and Subletting.**

Neither the Non-Profit nor the Charter School may assign its or their rights under this Agreement or sublet any portion of the Facilities or Leased Land without the prior written consent of the District.

**27. 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, and cleanliness of the Facilities/Leased Land, and the Facilities'/Leased Land's furnishings and equipment, and shall comply with all applicable laws. The District will provide the Non-Profit with copies of any relevant written custodial and maintenance policies within its possession. The District will provide any such written policies that are amended or adopted during the Term of the Agreement.

**28. Smoking.**

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

**29. Hazardous Material.**

The Parties agree as follows with respect to the Hazardous Materials (as defined below) on the Freeport Site, including on the Facilities and Leased Land.

(a) Definition. As used herein, the term "Hazardous Materials" means any hazardous or toxic substance, material, waste, pollutant, or contaminant which is or becomes listed, regulated, classified, or defined as "hazardous" or "toxic" under applicable local, state, or federal law, regulation, statute, order, decision, or guidance for the protection of health or the environment, including, without limitation: trichloroethylene, tetrachloroethylene, perchloroethylene and other chlorinated solvents; any petroleum products or fractions thereof; asbestos; polychlorinated biphenyls; flammable explosives; urea formaldehyde; and radioactive materials and waste.

The term "Hazardous Materials" includes, without limitation, any substances, materials, wastes, pollutants, or contaminants which are: (i) listed under Section 29(a) above or defined as hazardous or extremely hazardous pursuant to Article 1 of Title 22 of the California Administrative Code, Division 4, Chapter 20; (ii) defined as a "Hazardous Substance," "Hazardous Material," "Hazardous Waste," or "Toxic Substance" under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601, *et seq.*, the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801 *et seq.*, or the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 *et seq.*; (iii) listed or defined as a "Hazardous Waste," "Extremely Hazardous Waste," or an "Acutely Hazardous Waste" pursuant to Chapter 11 of Title 22 of the California Code of Regulations; (iv) pesticides regulated under the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136 *et seq.*; (v) asbestos, PCBs, and other substances regulated under

the Toxic Substances Control Act, 15 U.S.C. §§ 2601 *et seq.*; (vi) substances and contaminants regulated under the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*; or (vii) substances and contaminants regulated under the Occupational Safety and Health Act, 29 U.S.C. §§ 651 *et seq.*, or the California Occupational Safety and Health Act, California Labor Code §§ 6300 *et seq.*

As used herein, the term “Hazardous Materials Laws” shall mean any statute, law, ordinance, regulation, order, decree, or official guidance of any governmental body or agency (including the U.S. Environmental Protection Agency, the California Regional Water Quality Control Board, and the California Department of Health Services) which regulates the use, storage, release or disposal of any Hazardous Materials.

(b) Hazardous Materials Prohibition. Unless otherwise permitted by the District in writing, Charter School shall not cause or permit any Hazardous Materials to be generated, brought onto, used, stored, released, or disposed of in, on, about, or under the Freeport Site, Facilities, Leased Land, or the areas adjacent thereto by Charter School or any of Charter School’s employees, agents, contractors, representatives, consultants, students, tenants, sub-tenants, guests, or invitees (“Charter School Parties”), except for limited quantities of standard office and janitorial supplies (which shall be used and stored in strict compliance with all applicable Hazardous Materials Laws). Charter School shall be responsible to ensure that all activities conducted in, on, about or under the Freeport Site, Facilities, and/or Leased Land by Charter School or the Charter School Parties, including construction activities that take place pursuant to this Agreement, comply in every respect with all applicable Hazardous Materials Laws including, but not limited to, all handling, disposal, notification, recordkeeping, and maintenance requirements of such Laws. Breach of this provision by Charter School shall constitute a default and material breach of this Agreement under Section 30, below.

(c) Duty to Remediate. Notwithstanding any other provisions of this Agreement, if the Charter School or Charter School Parties cause the release of Hazardous Materials in, on, about, or under the Freeport Site, Facilities, or Leased Land, then Charter School shall, at its sole cost and expense, promptly take any and all action necessary to investigate and remediate such contamination to the satisfaction of the District and any governmental entities having jurisdiction over the Freeport Site, Facilities, or Leased Land.

(d) Indemnification. Non-Profit shall indemnify, defend upon demand with counsel reasonably acceptable to District, and hold harmless District, its Board of Trustees, the members of its Board of Trustees, officers, employees, and agents from and against any and all claims, demands, actions, suits, losses, liabilities, expenses, costs, penalties, fines, sanctions, attorneys' fees, experts fees, remediation costs, investigation costs, and other expenses which result from or arise in any manner whatsoever out of Charter School's or the Charter School Parties' use, storage, treatment, transportation, release, or disposal of Hazardous Materials in, on, about or under the Freeport Site, Facilities, Leased Land, or areas immediately adjacent thereto, including, but not limited to, any and all claims, demands, actions, suits, losses, liabilities, expenses and costs arising out of or in connection with any investigation and remediation required hereunder to return the Freeport Site, Facilities, Leased Land, or any part thereof to full compliance with all Hazardous Materials Laws pursuant to this Section 29. The District shall indemnify, defend upon demand with counsel reasonably acceptable to Charter School, and hold harmless Charter School, its Board of

Directors, the members of its Board of Directors, officers, employees, and agents from and against any and all claims, demands, actions, suits, losses, liabilities, expenses, costs, penalties, fines, sanctions, attorneys' fees, experts fees, remediation costs, investigation costs, and other expenses which result from or arise in any manner whatsoever out of District's or its agents, vendors, employees or contractors/subcontractors' use, storage, treatment, transportation, release, or disposal of Hazardous Materials in, on, about or under the Freeport Site, Facilities, Leased Land, or areas immediately adjacent thereto, or Hazardous Materials that predated Charter School's occupancy of the Facilities or that were not caused by Charter School or Charter School Parties, including, but not limited to, any and all claims, demands, actions, suits, losses, liabilities, expenses and costs arising out of or in connection with any investigation and remediation required hereunder to return the Freeport Site, Facilities, Leased Land, or any part thereof to full compliance with all Hazardous Materials Laws pursuant to this Section 29.

(e) Notice. Charter School shall, immediately upon becoming aware of (i) any contamination or threatened contamination of the Freeport Site, Facilities, or Leased Land by Hazardous Materials, or (ii) any communication received from any governmental authority concerning Hazardous Materials which relates to the Freeport Site, Facilities, or Leased Land, provide written notice of such communication or information to the District.

(f) Survival. The obligations of the parties under this Section 29 shall survive the expiration or earlier termination of this Agreement. In the event of any inconsistency between any part of this Agreement and this Section 29, the terms of this Section 29 shall control.

### **30. Default by Charter School.**

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

- (a) The failure by Non-Profit to utilize the Facilities or Leased Land for the sole purpose of operating the Charter School.
- (b) The failure by Non-Profit to make timely payments required under this Agreement.
- (c) The failure of the Charter School or the Non-Profit to observe or perform any of the express covenants, conditions or provisions of this Agreement.
- (d) The revocation or non-renewal of the Charter School's charter. Notwithstanding the foregoing, this Agreement shall not be terminated pursuant to this provision provided that the Charter School continues to operate in accordance with the terms of this Agreement and is diligently pursuing a statutory appeal of the revocation or nonrenewal of its charter.

In the event of any material default or breach by Non-Profit or Charter School, District may, but shall not be obligated to, terminate this Agreement and Charter School's right to possession of the Facilities/Leased Land upon thirty (30) days written notice thereof to the Charter School if the default is not cured within the thirty (30) day period. If the nature of the default is such that the same cannot reasonably be cured within said thirty (30) day period, the Non-Profit and Charter

School shall not be in default if Non-Profit or Charter School shall within such thirty (30) day period commence such cure and thereafter, diligently prosecute the same to completion. In no event shall such period to cure exceed sixty (60) days.

Upon termination, District shall retain the right to recover from Non-Profit, without limitation, any amounts due under this Agreement or applicable law. Unpaid Facilities Use Fees and Rent shall bear interest from the date due at the maximum legal rate. In the event of termination by the District by reason of Charter School's or Non-Profit's default or breach of this Agreement, the District shall not be obligated to provide Facilities to Charter School pursuant to Proposition 39 for the remainder of the Term.

**31. Default by District.**

District shall be in default of this Agreement if District fails to perform any material obligation required by this Agreement. In the event of any default by District, Charter School may perform the action that is the obligation of the District and invoice the District for the reasonable costs thereof. Prior to taking such action, the Non-Profit must provide thirty (30) days written notice thereof to the District if the District has failed to cure the default within thirty (30) days, unless the nature of the default is such that the same cannot reasonably be cured within said thirty (30) day period, in which event District shall not be in default (and Charter School may not perform such action) if District commences to cure such default within such thirty (30) day period and thereafter, diligently prosecutes the same to completion.

**32. Miscellaneous.**

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

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

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

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

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

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

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

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

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

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

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

(l) Prior Agreements. This Agreement contains all of the agreements of the Parties hereto with respect to any matter covered or mentioned in this Agreement, and no prior agreements or understanding pertaining to any such matters shall be effective for any purpose, with the limited exception of the Parties' participation in the dispute resolution procedure contained in the Charter School's charter, but only where specifically allowed for in Section 6 above.

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

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

addressed to Non-Profit or Charter School at the address set forth below. All notices and demands by the Charter School to the District shall be sent by United States Mail, postage prepaid, addressed to the District at the addresses set forth below.

**To District:**

Sacramento City Unified School District  
Attn: Jorge A. Aguilar  
5735 47th Avenue  
Sacramento, CA 95824

**with a copy to:**

Lozano Smith  
Attn: Edward Sklar  
2001 North Main St., Suite 500  
Walnut Creek, CA 94596

**To Non-Profit or Charter School:**

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

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

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

[Signatures on the following page.]

IN WITNESS WHEREOF, District and Non-Profit execute this Agreement effective as of the date and year last written below.

**Non-Profit and Charter School**

**District**

By: *Cristin Fiorelli*  
Cristin Fiorelli  
Head of School  
Date: *4/8/2022*

By: \_\_\_\_\_  
Jorge A. Aguilar  
Superintendent  
Date: \_\_\_\_\_

Approved and ratified this \_\_\_\_ day of \_\_\_\_\_, 2022, by the Board of Education of the Sacramento City Unified School District by the following vote:

AYES:

NOES:

Abstentions:

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

## **Attached Exhibits**

- Exhibit A-Depiction of Facilities
- Exhibit B-Site Map
- Exhibit C-Facilities Use Fee Calculation
- Exhibit D-Custodial Services
- Exhibit E-Depiction of Leased Land

**Exhibit A  
Facilities**

School Name: Freeport Elementary School

School Code: 114

Site Area: 10.46 Acres

Year Built: 1954

Year Modernized: 1999

A.P.N. 052-0100-004

Bldg/Room Code	Bldg/Room No.	Classroom No.	Area
<b>PERMANENT BUILDINGS</b>			
<b>Bldg. 001</b>	<b>C</b>		
J001	C9		52
O001	C5	1	1,335
O002	C4	2	952
O003	C3	3	952
O004	C2	4	952
O005	C1	5	979
T001	C8		110
T01A	C7		47
T01B	C6		47
T002	C10		110

BUILDING AREA TOTAL	5,535
COVERED WALKWAYS	868
CLASSROOMS	5

<b>Bldg. 002</b>	<b>B</b>		
B001	B3		214
J001	B1		63
J002	B2		66
T001	B4		226
T002	B5		226

BUILDING AREA TOTAL	795
COVERED WALKWAY	208
CLASSROOMS	0

<b>Bldg. 003</b>	<b>A</b>		
C005			69
O007	A4	7	960
O008	A3	8	960
O009	A2	9	960
O010	A1	10	967
S005	A7		178
S06A	A6		82
X006	A5	6	1,118

BUILDING AREA TOTAL  
COVERED WALKWAYS  
CLASSROOMS

5,294  
941  
5

<b>Bldg. 004</b>	<b>D</b>		
	D7		105
	D6		157
Z001	D5		440
C004	D4		194
C005	D2		88
	D9		216
	D10		10
	D8		260
H001	D1		299
H002	D1		295
T001	D3		28
M001	D11		41
S001	D12		23

BUILDING AREA TOTAL  
COVERED WALKWAYS  
COVERED WALKWAYS (ENCLOSED)  
CLASSROOMS

2,155  
344  
922  
0

<b>Bldg. 005</b>	<b>E</b>		
T001	E6		110
T002	E7		110
T030	E4		85
T040	E3		85
Y030	E1	30	1,037
	E5		192
Y040	E2	40	1,037
	E8		192

BUILDING AREA TOTAL  
 COVERED WALKWAYS  
 CLASSROOMS

2,847  
 766  
 2

Bldg. 006	F		
J001	F2		115
K001	F3		434
S001	F4		42
S002	F6		70
S003	F3		128
S003	F7		259
T001	F5		43
U001	F1		2,822
U002	F8		809

BUILDING AREA TOTAL  
 COVERED WALKWAYS  
 COVERED WALKWAYS (ENCLOSED)  
 CLASSROOMS

4,720  
 633  
 140  
 0

**Permanent Building Area**  
**Permanent Covered Walkways**  
**Permanent Covered Walkways (Enclosed)**  
**Permanent Classroom**

**21,346**  
**3,760**  
**1,062**  
**12**

**PORTABLE BUILDINGS**

P01			
O011		11	960
O012		12	960
O013		13	960
O014		14	960
O015		15	960

TOTAL BUILDING AREA  
 COVERED WALKWAYS  
 CLASSROOMS

4,800  
 0  
 5

P02			
O034		34	900
O035		35	900

TOTAL BUILDING AREA

1,800

COVERED WALKWAYS 0  
 CLASSROOMS 2

<b>P09</b>			
		36	960

TOTAL BUILDING AREA 960  
 COVERED WALKWAYS 0  
 CLASSROOMS 1

		37	960

TOTAL BUILDING AREA 960  
 COVERED WALKWAYS 0  
 CLASSROOMS 1

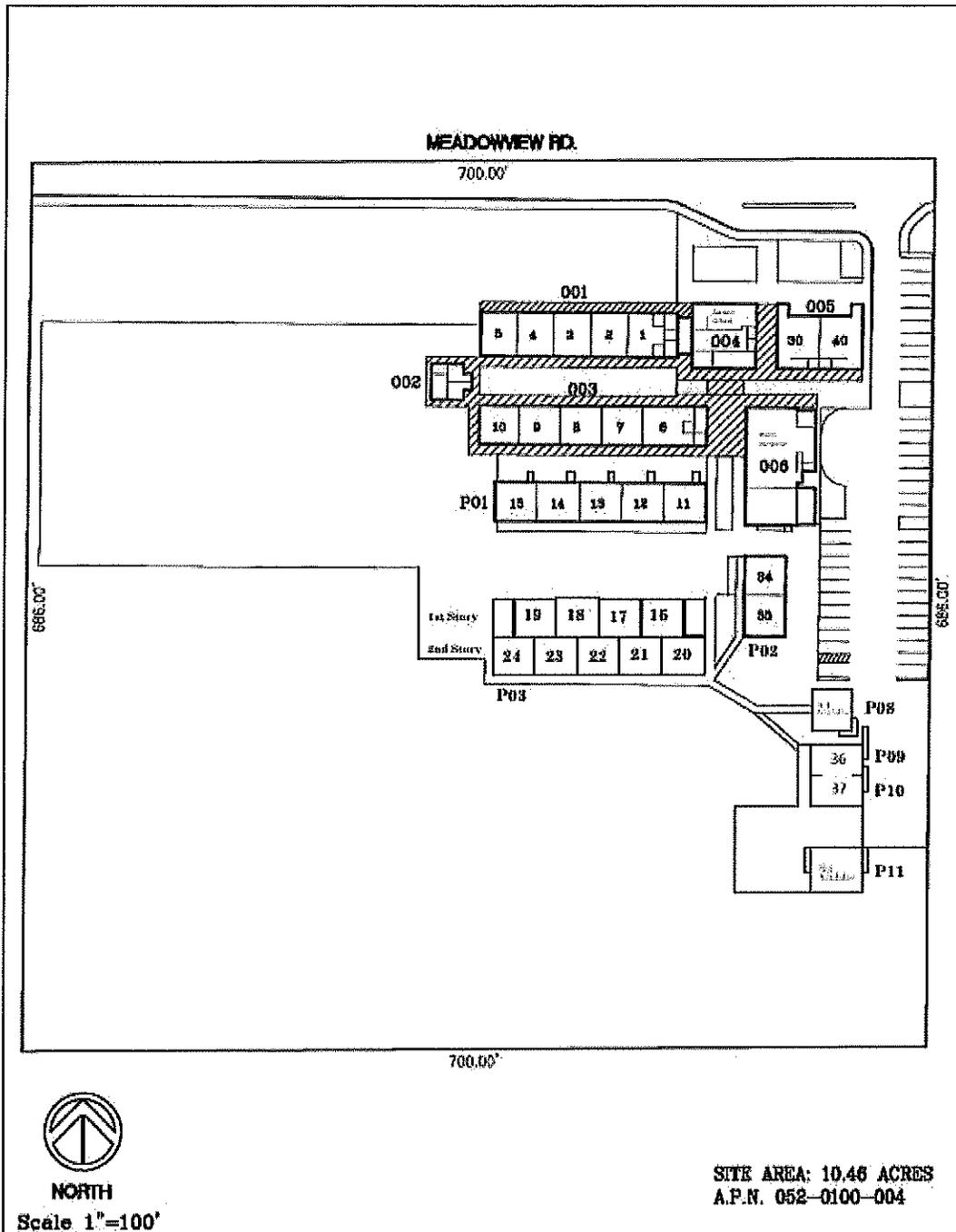
**Portable Building Area 8,520**  
**Covered Walkways 0**  
**Portable Classrooms 9**

**TOTAL BUILDING AREA 29,866**  
**TOTAL COVERED WALKWAYS 3,760**  
**TOTAL COVERED WALKWAYS (ENCLOSED) 1,062**  
**TOTAL CLASSROOMS 21**

---

**TOTAL BILLABLE SQUARE FOOTAGE 34,688**

Exhibit B  
Site Map



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

EXISTING SITE DIAGRAM

**Exhibit C**  
**Facilities Use Fee**

Starting with the 2022-2023 school year, Non-Profit shall pay the District a Facilities Use Fee that is calculated by adding the total of: (a) a pro rata fee rate multiplied by that percentage of the square footage that is equivalent to the percentage of enrollment that comprise the Charter School's in-District students (84.2% for the 2022-23 school year); plus (b) the fair market rate multiplied by that percentage of the square footage that is equivalent to the percentage of enrollment that comprise the Charter School's out-of-District students (15.8% for the 2022-23 school year). The initial estimated base Facilities Use Fee for the 2022-2023 school year is one-hundred sixty-three thousand one-hundred twenty-three and ten cents (\$163,123.10). The 2022-23 pro rata fee rate has been calculated to be a Facilities cost estimate of two dollars and forty-one cents (\$2.41) per square foot. The fair market rate for comparable facilities in the greater Sacramento area has been calculated to be sixteen dollars and ninety-two cents (\$16.92) per square foot. The Facilities Use Fee will be recalculated on an annual basis based on the then applicable pro rata fee rate (as calculated as described in Section 4 of the Agreement) and on the percentage of in-District and out-of-District students.

The total square footage of the District Facilities that will be provided to the Charter School consists of thirty-four thousand six-hundred and eighty-eight (34,688) square feet. The in- District student enrollment projection received from the Charter School for the 2022-23 school year was three hundred ninety-five (395) students, and the out-of-District student enrollment projection received from the Charter School for the 2022-23 school year was seventy-four (74) students.

**Exhibit D**  
**Custodial**  
**Services**

1. Routine Services. For the first school year of the Agreement, one full time (1.0 FTE) District-employed custodian shall provide the “routine” or regularly scheduled daily or weekly custodial services for the Facilities/Leased Land and Improvements, with the Charter School to reimburse the District for the actual costs incurred by the District as further described herein below. Following the first school year, for each subsequent school year over the Term of the Agreement, Charter School shall have the option to request the District to provide the “routine” or regularly scheduled daily or weekly custodial services for the Facilities/Leased Land and Improvements, or to provide these services itself. The Charter School will notify the District by no later than February 1 of the prior school year regarding whether it wishes to have the District provide the custodial services for the following school year, and the number of FTE custodians it would like the District to provide for the Facilities/Leased Land; provided, however, the number of requested FTE custodians may not equal to less than 1.0, but may thereafter increase in increments of 0.5 FTE. For the avoidance of doubt, as an example, the Charter School may not request 0.5 FTE custodian, but may request 1.0 FTE, 1.5 FTE, or 2.0 FTE, and so on. Within ten (10) business days of receiving Charter School’s request, the District shall notify Charter School if it approves Charter School’s requested number of District-employed custodians for the following school year in its entirety, with such approval subject to the District’s sole and reasonable discretion. For the avoidance of doubt, as an example, if the Charter School were to request 1.5 FTE custodians for a given school year, the District may not limit its approval to 1.0 FTE, but must approve or deny the 1.5 FTE requested by the Charter School. In the event that the District denies the Charter School’s request for any school year, the Charter School shall provide those services itself.

The level of said services will be consistent with the District’s standard practices and policies. If said services will be provided by District employees, the Charter School has the right to report dissatisfaction with the custodial services so that the District will take any corrective action necessary to ensure that the correct level of service is provided. The Charter School shall have the right to direct the custodial staff to perform specific duties that are within the scope of their job duties. The Charter School will reimburse the District for the actual costs, including but not limited to time and labor (including, salary, and benefits and payroll taxes), to provide custodial services (if any) for the Facilities/Leased Land, and any improvements to be placed on the Leased Land.

Said reimbursement shall also include all actual costs incurred by the District (if any). The District will invoice the Charter School quarterly for these services. The Charter School will pay each invoice within thirty (30) days of receipt. The Charter School shall provide any cleaning supplies and tools necessary for those District personnel to provide custodial services, including but not limited to toilet paper, soap, and paper towels.

2. “Deep Cleaning” Services. The parties also understand that, from time to time, additional custodial services may be required for “deep cleaning”. These services may occur on a bi- annual, annual or semi-annual basis, at the District’s discretion, and

include, but are not limited to: high dusting and power washing surfaces. If the District is providing custodial services to the Facilities/Leased Land, the Charter School will reimburse the District for these services in the same manner as “Routine” services as outlined above.

3. Additional Services. Should the Charter School require additional custodial services above the District’s standard practices and policies, or for special events, those costs to the Charter School will be assessed separately as requested.
4. Collective Bargaining Agreements. The Charter School recognizes that District employees have rights and responsibilities under the respective Collective Bargaining Agreements. Utilization of District Staff will include agreement to comply with, and cooperate with the District’s efforts to comply with, all of the respective Collective Bargaining Agreements terms and conditions, if any, as well as any other state or federal law related to the employment of said employee. This includes terms and conditions regarding seniority, placement, transfers, and termination. Throughout the full Term of this Agreement, the District retains full discretion to reduce staffing, transfer staffing, and all other rights and responsibilities the District maintains by law and/or the terms of the Collective Bargaining Agreement.

**Exhibit E**  
**Description of Leased Land**

The Leased Land is limited to the land indicated in the Pink Outline below:

**SITE LEGEND**

- ① ADMIN. / OFFICE
- ② MULTIPURPOSE BUILDING
- ③ RESTROOM
- ④ LUNCH PAVILION
- ⑤ COLLABORATION SPACE
- ⑥ CLASSROOM PORTABLE

