



# SACRAMENTO CITY UNIFIED SCHOOL DISTRICT BOARD OF EDUCATION

Agenda Item# 11.1

**Meeting Date:** June 2, 2011

**Subject:** Approve Facility Use Agreements for Charter Schools

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

**Division:** Accountability Office

**Recommendation:** Approve the Facility Use Agreements (FUAs) for:

1. Capitol Collegiate Academy (K-8)
  - Fruit Ridge, 4900 Roosevelt Avenue
2. Language Academy of Sacramento (K-8)
  - Marian Anderson, 2850 49th Street
3. Public School 7 (PS7) (K-8)
  - John Muir, 5201 Strawberry Lane
  - Sacramento High West Wing, 2315 34th Street
4. Sacramento Charter High School (9-12)
  - Sacramento High, 2315 34th Street
5. Sol Aureus College Preparatory (SAC Prep) (K-8)
  - Bear Flag, 6620 Gloria Drive
6. Yav Pem Suab Academy (K-6)
  - Lisbon, 7555 South Land Park Drive

**Background/Rationale:** Pursuant to Education code 47614 (Prop 39) public school facilities should be shared fairly among all public school pupils, including those in Charter Schools. This means that the District shall make available to each Charter School operating in the District, facilities sufficient for the district students in conditions reasonably equivalent to those in other public schools in the district. The District may charge the Charter School a pro rata share of those school district facilities costs.

The Charter Schools have submitted Prop 39 requests to the District on November 1, 2010. Within that request were the 2011-2012 enrollments and ADA projections. The District and the Charter Schools have collaboratively worked together to define the specific terms of the Facility Use Agreements for the 2011-2012 and 2012-2013 school years.

**Financial Considerations:** The total projected Facilities Use Fees from all the Charter Schools for 2011-2012 is \$822,418.50

**Documents Attached:**

1. Executive Summary
2. Facility Use Agreements

**Estimated Time of Presentation:** 10 minutes

**Submitted by:** Chiem-Seng Yaangh, Ph.D., Coordinator

**Approved by:** Mary C. Shelton, Chief Accountability Officer

# Board of Education Executive Summary

## Accountability Office

June 2, 2011



## Facility Use Agreements for Charter Schools

### I. Overview of Facility Use Agreements:

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

Currently, the District provides school facilities to six (6) Independent Charter Schools, including California Montessori Project-Capitol Campus (K-8), Language Academy of Sacramento (K-8), Public School 7 (PS7) (K-8), Sacramento Charter High School (9-12), Sol Aureus College Preparatory (SAC Prep) (K-8), and Yav Pem Suab Academy (K-6). For 2011-2012 school year, the District will provide a facility to a new Charter School, Capitol Collegiate Academy, which was authorized in 2009-2010. There is only one Charter School that is not in a District facility, Capitol Heights Academy (K-5).

### II. Driving Governance:

Education Code Section 47614 and Title 5 of the California code of Regulations Section 11969, et seq., adopted by the State Board of Education (“Proposition 39”), provide guidance to the process. Among other things, the Regulations require a written agreement regarding the allocation of facilities under Proposition 39. However, it should be noted that the Regulations also allow for negotiation by the parties to all terms in the course of reaching agreement.

§ Section 47614 reads , in part:

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

### III. Budget:

State regulations limit the fees charter schools pay to be housed in District facilities. The Charter Schools pay the District “Facilities Use Fees” based on a pro rata share facilities cost *estimated* at \$2.10 per square foot (SF) for the use of District facilities. Based on current estimated projection for 2011-2012, the District’s Facilities Use Fees from all the Charter Schools is \$822,418.50 which is an increase of \$131,457.00 from 2010-2011 school year.

# Board of Education Executive Summary



## Accountability Office

June 2, 2011

### Facility Use Agreements for Charter Schools

#### **Capitol Collegiate Academy (K-8), Fruit Ridge Site, 4900 Roosevelt Avenue**

- \$2.10 based on approximately 5,462 square feet \$11,470.20

#### **Language Academy of Sacramento (K-8), Marian Anderson Site, 2850 49<sup>th</sup> Street**

- \$2.10 based on approximately 39,086 square feet \$82,086.60

#### **PS7 (K-8), John Muir, 5201 Strawberry Lane; and Sacramento High West Wing, 2315 34<sup>th</sup> Street**

- \$2.10 based on approximately 39,203 square feet \$82,326.30

#### **Sacramento Charter High School (9-12), Sacramento High Site, 2315 34<sup>th</sup> Street**

- \$2.10 based on approximately 206,419 square feet \$433,479.90

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

- \$2.10 based on approximately 35,207 square feet \$73,934.70

Note: Facility offer has changed to Bear Flag since their Amendment Petition to add K-4 was approved by the board on May 5, 2011.

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

- \$2.10 based on approximately 41,305 square feet \$86,740.50

## IV. Goals, Objectives and Measures:

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

## V. Major Initiatives:

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

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

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

# Board of Education Executive Summary

## Accountability Office

June 2, 2011



## Facility Use Agreements for Charter Schools

### VI. Results:

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

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

- Table A: SCUSD Facilities, Allocation of Space and Square Footage (SF)
- Table B: Description of District Facilities for Charter Schools
- Maps
- FUAs

### VII. Next Steps:

- The District will monitor the implementation of the individual FUA for compliance.
- The District will continue to monitor the enrollment of the Charter Schools.
- The District will continue to review the utilization of District facilities.
- The District will explore program designs and develop options for co-location at sites that have unused spaces.

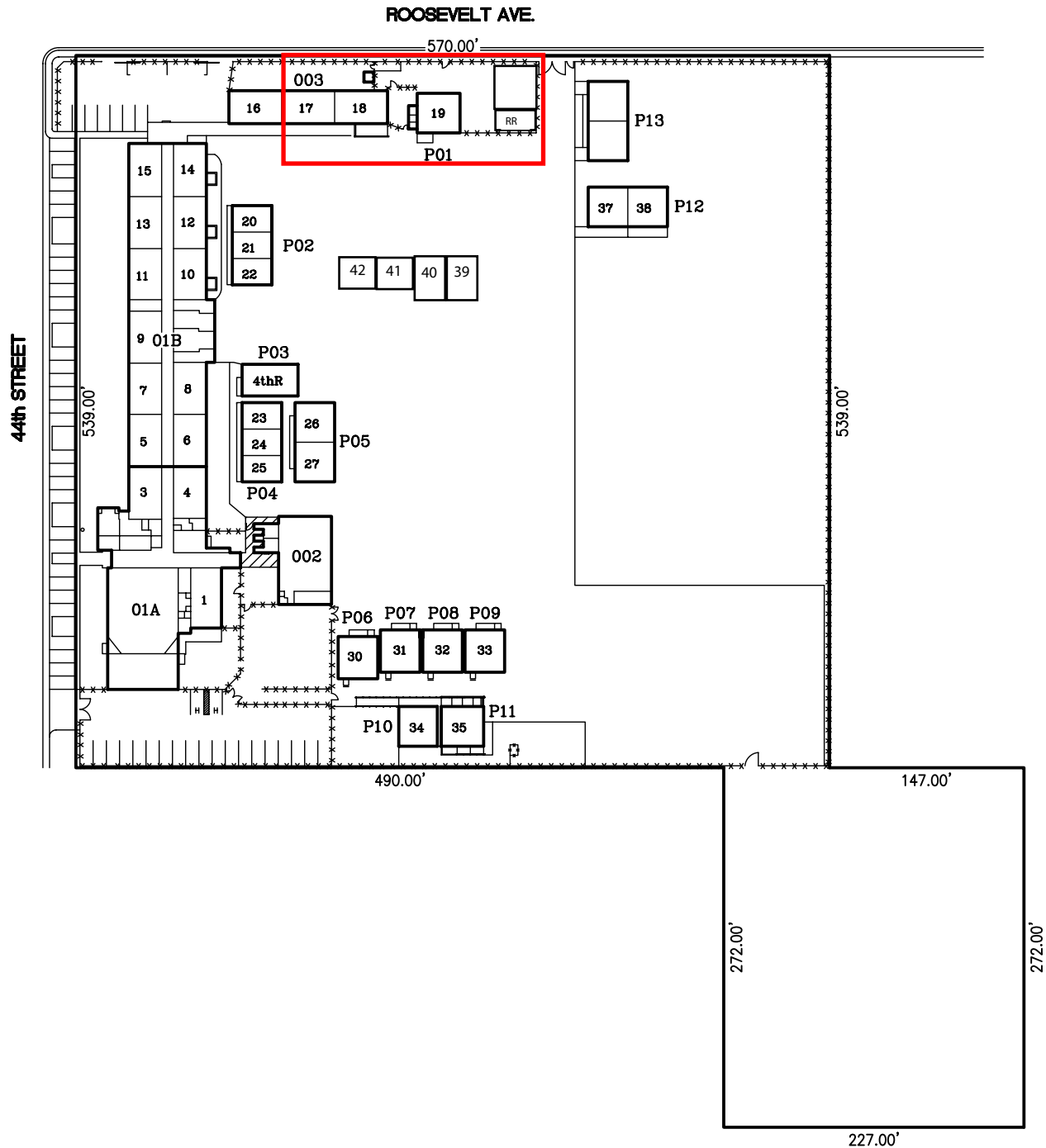
Table A:

SCUSD District Facilities: Allocation of Space and Square Footage (SF)  
2011-2012

School/Site	Projected In-District ADA	Projected Total ADA	Total SF	Charter SF and Percentage (%)	District SF and Percentage (%)	Unused SF and Percentage (%)
<b>CMP-Capital Campus</b> (K-8)/ Thomas Jefferson FUA in place for 2011-2012	176 (152 ADA 2010-2011)	251	31,011 100%	24,943 <b>80%</b>	6,202 <b>20%</b>	0
<b>Capitol Collegiate Academy</b> (K-8)/ Fruit Ridge FUA, 2 years	58 (Planning 2010-2011)	60	58,801 100%	5,462 <b>9%</b>	48,219 <b>82%</b>	5,120 <b>9%</b>
<b>Language Academy of Sacramento</b> (K-8)/Marian Anderson FUA, 2 years	362.25 (329 ADA 2010-2011)	401.58	46,827 100%	39,086 <b>83%</b>	7,741 <b>17%</b>	0
<b>Sol Aureus College Preparatory</b> (SAC Prep) (K-8)/Bear Flag FUA, 2 years	112 (50 ADA 2010-2011)	150	41,286 100%	35,381 <b>86%</b>	1,262 <b>3%</b>	4,643 <b>11%</b>
<b>Public School 7</b> (PS7) (K-5)/ John Muir-Strawberry Lane FUA, 2 years	130 (103 ADA 2010-2011)	293	21,882 100%	21,882 <b>100%</b>	0	0
<b>Public School 7</b> (PS7) (6-8) Sacramento High (West Wing) FUA, 2 years	83 (73 ADA 2010- 2011)	158	272,208 100%	17,321 <b>6%</b>	0	0
<b>Sacramento Charter High</b> (9-12)/ Sacramento High FUA, 2 years	633 (603.27 ADA 2010-2011)	890	272,208 100%	206,419 <b>76%</b>	0	48,468 <b>18%</b>
<b>Yav Pem Suab Academy</b> (K-6)/ Lisbon FUA, 2 years	220.7 (190.7 ADA 2010-2011)	290.2	48,535 100%	41,305 <b>85%</b>	7,230 <b>15%</b>	0

Table B:  
Description of District Facilities for Charter Schools  
2011-2012

Charter School	Site/Address	Description of Facilities
California Montessori Project – Capitol Campus (K-8)	Thomas Jefferson 2635 Chestnut Hill Drive Sacramento, CA 95826	15 Classrooms Multiple Room Office Playgrounds
Capitol Collegiate Academy (K-8)	Fruit Ridge 4500 Roosevelt Avenue Sacramento, CA 95820	3 Classrooms Office Space Share Multipurpose and Cafeteria Rooms
Language Academy of Sacramento (K-8)	Marian Anderson 2850 49th St. Sacramento, CA 95817	All Classrooms (except OOE) and Portables (B1 to B9) Library Room Multiple Room Playgrounds
Sol Aureus College Preparatory Charter (SAC Prep) (K-8)	Bear Flag 6620 Gloria Drive Sacramento, CA 95831	11 Classrooms Multipurpose/Cafeteria Room Office Playgrounds
Sacramento Charter High School (9-12)	Sacramento High 2315 34th Street Sacramento, CA 95817	All of East Wing, 50% of West Wing, Portables 10-15, Pavillion Gym, Fieldhouse Gym
Public School 7(PST) (K-8)	<b>Physical Address/K-6:</b> 5201 Strawberry Lane Sacramento, CA 95820 <b>Physical Address/7th -8th:</b> 2315 34th Street Sacramento, CA 95817	John Muir/Strawberry Land, All of the campus  West Wing of Sacramento High, 15 Classrooms
Yav Pem Suab Academy (K-6)	7555 South Land Park Dr. Sacramento, CA 95831 Mailing Address: P.O. Box 189296 Sacramento, CA 95818	All Classrooms (except 14, 19, 28, 29, 30, and 31) Multipurpose Room Library Room Playgrounds



NORTH

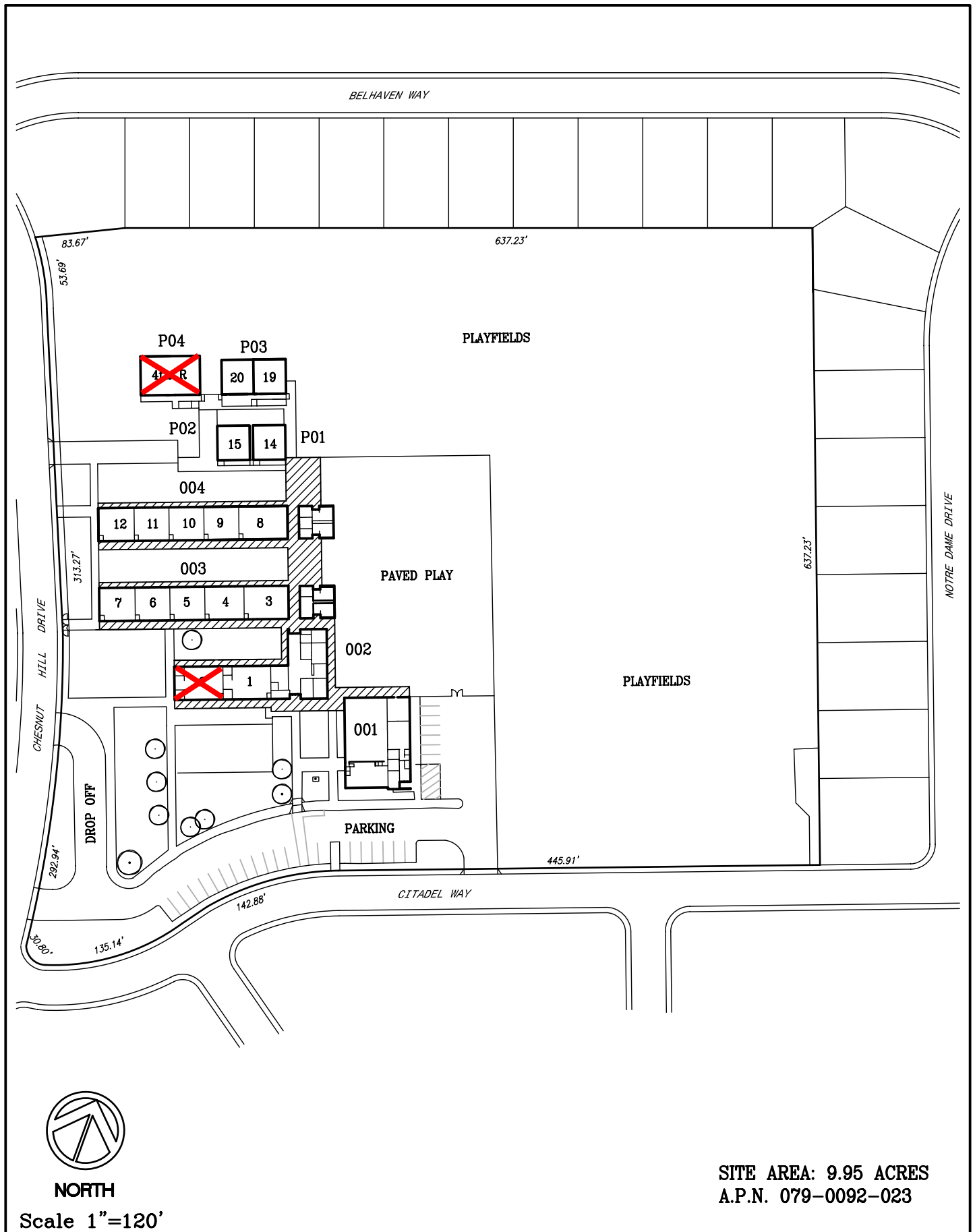
Scale 1"=120'

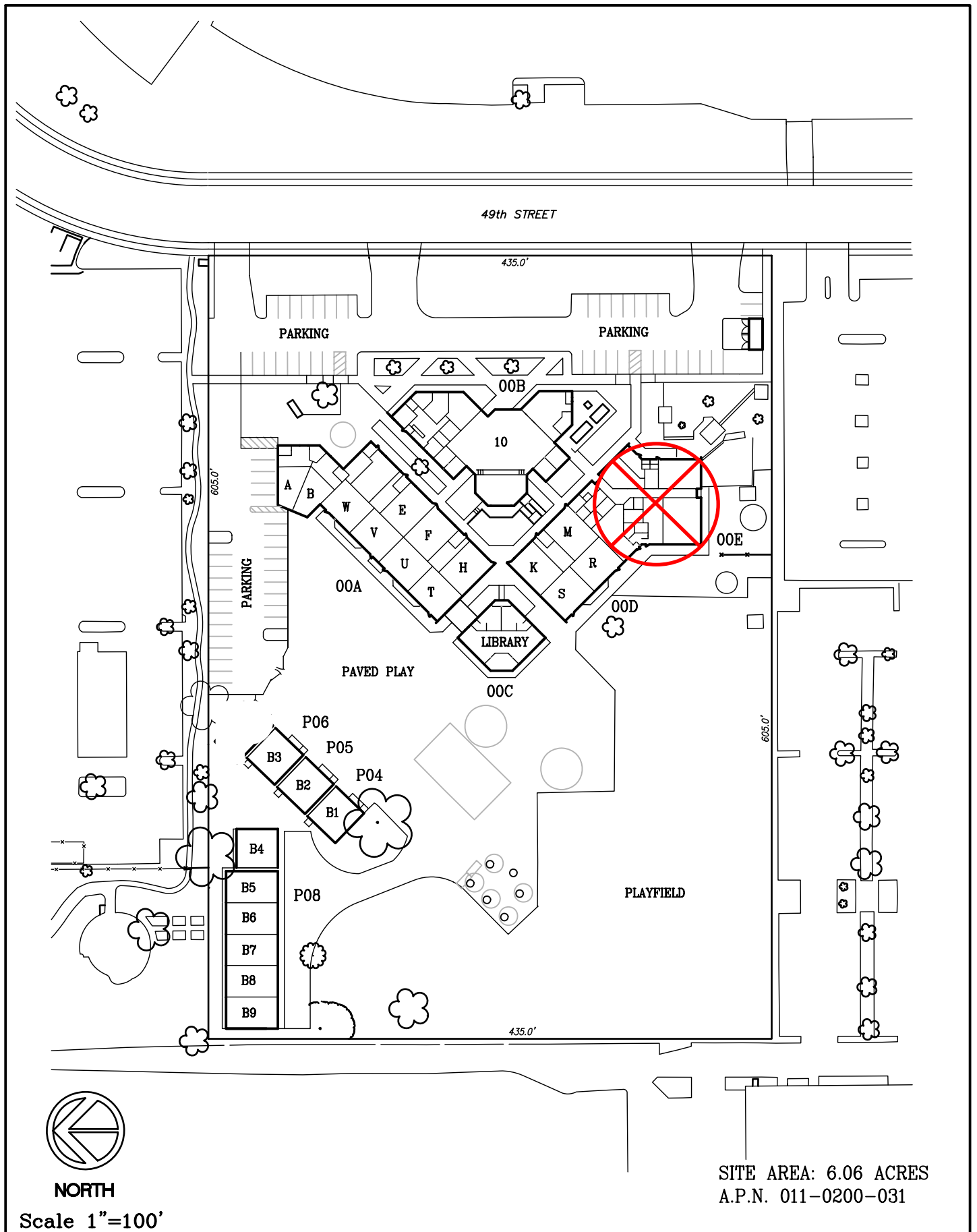
SITE AREA: 8.32 ACRES  
A.P.N. 020-0301-001

Fruit Ridge Elementary School (122)  
4625 - 44th Street  
SACRAMENTO CITY UNIFIED SCHOOL DISTRICT

EXISTING SITE DIAGRAM

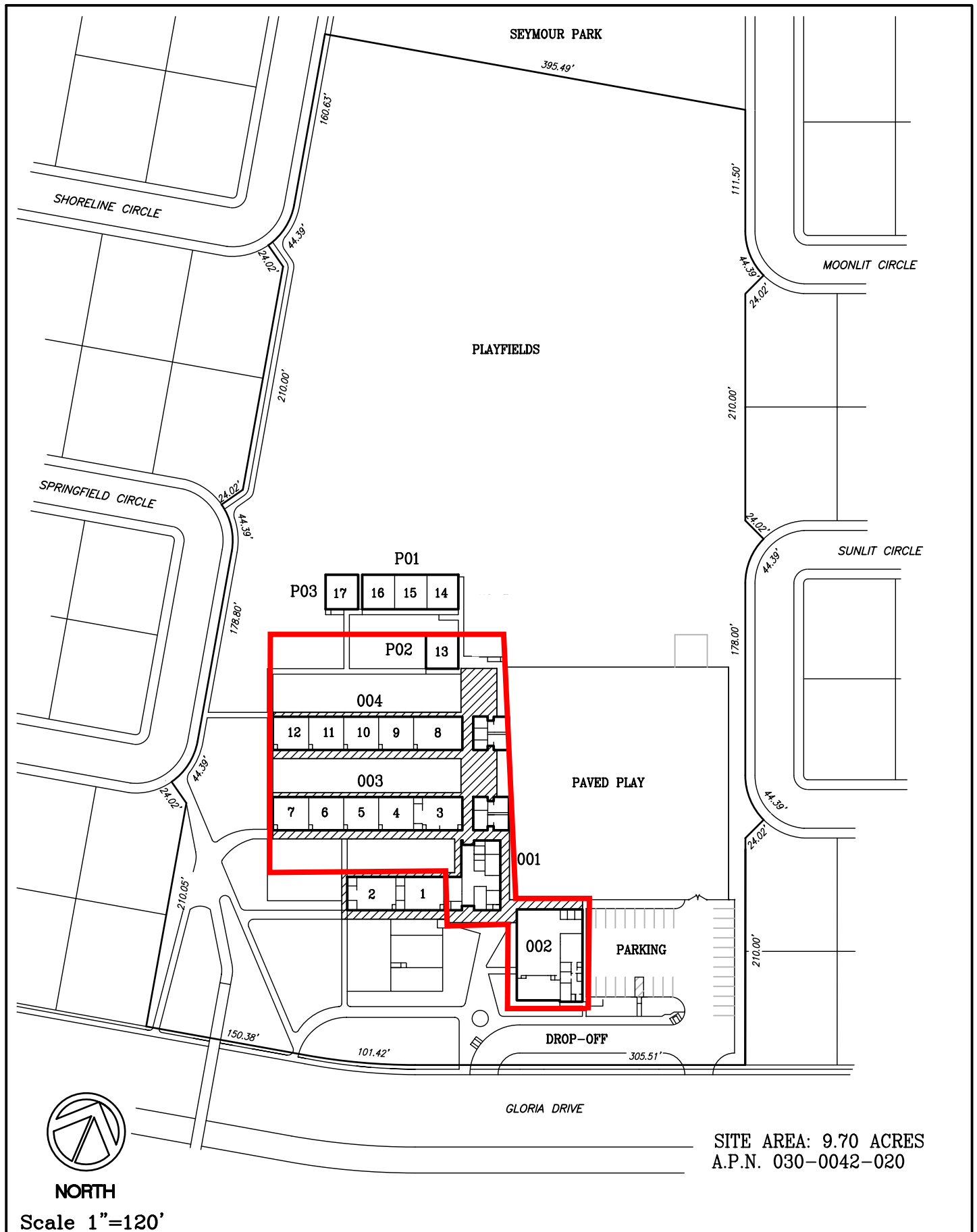
OCTOBER 2001





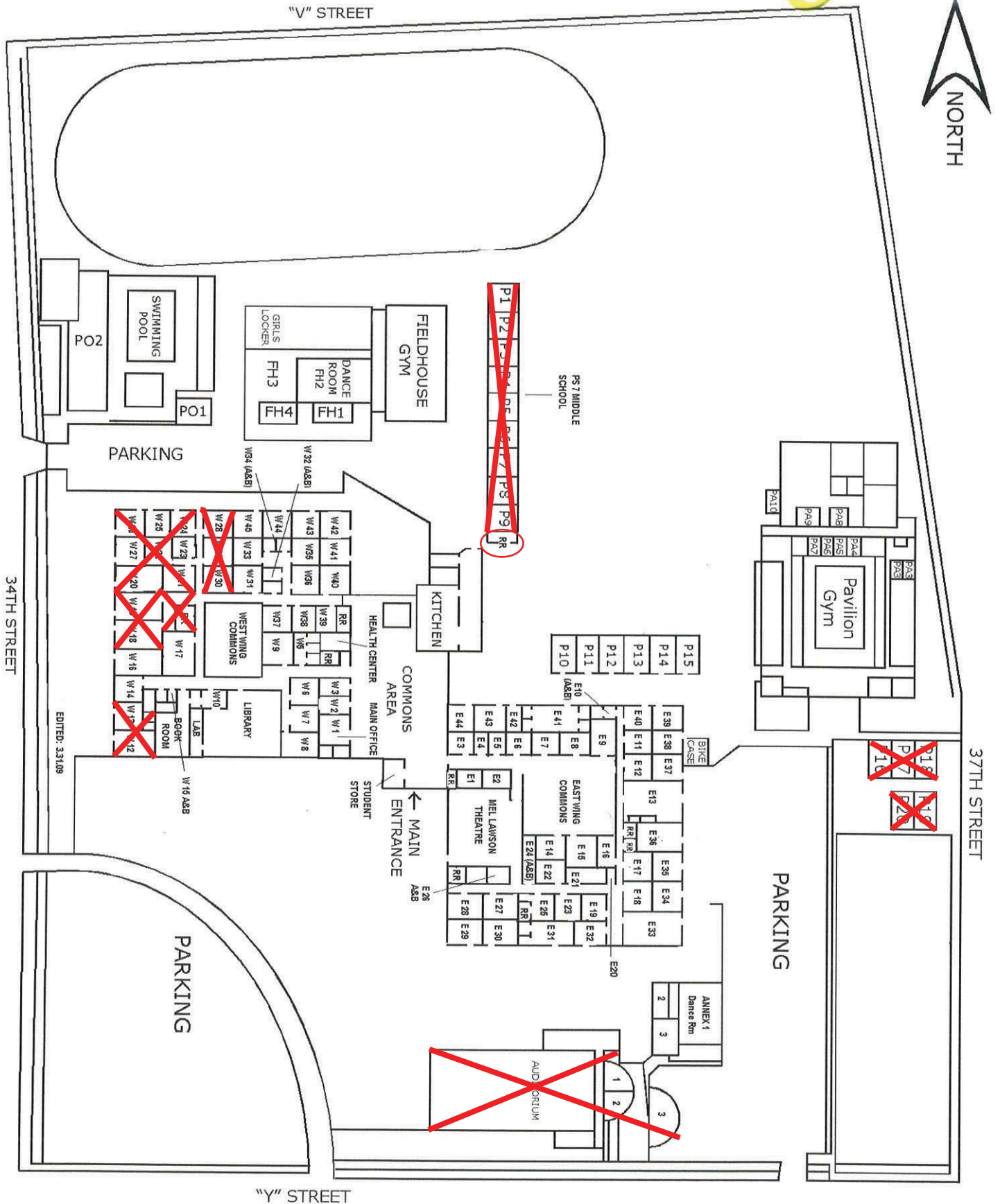
Marian Anderson Elementary School (111)  
2850 49th Street  
SACRAMENTO CITY UNIFIED SCHOOL DISTRICT

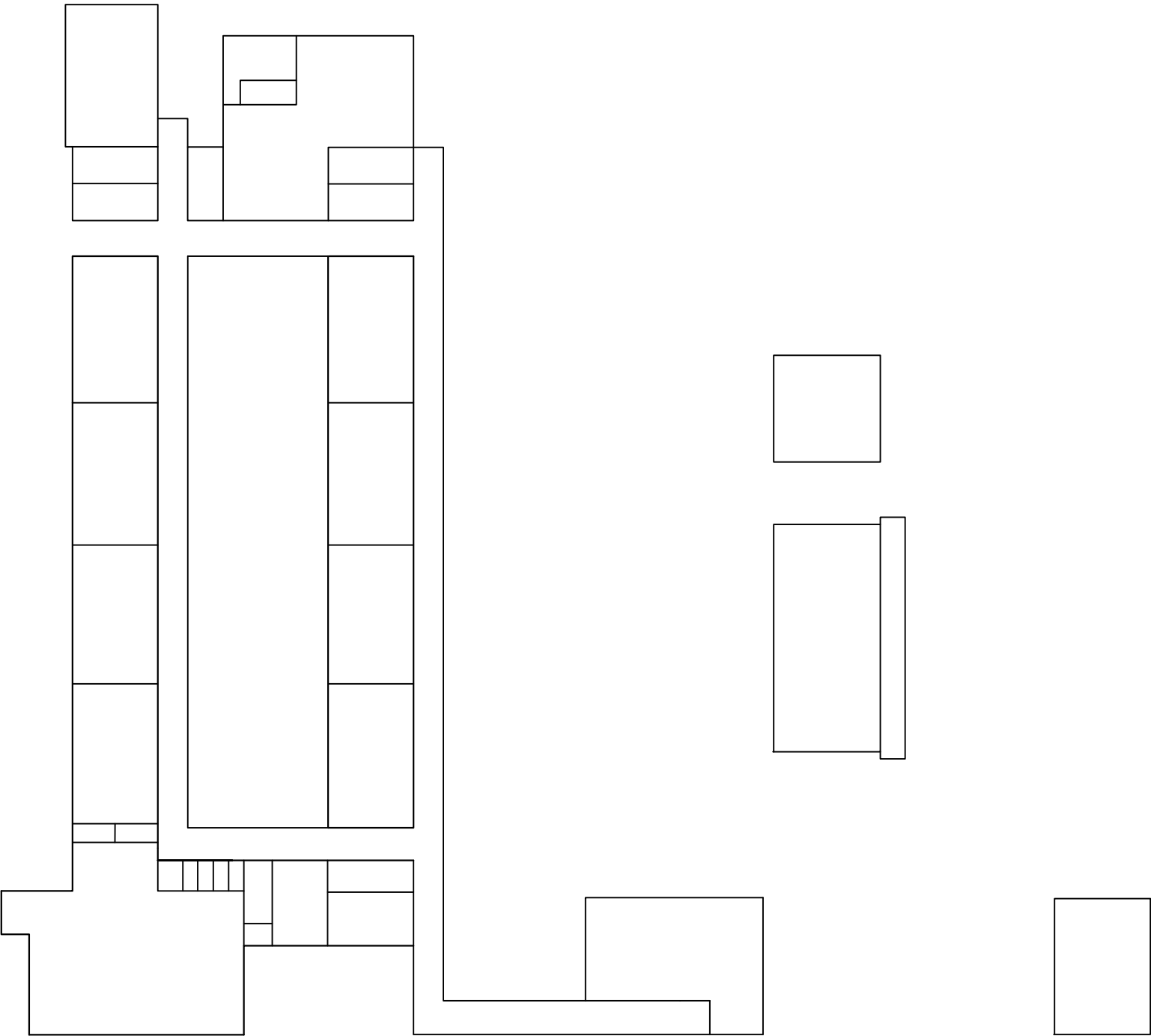
**EXISTING SITE DIAGRAM**  
DECEMBER 2003



Bear Flag Elementary School (017)  
6620 Gloria Drive  
SACRAMENTO CITY UNIFIED SCHOOL DISTRICT

EXISTING SITE DIAGRAM  
DECEMBER 2003



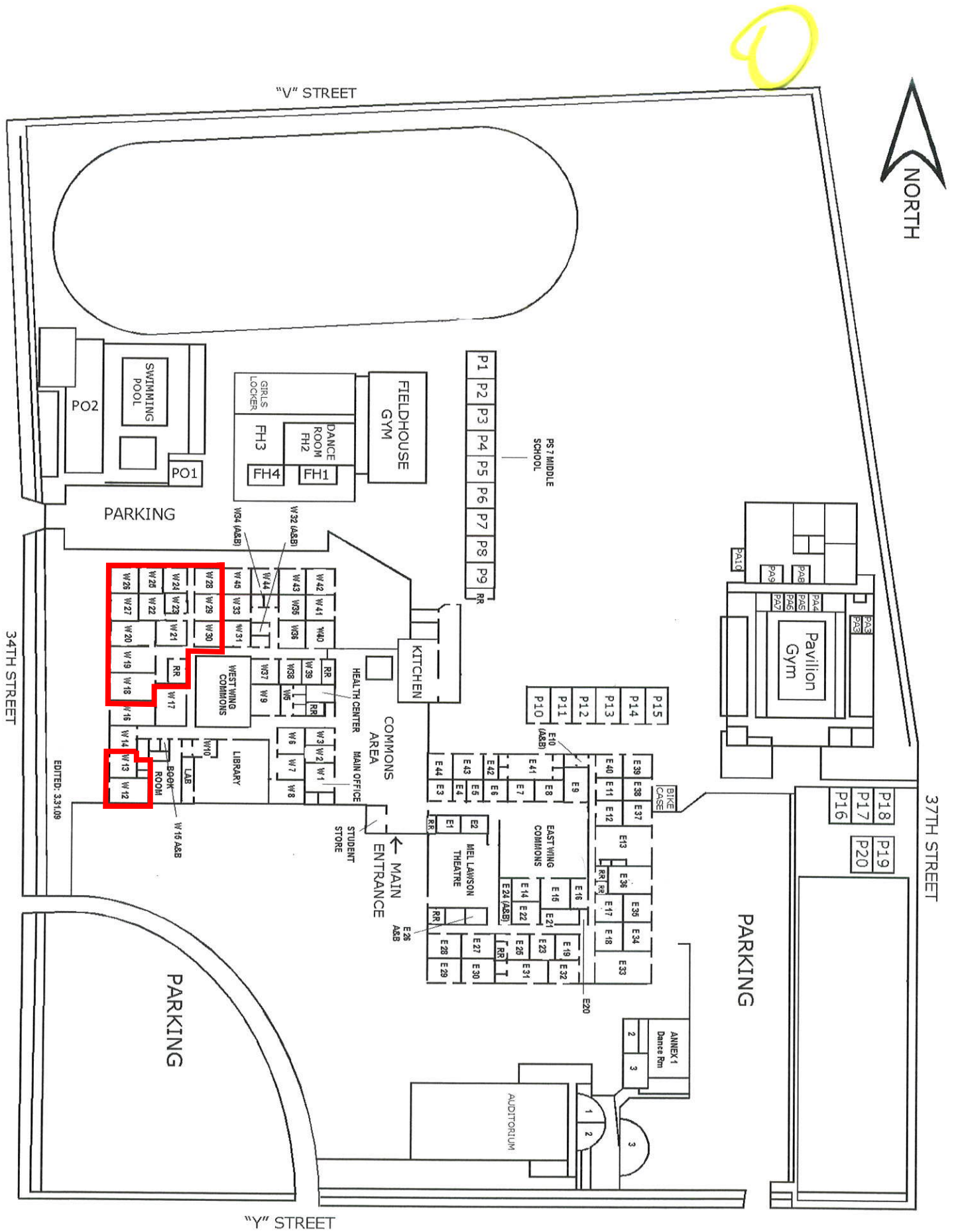


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STRAWBERRY LANE

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John Muir Elementary School (290)  
5201 Strawberry Lane  
SACRAMENTO CITY UNIFIED SCHOOL DISTRICT



# Yav Pem Suab Academy (K-6)



Yav Pem Suab Academy, 7555 South Land Park Drive, Sacramento, CA 95831

Sacramento City Unified School District

# Facilities Use Agreement

Capitol Collegiate Academy

2011-2013

## FACILITIES USE AGREEMENT

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

### RECITALS

- A. WHEREAS, the District and its charter schools are partners in the public education of students and it is the District's intent to ensure that its facilities are shared equally with all of its students, including those students who attend its charter schools housed in District facilities.
- B. WHEREAS, District is the owner of real property located at 4500 Roosevelt Avenue, Sacramento, California ("Site").
- C. WHEREAS, Charter School is a charter school duly formed and approved by the District under the laws of the Charter Schools Act of 1992 (Education Code §§ 47600, *et seq.*) serving students in grades Kindergarten through 8th grade in the 2011-2012 and 2012-2013 school years.
- D. WHEREAS, Charter School desires to use certain District facilities located on the Site for its public charter school program.
- E. WHEREAS, the Parties intend this Agreement to satisfy their obligations under Education Code Section 47614 and Title 5 of the California Code of Regulations Section 11969, *et seq.*, adopted by the State Board of Education ("Proposition 39"), which among other things require a written agreement regarding the allocating of facilities under Proposition 39, for the 2011-2012 and 2012-2013 school years.

### AGREEMENT

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

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

are attached hereto and incorporated herein by reference, to the Charter School under the terms and conditions set forth in this Agreement.

3. Term. The term of this Agreement shall be from August 1, 2011, to July 31, 2013 ("Term"), unless earlier terminated as provided herein.
4. Facilities Use Fee. The dollar amount to be paid by Charter School, per square foot, for use of the Facilities contemplated herein during the Term ("Facilities Use Fee") will be calculated by District pursuant to Title 5, California Code of Regulations, section 11969.7. To calculate the Facilities Use Fee, 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 District after the Term of the Agreement begins. Therefore, the District will provide an initial estimated Facilities Use Fee, subject to amendment when the preceding fiscal year figures become final. The initial estimated Facilities Use Fee and terms of payment are further defined in Exhibit C.

Within ninety (90) days of the beginning of the Term, or as soon as the actual facilities costs and total space figures for the prior fiscal year become available, whichever is later, the District shall provide notice to the Charter School of any *amended* Facilities Use Fee calculations based on the actual data for the prior fiscal year. Amounts owed to or by the Charter School due to this calculation will be credited or added to subsequent remaining monthly installment payments of the 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 Charter School of any late fees or interest shall in no event excuse or cure any default by Charter School nor waive District's legal rights and remedies with respect to such default.

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

5. Over-Allocation. The District reserves the right to collect over-allocation and other applicable fees and reimbursements from the Charter School, pursuant to Title 5, California Code of Regulations, Section 11969.8. The Charter School's projected in-District Average Daily Attendance ("ADA") for the 2011-2012 school year, and upon which the Facilities are provided, is 57.
6. Dispute Resolution. The Parties agree to attempt to resolve all disputes regarding this Agreement, including the alleged violation, misinterpretation, or misapplication of the Agreement, pursuant to the dispute resolution procedures identified in the Charter School's charter. Notwithstanding the foregoing, those disputes that may result in

revocation of Charter School's charter, pursuant to Education Code section 47607, are not required to go through the dispute resolution process.

7. Use.

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

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

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

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

(e) Security Badges. The District will provide security badges to the Charter School for its staff. The Charter School will pay for the cost of the security badges. Charter School staff shall wear these badges to use as evidence that they are lawfully on the premises. Charter School is entitled to up to twenty-five (25) District badges. Lost or stolen badges shall be replaced at a cost of \$5.00 per badge.

(f) Civic Center Act. The Charter School agrees to comply with the provisions of the Civic Center Act (Education Code Section 38131, *et seq.*) in making use of the Facilities accessible to members of the community. The Parties understand that the Facilities are to be primarily used for school programs and activities and as such any use of the Facilities by members of the community shall not interfere with school activities. District Board Policy and Administrative Regulations related to the Civic Center Act shall control scheduling, use and collection of fees related to use of the Facilities by members of the

public. Consistent with that policy and the regulations, the District shall be solely responsible for coordinating access to the Facilities under the Civic Center Act and shall require users to provide appropriate proof of insurance related to use of the Facilities and to indemnify and hold harmless the District and Charter School for injury, risk of loss, or damage to property as a result of that access by members of the community. The District agrees to promptly clean and repair, if necessary, any portion of the Facilities used by members of the community immediately following such use. All requests for use of the Facilities made directly to the Charter School shall be forwarded to the District for coordination of use consistent with Board Policy and Administrative Regulations.

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

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

The Charter School shall reimburse the District for the cost of utilities at the Site, as charged to the District by its utility providers, pro-rated to reflect use by other users of

the Site. Thirty (30) days prior to the commencement of the 2011-2012 school year, the District shall endeavor to notify the Charter School of its estimated monthly charge for utilities. The Charter School shall pay such charge to the District throughout the Term on a monthly basis concurrent with the Charter School's payment of the Facilities Use Fee to the District pursuant to Section 4 of this Agreement. Within one hundred twenty (120) days after the expiration or earlier termination of this Agreement, the District shall provide the Charter School with a reconciliation of the Charter School's actual utility usage throughout the Term and the cost thereof. The District shall either refund the Charter School for any overpayment or shall invoice the Charter School for any underpayment. The Charter School shall reimburse the District for such underpayment, if any, within thirty (30) days after receipt of said invoice.

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

10. Proposition 39/Conditions Reasonably Equivalent.

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

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

11. Gardening/Custodial Services.

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

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

13. Operations and Maintenance.

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

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

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

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

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

Upon written reasonable request of the District prior to the expiration or earlier termination of the Agreement, Charter School will remove any and all improvements to the Facilities, at its own cost, that can be done without damage to the Facilities. In the event of charter termination or closure of the Charter School, all property shall be disposed of in accordance with the provision of the approved Charter School's petition. Unless the Parties agree otherwise in writing on an item by item basis, Charter School maintains its ownership rights in any alterations, additions or improvements and may be allowed to remove at termination of this Agreement and restore the Facilities to the

condition existing prior to alteration, addition or improvement. Notwithstanding the foregoing, any addition to the Facilities that the Charter School does not remove prior to vacating the Facilities, shall vest in the District.

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

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

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

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

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

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

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

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

19. Damage to or Destruction of School Site.

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

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

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

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

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

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

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

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

(e) The failure by Charter School to maintain ADA of eighty (80) or more in-District students as the term "in-District students" is defined in Proposition 39.

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

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

27. Miscellaneous.

(a) Waiver. The waiver by either Party of any term, covenant or condition herein

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

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

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

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

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

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

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

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

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

deemed an amendment to any other such agreement, replacing any conflicting terms therein.

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

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

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

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

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

To District:

Sacramento City Unified School District  
Attn: Mary Shelton, Chief Accountability Officer  
5735 47th Avenue  
Sacramento, CA 95824  
Facsimile 916-643-9489

To Non-Profit or Charter School:

Attn: Penny Schwinn  
Capitol Collegiate Academy  
11883 Silver Cliff Way  
Gold River, CA 95670  
pschwinn@capitolcollegiate.org  
Phone: 916-217-1061

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

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

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

Non-Profit and Charter School

District

By: 

Penny Schwinn  
Head of School

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

Jonathan P. Raymond,  
Superintendent

Date: 4/19/2011

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:

Abstentions:

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

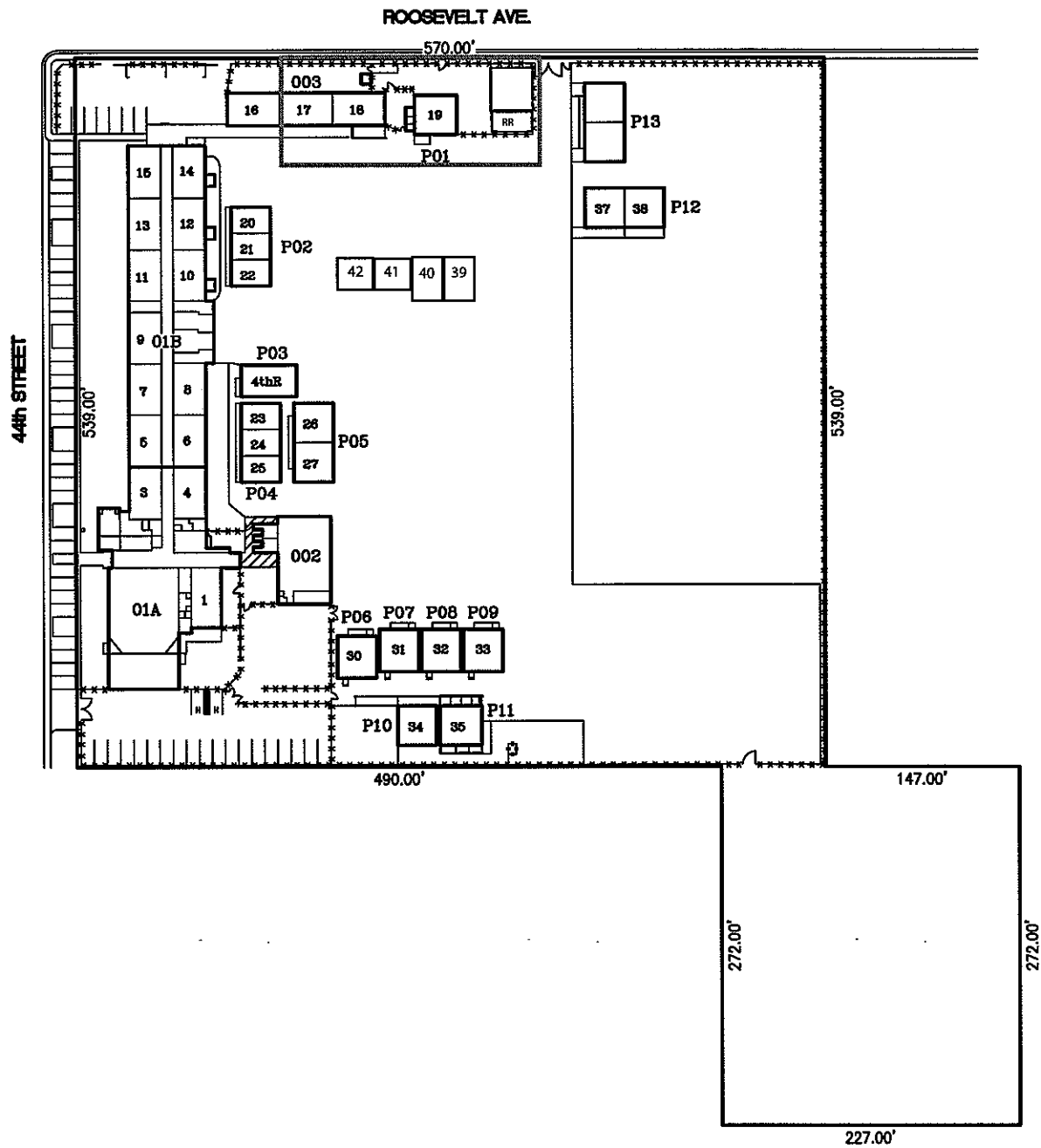
### **Exhibit A –Facilities**

The Facilities are limited to the buildings and other property that are listed herein and further depicted in Exhibit B. The Facilities include three (3) classrooms and one (1) office located at the Fruit Ridge Elementary school site located at 4500 Roosevelt Avenue, Sacramento, CA. The classrooms are numbered 17, 18, and 19. The office is located off of the main office administration building.

At the Fruit Ridge Elementary school site, the Charter School and Fruit Ridge Elementary shall share use of Multi-Purpose Room, restrooms, and cafeteria in accordance with a mutually agreed-upon schedule. Except as otherwise agreed in writing, neither the Charter School nor Fruit Ridge Elementary will make requests for classroom space in the buildings each school uses beyond shared space and athletic fields. Parking for Charter School staff and visitor parking will be provided for along the fence at the northwest end of the Capitol Collegiate Entrance.



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



NORTH

Scale 1"=120'

SITE AREA: 8.32 ACRES  
A.P.N. 020-0301-001

Fruit Ridge Elementary School (122)  
4625 - 44th Street  
SACRAMENTO CITY UNIFIED SCHOOL DISTRICT

EXISTING SITE DIAGRAM

OCTOBER 2001

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

Charter School shall pay District an *initial estimated* Facilities Use Fee of Eleven Thousand, Four Hundred Seventy Dollars and Twenty Cents (\$11,470.20), based on a pro rata facilities cost estimate of Two Dollars and Ten Cents (\$2.10) per square foot for the use of approximately Seven Thousand, Five Hundred Eighty-Nine (5,462) square feet of the Facilities during the Term of the Agreement. The initial estimated Facilities Use Fee shall be paid out in equal installments of Nine Hundred Fifty-Five Dollars and Eighty-Five Cents (\$955.85) 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"), without deduction, offset, prior notice or demand, in lawful money of the United States.

#### **Exhibit D – Custodial Services**

Charter School shall be responsible for providing and paying directly for custodial services for the Facilities. Said services shall result in a level of performance consistent with custodial services maintained by the District for its other District schools. The Charter School shall bear the cost of such custodial services, including the salary and benefits of the Custodian and the cost of any cleaning supplies and tools necessary for the Custodian to provide services. The Charter School shall purchase, store and provide all consumable materials which the custodian shall use in provisioning the facilities' restrooms, including but not limited to toilet paper, soap, and paper towels. In the event that Charter School fails to meet these standards, the District may, at its sole option, provide custodial services for the Facilities, and the Charter School will become responsible for the salary and benefits of the District-supplied custodian and/or Plant Manager, along with the cost of the cleaning supplies, tools and materials used by the custodial staff.

Sacramento City Unified School District

# Facilities Use Agreement

Language Academy of Sacramento

2011-2013

## FACILITIES USE AGREEMENT

This Facilities 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 Charter School, a charter school ("Charter School"). The Non-Profit and District are collectively referred to as the "Parties."

### RECITALS

- A. WHEREAS, the District and its charter schools are partners in the public education of students and it is the District's intent to ensure that its facilities are shared equally with all of its students, including those students who attend its charter schools housed in District facilities.
- B. WHEREAS, District is the owner of certain real property located at 2850 49th Street, Sacramento, California ("Site").
- C. WHEREAS, Charter School is a charter school duly formed and approved by the District under the laws of the Charter Schools Act of 1992 (Education Code §§ 47600, *et seq.*) serving students in grades Kindergarten through 8th grade in the 2011-2012 and 2012-2013 school years.
- D. WHEREAS, Charter School desires to use certain District facilities located on the Site for its public charter school program.
- E. WHEREAS, the Parties intend this Agreement to satisfy their obligations under Education Code Section 47614 and Title 5 of the California Code of Regulations Section 11969, *et seq.*, adopted by the State Board of Education ("Proposition 39"), which among other things require a written agreement regarding the allocating of facilities under Proposition 39, for the 2011-2012 and 2012-2013 school years.

### AGREEMENT

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

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

are attached hereto and incorporated herein by reference, to the Charter School under the terms and conditions set forth in this Agreement.

3. Term. The term of this Agreement shall be from August 1, 2011, to July 31, 2013 ("Term"), unless earlier terminated as provided herein.
4. Facilities Use Fee. The dollar amount to be paid by Charter School, per square foot, for use of the Facilities contemplated herein during the Term ("Facilities Use Fee") will be calculated by District pursuant to Title 5, California Code of Regulations, section 11969.7. To calculate the Facilities Use Fee, 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 District after the Term of the Agreement begins. Therefore, the District will provide an initial estimated Facilities Use Fee, subject to amendment when the preceding fiscal year figures become final. The initial estimated Facilities Use Fee and terms of payment are further defined in Exhibit C.

Within ninety (90) days of the beginning of the Term, or as soon as the actual facilities costs and total space figures for the prior fiscal year become available, whichever is later, the District shall provide notice to the Charter School of any *amended* Facilities Use Fee calculations based on the actual data for the prior fiscal year. Amounts owed to or by the Charter School due to this calculation will be credited or added to subsequent remaining monthly installment payments of the Facilities Use Fees. The District's calculation will be shared with the Charter School.

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 Charter School of any late fees or interest shall in no event excuse or cure any default by Charter School nor waive District's legal rights and remedies with respect to such default.

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

5. Over-Allocation. The District reserves the right to collect over-allocation and other applicable fees and reimbursements from the Charter School, pursuant to Title 5, California Code of Regulations, Section 11969.8. The Charter School's projected in-District Average Daily Attendance ("ADA") for the 2011-2012 school year, and upon which the Facilities are provided, is 362
6. Dispute Resolution. The Parties agree to attempt to resolve all disputes regarding this Agreement, including the alleged violation, misinterpretation, or misapplication of the Agreement, pursuant to the dispute resolution procedures identified in the Charter

School's charter. Notwithstanding the foregoing, those disputes that may result in revocation of Charter School's charter, pursuant to Education Code section 47607, are not required to go through the dispute resolution process.

7. Use.

(a) Public Charter School. The Facilities shall be used and occupied by the Charter School for the purpose of operating a California public charter school as well as conducting such activities which are consistent with the terms of its Charter (including, for example, PTA events, weekend fundraisers, and after-school programs) and for no other purposes without the prior written consent of the District. The Charter School will comply with provision 7(f) of this Agreement, prior to making some or all of the Site(s) or Facilities available to members of the community. The Charter School's enrollment must not exceed the safe and legal limit for the classroom space it occupies.

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

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

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

(e) Security Badges. The District will provide security badges to the Charter School for its staff. The Charter School will pay for the cost of the security badges. Charter School staff shall wear these badges to use as evidence that they are lawfully on the premises. Charter School is entitled to up to twenty-five (25) District badges. Lost or stolen badges shall be replaced at a cost of \$5.00 per badge.

(f) Civic Center Act. The Charter School agrees to comply with the provisions of the

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

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

8. Furnishings and Equipment. The District shall provide the Charter School with furnishings and equipment that is "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 Facilities are those furnishings and equipment that exist at the Facilities as of July 1, 2011. No later than August 1, 2011, the parties will meet and confer in good faith to finalize the inventory of reasonably equivalent furnishings and equipment to be provided to the Charter School. 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.
9. Utilities. District agrees to furnish or cause to be furnished to the Facilities necessary utilities. Utilities include, but are not limited to, are electrical, natural gas, sewer, waste disposal/recycling and water services. Due to cost containment efforts by the District, the

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

The Charter School shall reimburse the District for the cost of utilities at the Site, as charged to the District by its utility providers, pro-rated to reflect use by other users of the Site. Thirty (30) days prior to the commencement of the 2011-2012 school year, the District shall endeavor to notify the Charter School of its estimated monthly charge for utilities. The Charter School shall pay such charge to the District throughout the Term on a monthly basis concurrent with the Charter School's payment of the Facilities Use Fee to the District pursuant to Section 4 of this Agreement. Within one hundred twenty (120) days after the expiration or earlier termination of this Agreement, the District shall provide the Charter School with a reconciliation of the Charter School's actual utility usage throughout the Term and the cost thereof. The District shall either refund the Charter School for any overpayment or shall invoice the Charter School for any underpayment. The Charter School shall reimburse the District for such underpayment, if any, within thirty (30) days after receipt of said invoice.

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

10. Proposition 39/Conditions Reasonably Equivalent.

(a) Charter School 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.

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

The Charter School shall not be responsible for hazardous environmental conditions that existed prior to the Charter School's original occupancy of the Site(s) and 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 (as that term is defined in section 4 hereunder) performed by the Charter School, during this

or any prior facilities use agreement term. The Charter School shall operate the Site(s) and Facilities in compliance with the above statutes, standards and policies.

11. Custodial Services.

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

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

13. Operations and Maintenance.

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

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

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

14. Alterations and Additions. The Charter School shall only make alterations, additions, or improvements ("Improvements") to the Facilities after obtaining the prior written consent of the District's Superintendent or his designee. Any Improvements to the Facilities made

by the Charter School shall be paid for by the Charter School, and shall be contracted for and performed in accordance with all applicable building code standards, including Title 24 of the California Code of Regulations, the Field Act, Americans with Disabilities Act and the Fair Employment and Housing Act.

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

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

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

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

liabilities, expenses and costs arising from the negligent or intentional acts of the District, its employees, agents, officers and invitees.

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

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

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

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

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

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

19. Damage to or Destruction of School Site.

(a) Cost. The cost of restoring the Facilities under this Section shall be borne by the Charter School if the cause of the casualty is the negligence or intentional act of the Charter School, its employees, agents, students or invitees. The cost of restoring the Facilities under this Section shall be borne by the District if the cause of the casualty is the negligence or intentional act of the District, its employees, agents, or invitees. The

Parties shall tender the cost of restoring the Facilities to their respective insurance carriers if the casualty is caused by a third party.

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

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

20. Liens. Charter School shall keep the Facilities free from any liens arising out of any work performed, materials furnished or obligations incurred by or on behalf of Charter School. Notwithstanding anything stated herein to the contrary, if Charter School fails to promptly release and remove any such lien, District, at its sole option, may immediately (but shall not be obligated to) take all action necessary to release and remove such lien, without any duty to investigate the validity thereof, and all sums, costs and expenses, including reasonable attorneys' fees and costs, incurred by District in connection with such lien shall be immediately due and payable by Charter School.
21. Holding Over. Charter School shall not remain in possession of the Facilities or any part thereof after the expiration of this Agreement or after termination thereof without the express written consent of District. Notwithstanding the foregoing, if the Charter School holds over, the Charter School shall pay the monthly Facilities Use Fee plus all other charges payable required by this Agreement. Any holdover by Charter School requires the Charter School to comply with all terms of this Agreement. A holdover by the Charter School shall not trigger any additional term. The District shall have the right to remove the Charter School at any time after the expiration of the Term or termination of this Agreement.

22. Assignment and Subletting. The Charter School may not assign its rights under this Agreement or sublet any portion of the Facilities without the prior written consent of the District.
23. Rules, Regulations and Law. The Charter School and the Charter School's agents, employees, students, visitors and invitees shall observe and comply fully and faithfully with all reasonable and nondiscriminatory policies, rules, and regulations adopted by the District for the care, protection, cleanliness, and operation of the Facilities, and the Facilities' furnishings and equipment, and shall comply with all applicable laws.
24. Smoking. Smoking or the consumption of alcohol in any form shall not be allowed in or on District property and Facilities, including but not limited to all courtyards, walkways, and parking areas.
25. Default by Charter School. The occurrence of any one or more of the following events shall constitute a default and material breach of this Agreement by Charter School:
- (a) The failure by Charter School to utilize the Facilities for the purpose of operating a California public charter school and conducting such activities which are consistent with the terms of its Charter (including, for example, PTA events, weekend fundraisers, and after-school programs).
  - (b) The failure by Charter School to make timely payments required under this Agreement.
  - (c) The failure by Charter School to observe or perform any of the express covenants, conditions or provisions of this Agreement.
  - (d) The revocation or non-renewal of the Charter School's charter. Notwithstanding the foregoing, this Agreement shall not be terminated pursuant to this provision provided that the Charter School continues to operate in accordance with the terms of this Agreement and is diligently pursuing a statutory appeal of the revocation or nonrenewal of its charter.
  - (e) The failure by Charter School to maintain ADA of eighty (80) or more in-District students as the term "in-District students" is defined in Proposition 39.

In the event of any material default or breach by Charter School, District may, but shall not be obligated to, terminate this Agreement and Charter School's right to possession of the Facilities upon thirty (30) days written notice thereof to the Charter School if the default is not cured within the thirty (30) day period. If the nature of the default is such that the same cannot reasonably be cured within said thirty (30) day period, the Charter School shall not be in default if Charter School shall within such thirty (30) day period commence such cure and thereafter, diligently prosecute the same to completion. In no event shall such period to cure exceed sixty (60) days. Upon termination, District shall retain the right to recover from Charter School, without limitation, any amounts due

under this Agreement or applicable law. Unpaid Facilities Use Fees shall bear interest from the date due at the maximum legal rate. In the event of termination by the District by reason of Charter School's default or breach of this Agreement, the District shall not be obligated to provide facilities to Charter School pursuant to Proposition 39 for the remainder of that school year.

26. Default by District. District shall be in default of this Agreement if District fails to perform any material obligation required by this Agreement. In the event of any default by District, Charter School may terminate this Agreement upon thirty (30) days written notice thereof to the District if the District has failed to cure the default within thirty (30) days, unless the nature of the default is such that the same cannot reasonably be cured within said thirty (30) day period, in which event District shall not be in default (and Charter School may not terminate this Agreement) if District commences to cure such default within such thirty (30) day period and thereafter, diligently prosecutes the same to completion.
27. Miscellaneous.
- (a) Waiver. The waiver by either Party of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of any charge hereunder by District or payment of any charge by Charter School shall not be deemed to be a waiver of any preceding default by Charter School or District of any term, covenant or condition of this Agreement, other than the failure of the Charter School to pay the particular charge so accepted, regardless of District's knowledge of such preceding default at the time of the acceptance of such charge.
- (b) Marginal Headings. The marginal headings and article titles to the articles of this Agreement are not a part of the Agreement and shall have no effect upon the construction or interpretation of any part hereof.
- (c) Successors and Assigns. The covenants and conditions herein contained, subject to the provisions as to assignment, apply and bind the heirs, successors, executors, administrators and assigns of the Parties hereto.
- (d) Amendment. No provision of this Agreement may be amended or modified except by an agreement in writing signed by the Parties hereto.
- (e) Construction. Each of the Parties acknowledges and agrees that this Agreement is to be construed as a whole according to its fair meaning and not in favor of nor against any of the Parties as draftsman or otherwise.

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

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

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

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

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

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

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

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

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

To District:

Sacramento City Unified School District  
Attn: Mary Shelton, Chief Accountability Officer  
5735 47th Avenue  
Sacramento, CA 95824  
Facsimile 916-643-9489

To Non-Profit or Charter School:

Attn: Judy Morales  
Language Academy of Sacramento  
4500 Roosevelt Avenue  
Sacramento, CA 95820

Facsimile: 916-277-7141

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

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

Non-Profit and Charter School

District

By:   
Judy Morales  
Business Manager

By: \_\_\_\_\_  
Jonathan P. Raymond,  
Superintendent

Date: 4/29/2011

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:

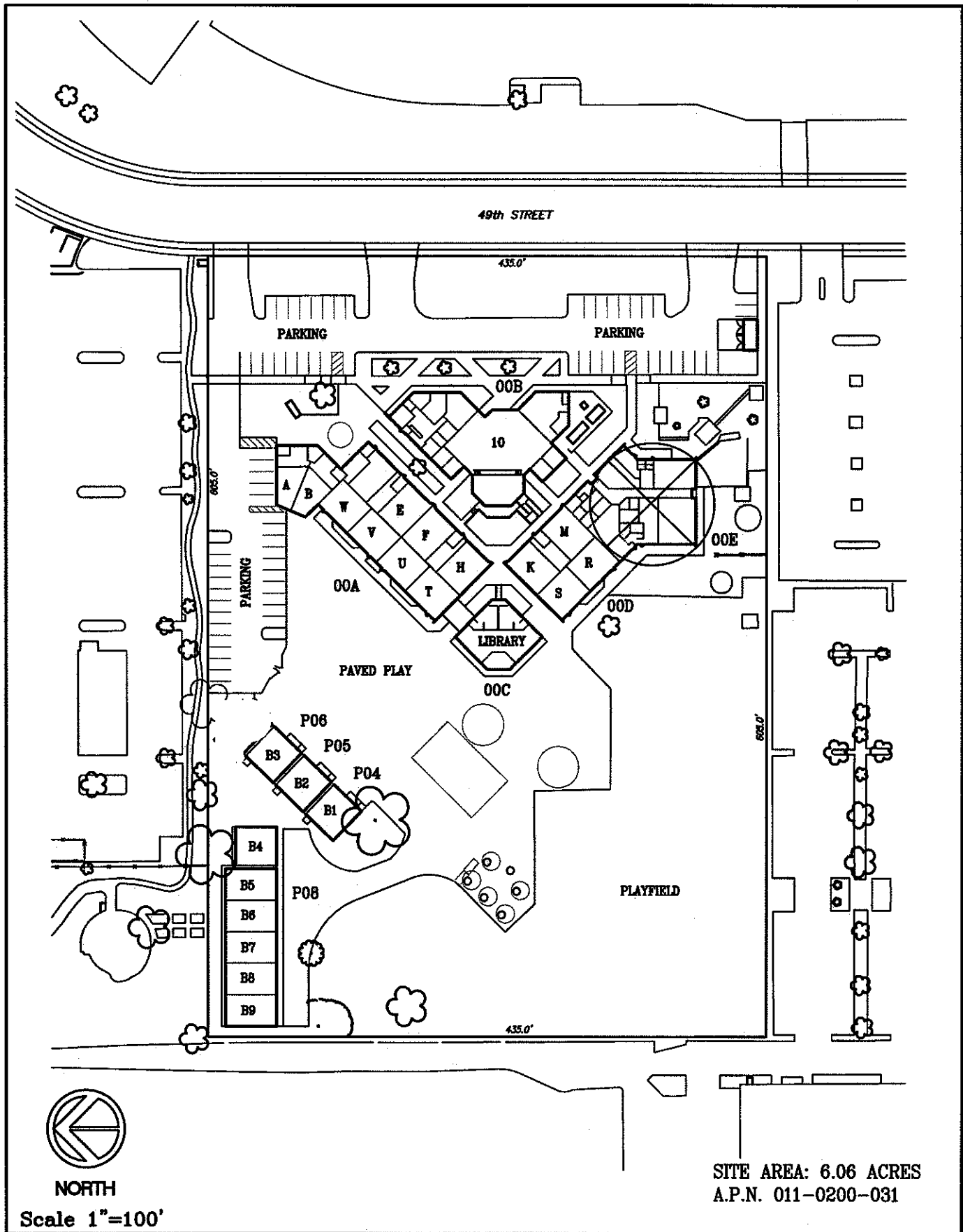
Abstentions:

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

### **Exhibit A –Facilities**

The Facilities are limited to the buildings and other property that are listed herein and further designated in Exhibit B. The Facilities include the use of the Marian Anderson Elementary School site. The Facilities do not include the use of any Preschool rooms or storage rooms and associated with the Preschool.

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



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

**EXISTING SITE DIAGRAM**  
DECEMBER 2003

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

Charter School shall pay District an *initial estimated* Facilities Use Fee of Eighty-Two Thousand, Eighty Dollars and Sixty Cents (\$82,080.60), based on a pro rata facilities cost estimate of Two Dollars and Ten Cents (\$2.10) per square foot for the use of approximately Thirty-Nine Thousand, Eighty-Six (39,086) square feet of the Facilities during the Term of the Agreement. The initial estimated Facilities Use Fee shall be paid out in equal installments of Six Thousand, Four Hundred Sixty Dollars and Sixty-Five Cents (\$6,840.05) 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"), without deduction, offset, prior notice or demand, in lawful money of the United States.

## **Exhibit D – Custodial Services**

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

Sacramento City Unified School District

# Facilities Use Agreement

Public School 7 (PS7)

2011-2013

## FACILITIES USE AGREEMENT

This Facilities Use Agreement ("Agreement") is made by and between Sacramento City Unified School District ("District") and St. HOPE Public Schools, a California non-profit public benefit corporation ("Non-Profit"), which operates Public School No. 7, a charter school ("Charter School"). The Non-Profit and District are collectively referred to as the "Parties."

### RECITALS

- A. WHEREAS, the District and its charter schools are partners in the public education of students and it is the District's intent to ensure that its facilities are shared equally with all of its students, including those students who attend its charter schools housed in District facilities.
- B. WHEREAS, District is the owner of certain real property located at 5201 Strawberry Lane and 2315 34th Street, Sacramento, California ("Sites").
- C. WHEREAS, Charter School is a charter school duly formed and approved by the District under the laws of the Charter Schools Act of 1992 (Education Code §§ 47600, *et seq.*) serving students in grades Kindergarten through 8th grade in the 2011-2012 and 2012-2013 school years.
- D. WHEREAS, Charter School desires to use certain District facilities located on the Site for its public charter school program.
- E. WHEREAS, the Parties intend this Agreement to satisfy their obligations under Education Code Section 47614 and Title 5 of the California Code of Regulations Section 11969, *et seq.*, adopted by the State Board of Education ("Proposition 39"), which among other things require a written agreement regarding the allocating of facilities under Proposition 39, for the 2011-2012 and 2012-2013 school years.

### AGREEMENT

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

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

3. Term. The term of this Agreement shall be from August 1, 2011, to July 31, 2013 ("Term"), unless earlier terminated as provided herein.
4. Facilities Use Fee. The dollar amount to be paid by Charter School, per square foot, for use of the Facilities contemplated herein during the Term ("Facilities Use Fee") will be calculated by District pursuant to Title 5, California Code of Regulations, section 11969.7. To calculate the Facilities Use Fee, 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 District after the Term of the Agreement begins. Therefore, the District will provide an initial estimated Facilities Use Fee, subject to amendment when the preceding fiscal year figures become final. The initial estimated Facilities Use Fee and terms of payment are further defined in Exhibit C.

Within ninety (90) days of the beginning of the Term, or as soon as the actual facilities costs and total space figures for the prior fiscal year become available, whichever is later, the District shall provide notice to the Charter School of any *amended* Facilities Use Fee calculations based on the actual data for the prior fiscal year. Amounts owed to or by the Charter School due to this calculation will be credited or added to subsequent remaining monthly installment payments of the 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 Charter School of any late fees or interest shall in no event excuse or cure any default by Charter School nor waive District's legal rights and remedies with respect to such default.

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

5. Over-Allocation. The District reserves the right to collect over-allocation and other applicable fees and reimbursements from the Charter School, pursuant to Title 5, California Code of Regulations, Section 11969.8. The Charter School's projected in-District Average Daily Attendance ("ADA") for the 2011-2012 school year, and upon which the Facilities are provided, is 227.
6. Dispute Resolution. The Parties agree to attempt to resolve all disputes regarding this Agreement, including the alleged violation, misinterpretation, or misapplication of the Agreement, pursuant to the dispute resolution procedures identified in the Charter School's charter. Notwithstanding the foregoing, those disputes that may result in revocation of Charter School's charter, pursuant to Education Code section 47607, are not required to go through the dispute resolution process.

7. Use.

(a) Public Charter School. The Facilities shall be used and occupied by the Charter School for the purpose of operating a California public charter school as well as conducting such activities which are consistent with the terms of its Charter (including, for example, PTA events, weekend fundraisers, and after-school programs) and for no other purposes without the prior written consent of the District. The Charter School will comply with provision 7(f) of this Agreement, prior to making some or all of the Site(s) or Facilities available to members of the community. The Charter School's enrollment must not exceed the safe and legal limit for the classroom space it occupies.

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

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

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

(e) Security Badges. The District will provide security badges to the Charter School for its staff. The Charter School will pay for the cost of the security badges. Charter School staff shall wear these badges to use as evidence that they are lawfully on the premises. Charter School is entitled to up to twenty-five (25) District badges. Lost or stolen badges shall be replaced at a cost of \$5.00 per badge.

(f) Civic Center Act. The Charter School agrees to comply with the provisions of the Civic Center Act (Education Code Section 38131, *et seq.*) in making use of the Facilities accessible to members of the community. The Parties understand that the Facilities are to be primarily used for school programs and activities and as such any use of the Facilities

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

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

8. Furnishings and Equipment. The District shall provide the Charter School with furnishings and equipment that is "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 Facilities are those furnishings and equipment that exist at the 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.
9. Utilities. District agrees to furnish or cause to be furnished to the Facilities necessary utilities. Utilities include, but are not limited to, are electrical, natural gas, sewer, waste disposal/recycling and water services. Due to cost containment efforts by the District, the number of bins associated with the Site(s), the bin capacities and the number of removals per week shall not increase during the Term. The District's failure to furnish or cause to be furnished necessary utilities when such failure is caused by (i) Acts of God or other acts beyond the control or fault of the District; (ii) strikes, lockouts, or other labor disturbances or labor disputes of any kind; (iii) any laws, rules, orders, ordinances,

directions, regulations, requirements, or any other action by federal, state, county or municipal authority; (iv) inability despite the exercise of reasonable diligence by the District to obtain electricity, water, or fuel; or (v) any other unavoidable delay, shall not cause the District to be in default and shall not result in any liability of the District.

The Charter School shall reimburse the District for the cost of utilities at the Site, as charged to the District by its utility providers, pro-rated to reflect use by other users of the Site. Thirty (30) days prior to the commencement of the 2011-2012 and 2012-2013 school years, the District shall endeavor to notify the Charter School of its estimated monthly charge for utilities. The Charter School shall pay such charge to the District throughout the Term on a monthly basis concurrent with the Charter School's payment of the Facilities Use Fee to the District pursuant to Section 4 of this Agreement. Within one hundred twenty (120) days after the expiration or earlier termination of this Agreement, the District shall provide the Charter School with a reconciliation of the Charter School's actual utility usage throughout the Term and the cost thereof. The District shall either refund the Charter School for any overpayment or shall invoice the Charter School for any underpayment. The Charter School shall reimburse the District for such underpayment, if any, within thirty (30) days after receipt of said invoice.

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

10. Proposition 39/Conditions Reasonably Equivalent.

(a) Charter School 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.

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

The Charter School shall not be responsible for hazardous environmental conditions that existed prior to the Charter School's original occupancy of the Site(s) and 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 (as that term is defined in section 4 hereunder) performed by the Charter School, during this or any prior facilities use agreement term. The Charter School shall operate the Site(s) and Facilities in compliance with the above statutes, standards and policies.

11. Custodial Services.

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

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

13. Operations and Maintenance.

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

(b) The District shall be responsible for any modifications necessary to maintain the Facility in accordance with Education Code Sections 47610(d) or 47610.5. Projects eligible to be included in the District's deferred maintenance plan established pursuant to Education Code Section 17582 and the replacement of furnishings and equipment supplied by the District in accordance with the District's schedules and practices shall remain the responsibility of the District. The Charter School shall comply with the District's policies regarding the operations and maintenance of the Facilities, 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. Should the Charter School fail to comply with applicable District policies regarding the operations and maintenance of the Facilities, furnishings or equipment, the District may, at its sole option, alter, repair, or improve the Facilities, furnishings or equipment pursuant to paragraph 15 hereunder to bring them into compliance with applicable district policies, and Charter School shall be responsible for all such costs incurred by the District for such alterations, repairs or improvements. Alternatively, or in addition to the above, the District may provide for ongoing repair and maintenance services of the Facilities by District staff / Plant Manager(s), in which case the Charter School will provide reasonable workspace for such personnel and become responsible for the salary and benefits of said District staff / Plant Manager(s), along with the cost of tools and materials used.

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

14. Alterations and Additions. The Charter School shall only make alterations, additions, or improvements ("Improvements") to the Facilities after obtaining the prior written consent of the District's Superintendent or his designee, which shall not be unreasonably withheld. Any Improvements to the Facilities made by the Charter School shall be paid for by the Charter School, and shall be contracted for and performed in accordance with 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, Americans with Disabilities Act and the Fair Employment and Housing Act and all applicable District policies relating to facilities construction (the "Construction Standards"). The District 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.

Should the Charter School fail to obtain the prior written consent of the District's Superintendent or his 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 to 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 alter, repair, or improve the Facilities pursuant to paragraph 15 hereunder, to bring the Facilities into compliance with the Construction Standards and/or the conditions to the District's consent, and Charter School shall be responsible for all such costs and expenses incurred by the District for such alterations, repairs or improvements. No Improvement shall reduce or otherwise impair the value of the Facilities. No Improvements shall be commenced until 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.

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

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

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

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

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

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

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

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

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

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

18. Insurance. The Charter School shall comply with insurance provisions contained within its charter and any Memoranda Of Understanding between the Parties.
19. Damage to or Destruction of School Site.
  - (a) Cost. The cost of restoring the Facilities under this Section shall be borne by the Charter School if the cause of the casualty is the negligence or intentional act of the Charter School, its employees, agents, students or invitees. The cost of restoring the Facilities under this Section shall be borne by the District if the cause of the casualty is the negligence or intentional act of the District, its employees, agents, or invitees. The Parties shall tender the cost of restoring the Facilities to their respective insurance carriers if the casualty is caused by a third party.
  - (b) Partial Damage – Insured. If the Facilities are damaged by any casualty which is covered under fire and extended coverage insurance carried by District, then District may restore such damage provided insurance proceeds are available to pay eighty percent (80%) or more of the cost of restoration and provided such restoration can be completed within ninety (90) days after the commencement of the work in the opinion of a registered architect or engineer appointed by District. In such event this Agreement shall continue in full force and effect, except that Charter School shall be entitled to proportionate reduction of use payments while such restoration takes place, such proportionate reduction to be based upon the extent to which the restoration efforts interfere with Charter School's business in the Facilities. The District shall provide the Charter School alternative space in the District for any part of the Charter School program that is displaced by the partial damage and/or the repair work of the same. If the

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

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

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

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

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

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

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

27. Miscellaneous.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

To District:

Sacramento City Unified School District  
Attn: Mary Shelton, Chief Accountability Officer  
5735 47th Avenue  
Sacramento, CA 95824  
Facsimile 916-643-9489

To Non-Profit or Charter School:

St. Hope Public Schools  
Attn: Ed Manansala, Superintendent  
P.O. Box 5038  
Sacramento, CA. 95817

Facsimile 916-649-7757

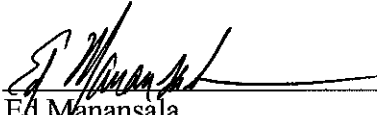
(o) Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original of the Agreement. Signatures transmitted via facsimile or portable document format ("pdf") to other Parties to this Agreement shall be deemed equivalent to original signatures on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

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

Non-Profit and Charter School

District

By:

  
Ed Manansala  
Superintendent

By:

Jonathan P. Raymond,  
Superintendent

Date:

5-2-2011

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:

Abstentions:

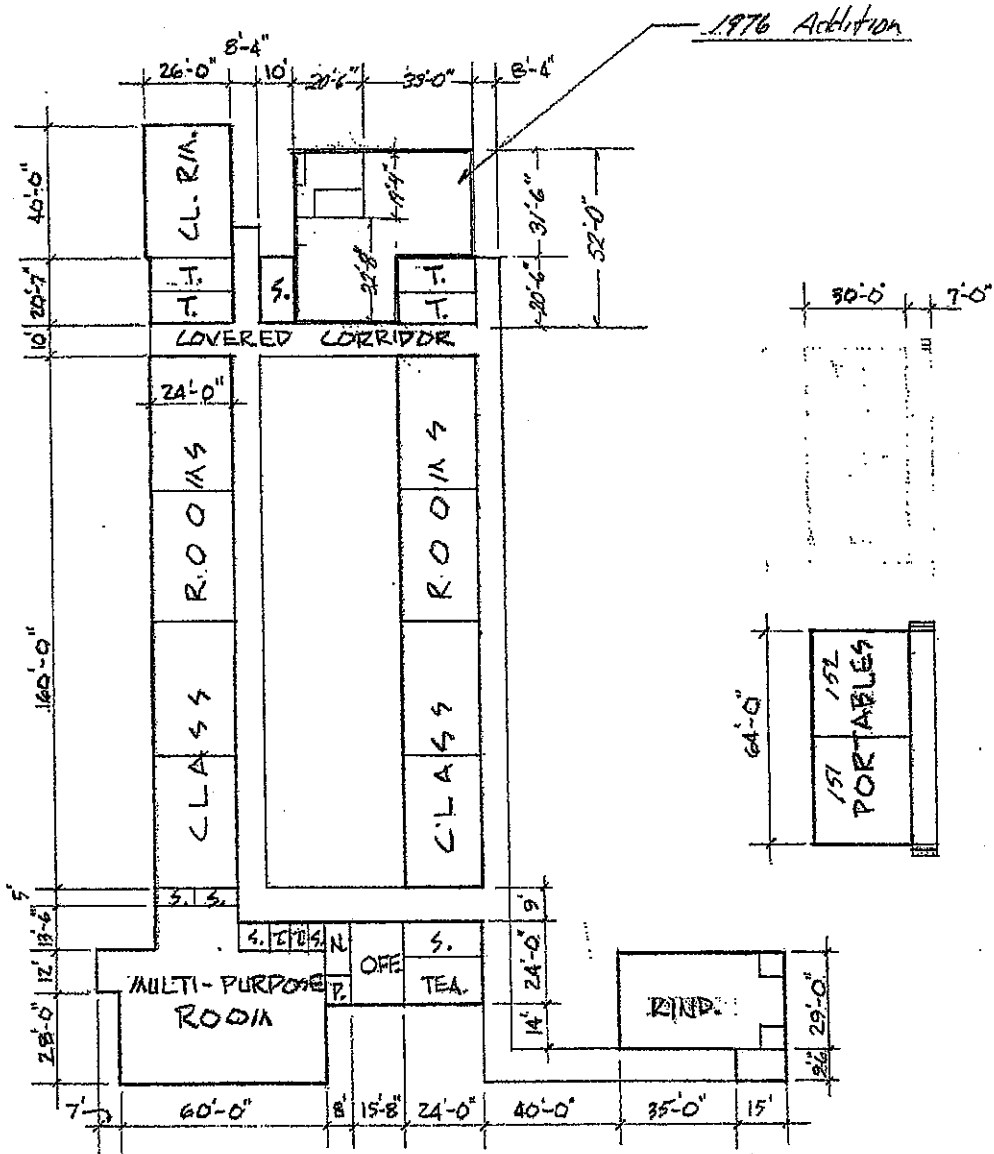
\_\_\_\_\_  
Secretary to the Board of Education

### **Exhibit A –Facilities**

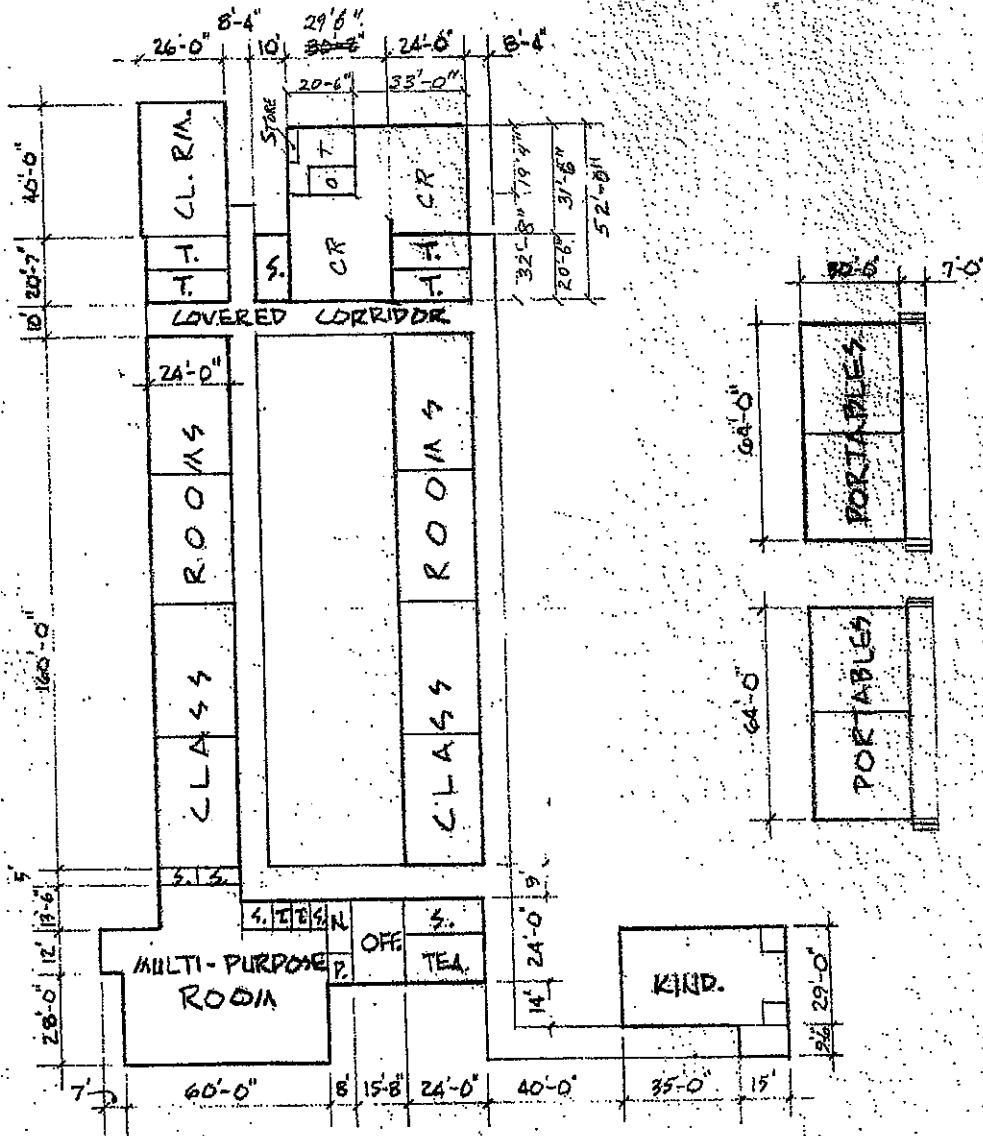
The Facilities are limited to the buildings and other property that are listed herein and further depicted in Exhibit B. At the Strawberry Lane Site, the Facilities consist of Buildings 1, 2, 3, 4 and 5 and Portables P-1, P-2 and P-3. At the 34th Street Site, the Facilities consist of classrooms W12, W13, and W18 through W30, and adjacent bathrooms and hallways. Throughout the term of this Agreement, the District intends to explore alternative facilities uses, including but not limited to, co-location for the 2011-2012 and 2012-2013 school years.

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

# JOHN MUIR



# JOHN MUIR



SACRAMENTO CITY UNIFIED SCHOOL DISTRICT			
PROJECT: <u>DIAGRAM OF BUILDING AREA</u>	<u>EXISTING</u>	<u>1-A</u>	
SCHOOL: <u>JOHN MUIR SCH.</u>	<u>BASIC PLANS</u>	<u>2-A</u>	
ADDRESS: <u>5201 STRAWBERRY LANE</u>	<u>FINAL PLANS</u>	<u>3-A</u>	

BLDG. NO.	SQ. FOOTAGE	YR. OF CONST	OSA APP NO.
#1	9898	CLASSROOMS 1948 MULTI-PURPOSE 1955	<u>7519</u> 13648
#2	4760	1952	9656
#3	1906	TOILETS 1948 CLASSROOM 1955	<u>6519</u> 13648
#4	3399	TOILETS 1948 CLASSROOM 1976	<u>6519</u> 39879
#5	2224	1952	9656

PORTABLE BLDG.

P-1	983	1957	15441
P-2	983	1952	9952
P-2	960	1989	51735

TOTAL AREA 25,113<sup>sq</sup> [186]

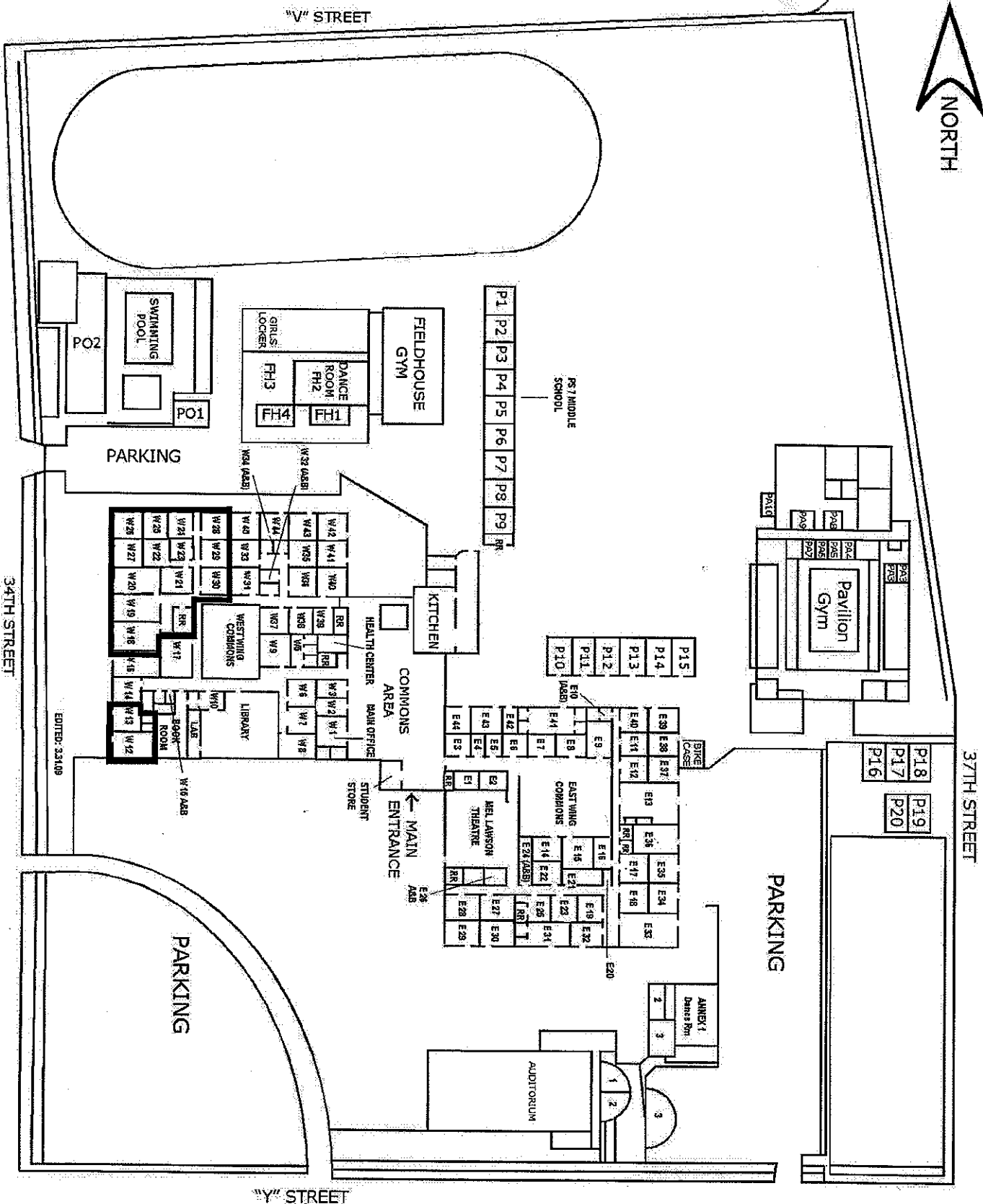
Open Corridors:

-Relocatables- 20+ YRS.-

$$1031 + 680 + 449 + 36 \\ + 193 = 2389$$

$$2 \times 983 = 1966$$

$$TOTAL = 24,153 - \frac{1}{3}(2389) - .75(1966) = \underline{21,882 \text{ Sq. Ft. [187]}}$$



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

Charter School shall pay District an *initial estimated* Facilities Use Fee of Eighty-Two Thousand, Three Hundred Twenty-Six Dollars and Thirty Cents (\$82,326.30), based on a pro rata facilities cost estimate of Two Dollars and Ten Cents (\$2.10) per square foot for the use of approximately Thirty-Nine Thousand, Two Hundred Three (39,203) square feet of the Facilities during the Term of the Agreement. The initial estimated Facilities Use Fee shall be paid out in equal installments of Six Thousand, Eight Hundred Sixty Dollars and Fifty-Three Cents (\$6,860.53) 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"), without deduction, offset, prior notice or demand, in lawful money of the United States.

#### **Exhibit D – Custodial Services**

Charter School shall be responsible for providing and paying directly for custodial services for the Facilities. Said services shall result in a level of performance consistent with custodial services maintained by the District for its other District schools. The Charter School shall bear the cost of such custodial services, including the salary and benefits of the Custodian and the cost of any cleaning supplies and tools necessary for the Custodian to provide services. The Charter School shall purchase, store and provide all consumable materials which the custodian shall use in provisioning the facilities' restrooms, including but not limited to toilet paper, soap, and paper towels. In the event that Charter School fails to meet these standards, the District may, at its sole option, provide custodial services for the Facilities, and the Charter School will become responsible for the salary and benefits of the District-supplied custodian and/or Plant Manager, along with the cost of the cleaning supplies, tools and materials used by the custodial staff.

Sacramento City Unified School District

# Facilities Use Agreement

Sacramento Charter High School

2011-2013

## FACILITIES USE AGREEMENT

This Facilities Use Agreement ("Agreement") is made by and between Sacramento City Unified School District ("District") and St. HOPE Public Schools, a California non-profit public benefit corporation ("Non-Profit"), which operates Sacramento Charter High School, a charter school ("Charter School"). The Non-Profit and District are collectively referred to as the "Parties."

### RECITALS

- A. WHEREAS, the District and its charter schools are partners in the public education of students and it is the District's intent to ensure that its facilities are shared equally with all of its students, including those students who attend its charter schools housed in District facilities.
- B. WHEREAS, District is the owner of certain real property located at 2315 34th Street, Sacramento, California ("Site").
- C. WHEREAS, Charter School is a charter school duly formed and approved by the District under the laws of the Charter Schools Act of 1992 (Education Code §§ 47600, *et seq.*) serving students in grades nine through twelve in the 2011-2012 and 2012-2013 school years.
- D. WHEREAS, Charter School desires to use certain District facilities located on the Site for its public charter school program.
- E. WHEREAS, the Parties intend this Agreement to satisfy their obligations under Education Code Section 47614 and Title 5 of the California Code of Regulations Section 11969, *et seq.*, adopted by the State Board of Education ("Proposition 39"), which among other things require a written agreement regarding the allocating of facilities under Proposition 39, for the 2011-2012 and 2012-2013 school years.

### AGREEMENT

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

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

3. Term. The term of this Agreement shall be from August 1, 2011, to July 31, 2013 ("Term"), unless earlier terminated as provided herein.
4. Facilities Use Fee. The dollar amount to be paid by Charter School, per square foot, for use of the Facilities contemplated herein during the Term ("Facilities Use Fee") will be calculated by District pursuant to Title 5, California Code of Regulations, section 11969.7. To calculate the Facilities Use Fee, 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 District after the Term of the Agreement begins. Therefore, the District will provide an initial estimated Facilities Use Fee, subject to amendment when the preceding fiscal year figures become final. The initial estimated Facilities Use Fee and terms of payment are further defined in Exhibit C.

Within ninety (90) days of the beginning of the Term, or as soon as the actual facilities costs and total space figures for the prior fiscal year become available, whichever is later, the District shall provide notice to the Charter School of any *amended* Facilities Use Fee calculations based on the actual data for the prior fiscal year. Amounts owed to or by the Charter School due to this calculation will be credited or added to subsequent remaining monthly installment payments of the 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 Charter School of any late fees or interest shall in no event excuse or cure any default by Charter School nor waive District's legal rights and remedies with respect to such default.

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

5. Over-Allocation. The District reserves the right to collect over-allocation and other applicable fees and reimbursements from the Charter School, pursuant to Title 5, California Code of Regulations, Section 11969.8. The Charter School's projected in-District Average Daily Attendance ("ADA") for the 2011-2012 school year, and upon which the Facilities are provided, is 633.
6. Dispute Resolution. The Parties agree to attempt to resolve all disputes regarding this Agreement, including the alleged violation, misinterpretation, or misapplication of the Agreement, pursuant to the dispute resolution procedures identified in the Charter School's charter. Notwithstanding the foregoing, those disputes that may result in revocation of Charter School's charter, pursuant to Education Code section 47607, are not required to go through the dispute resolution process.

7. Use.

(a) Public Charter School. The Facilities shall be used and occupied by the Charter School for the purpose of operating a California public charter school as well as conducting such activities which are consistent with the terms of its Charter (including, for example, PTA events, weekend fundraisers, and after-school programs) and for no other purposes without the prior written consent of the District. The Charter School will comply with provision 7(f) of this Agreement, prior to making some or all of the Site(s) or Facilities available to members of the community. The Charter School's enrollment must not exceed the safe and legal limit for the classroom space it occupies.

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

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

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

(e) Security Badges. The District will provide security badges to the Charter School for its staff. The Charter School will pay for the cost of the security badges. Charter School staff shall wear these badges to use as evidence that they are lawfully on the premises. Charter School is entitled to up to twenty-five (25) District badges. Lost or stolen badges shall be replaced at a cost of \$5.00 per badge.

(f) Civic Center Act. The Charter School agrees to comply with the provisions of the Civic Center Act (Education Code Section 38131, *et seq.*) in making use of the Facilities accessible to members of the community. The Parties understand that the Facilities are to be primarily used for school programs and activities and as such any use of the Facilities

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

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

8. Furnishings and Equipment. The District shall provide the Charter School with furnishings and equipment that is "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 Facilities are those furnishings and equipment that exist at the 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.
9. Utilities. District agrees to furnish or cause to be furnished to the Facilities necessary utilities. Utilities include, but are not limited to, are electrical, natural gas, sewer, waste disposal/recycling and water services. Due to cost containment efforts by the District, the number of bins associated with the Site(s), the bin capacities and the number of removals per week shall not increase during the Term. The District's failure to furnish or cause to be furnished necessary utilities when such failure is caused by (i) Acts of God or other acts beyond the control or fault of the District; (ii) strikes, lockouts, or other labor disturbances or labor disputes of any kind; (iii) any laws, rules, orders, ordinances,

directions, regulations, requirements, or any other action by federal, state, county or municipal authority; (iv) inability despite the exercise of reasonable diligence by the District to obtain electricity, water, or fuel; or (v) any other unavoidable delay, shall not cause the District to be in default and shall not result in any liability of the District.

The Charter School shall reimburse the District for the cost of utilities at the Site, as charged to the District by its utility providers, pro-rated to reflect use by other users of the Site. Thirty (30) days prior to the commencement of the 2011-2012 school year, the District shall endeavor to notify the Charter School of its estimated monthly charge for utilities. The Charter School shall pay such charge to the District throughout the Term on a monthly basis concurrent with the Charter School's payment of the Facilities Use Fee to the District pursuant to Section 4 of this Agreement. Within one hundred twenty (120) days after the expiration or earlier termination of this Agreement, the District shall provide the Charter School with a reconciliation of the Charter School's actual utility usage throughout the Term and the cost thereof. The District shall either refund the Charter School for any overpayment or shall invoice the Charter School for any underpayment. The Charter School shall reimburse the District for such underpayment, if any, within thirty (30) days after receipt of said invoice.

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

10. Proposition 39/Conditions Reasonably Equivalent.

(a) Charter School 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.

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

The Charter School shall not be responsible for hazardous environmental conditions that existed prior to the Charter School's original occupancy of the Site(s) and 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 (as that term is defined in section 4 hereunder) performed by the Charter School, during this or any prior facilities use agreement term. The Charter School shall operate the Site(s) and Facilities in compliance with the above statutes, standards and policies.

11. Gardening/Custodial Services.

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

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

13. Operations and Maintenance.

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

(b) The District shall be responsible for any modifications necessary to maintain the Facility in accordance with Education Code Sections 47610(d) or 47610.5. Projects eligible to be included in the District's deferred maintenance plan established pursuant to Education Code Section 17582 and the replacement of furnishings and equipment supplied by the District in accordance with the District's schedules and practices shall remain the responsibility of the District. The Charter School shall comply with the District's policies regarding the operations and maintenance of the Facilities, 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. Should the Charter School fail to comply with applicable District policies regarding the operations and maintenance of the Facilities, furnishings or equipment, the District may, at its sole option, alter, repair, or improve the Facilities, furnishings or equipment pursuant to paragraph 15 hereunder to bring them into compliance with applicable district policies, and Charter School shall be responsible for all such costs incurred by the District for such alterations, repairs or improvements. Alternatively, or in addition to the above, the District may provide for ongoing repair and maintenance services of the Facilities by District staff / Plant Manager(s), in which case the Charter School will provide reasonable workspace for such personnel and become responsible for the salary and benefits of said District staff / Plant Manager(s), along with the cost of tools and materials used.

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

14. Alterations and Additions. The Charter School shall only make alterations, additions, or improvements ("Improvements") to the Facilities after obtaining the prior written consent of the District's Superintendent or his designee, which shall not be unreasonably withheld. Any Improvements to the Facilities made by the Charter School shall be paid for by the Charter School, and shall be contracted for and performed in accordance with 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, Americans with Disabilities Act and the Fair Employment and Housing Act and all applicable District policies relating to facilities construction (the "Construction Standards"). The District 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.

Should the Charter School fail to obtain the prior written consent of the District's Superintendent or his 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 to 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 alter, repair, or improve the Facilities pursuant to paragraph 15 hereunder, to bring the Facilities into compliance with the Construction Standards and/or the conditions to the District's consent, and Charter School shall be responsible for all such costs and expenses incurred by the District for such alterations, repairs or improvements. No Improvement shall reduce or otherwise impair the value of the Facilities. No Improvements shall be commenced until 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.

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

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

any claim for damages for any inconvenience to or interference with the Charter School's business, any loss or use of quiet enjoyment of the Facilities related to District's entry for the purposes identified in this Section.

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

17. Indemnity.

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

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

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

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

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

In the event of a third party claim or potential claim covered by these provisions, the Parties agree to take all steps reasonable or necessary to cooperate in defending and protecting their joint interests, and in expediting all reasonable or necessary efforts to gain coverage for the Parties under any liability policy or indemnity agreement

issued in favor of the Non-Profit, including indemnity rights or agreements existing in contracts between the Non-Profit and any third party (such as contract with a supplier of goods or services), and further including efforts to reduce defense costs (through joint representation whenever possible), expenses and potential liability exposures.

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

19. Damage to or Destruction of School Site.

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

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

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

20. Liens. Charter School shall keep the Facilities free from any liens arising out of any work performed, materials furnished or obligations incurred by or on behalf of Charter School. Notwithstanding anything stated herein to the contrary, if Charter School fails to promptly release and remove any such lien, District, at its sole option, may immediately

(but shall not be obligated to) take all action necessary to release and remove such lien, without any duty to investigate the validity thereof, and all sums, costs and expenses, including reasonable attorneys' fees and costs, incurred by District in connection with such lien shall be immediately due and payable by Charter School.

21. Holding Over. Charter School shall not remain in possession of the Facilities or any part thereof after the expiration of this Agreement or after termination thereof without the express written consent of District. Notwithstanding the foregoing, if the Charter School holds over, the Charter School shall pay the monthly Facilities Use Fee plus all other charges payable required by this Agreement. Any holdover by Charter School requires the Charter School to comply with all terms of this Agreement. A holdover by the Charter School shall not trigger any additional term. The District shall have the right to remove the Charter School at any time after the expiration of the Term or termination of this Agreement.
22. Assignment and Subletting. The Charter School may not assign its rights under this Agreement or sublet any portion of the Facilities without the prior written consent of the District.
23. Rules, Regulations and Law. The Charter School and the Charter School's agents, employees, students, visitors and invitees shall observe and comply fully and faithfully with all reasonable and nondiscriminatory policies, rules, and regulations adopted by the District for the care, protection, cleanliness, and operation of the Facilities, and the Facilities' furnishings and equipment, and shall comply with all applicable laws.
24. Smoking. Smoking or the consumption of alcohol in any form shall not be allowed in or on District property and Facilities, including but not limited to all courtyards, walkways, and parking areas.
25. Default by Charter School. The occurrence of any one or more of the following events shall constitute a default and material breach of this Agreement by Charter School:
  - (a) The failure by Charter School to utilize the Facilities for the purpose of operating a California public charter school and conducting such activities which are consistent with the terms of its Charter (including, for example, PTA events, weekend fundraisers, and after-school programs).
  - (b) The failure by Charter School to make timely payments required under this Agreement.
  - (c) The failure by Charter School to observe or perform any of the express covenants, conditions or provisions of this Agreement.
  - (d) The revocation or non-renewal of the Charter School's charter. Notwithstanding the foregoing, this Agreement shall not be terminated pursuant to this provision provided that the Charter School continues to operate in accordance with the terms of this Agreement

and is diligently pursuing a statutory appeal of the revocation or nonrenewal of its charter.

(e) The failure by Charter School to maintain ADA of eighty (80) or more in-District students as the term "in-District students" is defined in Proposition 39.

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

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

27. Miscellaneous.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

To District:

Sacramento City Unified School District  
Attn: Mary Shelton, Chief Accountability Officer  
5735 47th Avenue  
Sacramento, CA 95824  
Facsimile 916-643-9489

To Non-Profit or Charter School:

St. Hope Public Schools  
Attn: Ed Manansala, Superintendent  
Sacramento Charter High School  
P.O. Box 5038  
Sacramento, CA. 95817


Facsimile 916-649-7757

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

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

Non-Profit and Charter School

District

By:   
Ed Manansala  
Superintendent

By: \_\_\_\_\_  
Jonathan P. Raymond,  
Superintendent

Date: 5-2-2011

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:

Abstentions:

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

### **Exhibit A –Facilities**

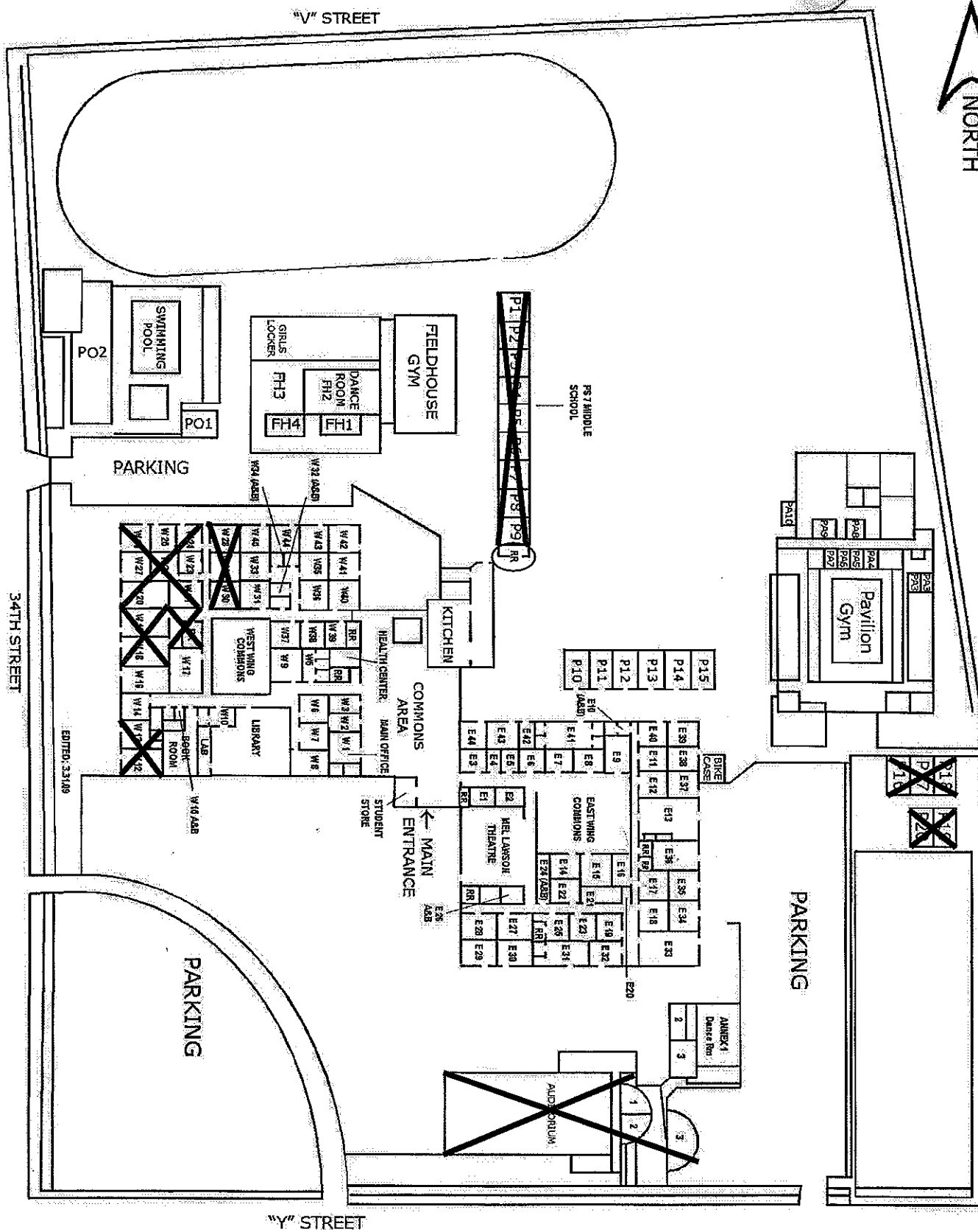
The Facilities are limited to the buildings and other property that are listed herein and in Exhibit B. The Facilities do not include Portable Building (rooms P0, P1, P2, P3, P4, P5, P6, P7, P8, P16, P17, P18, P19, and P20). The Facilities do not include the use of the Auditorium except by permit. The Facilities do not include the Pool House or pool. As identified in the building diagram and additional descriptions contained in Exhibit B, the Facilities do not include the following classrooms W12, W13, and W18 through W30 located in the West Wing, or adjacent bathrooms and hallways.

Throughout the term of this Agreement, the District intends to explore alternative facilities uses, including but not limited to, co-location during the 2011-2013 school years.

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



37TH STREET



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

Charter School shall pay District an *initial estimated* Facilities Use Fee of Four Hundred Thirty-Three Thousand, Four Hundred Seventy-Nine Dollars and Ninety Cents (\$433,479.90), based on a pro rata facilities cost estimate of Two Dollars and Ten Cents (\$2.10) per square foot for the use of approximately Two Hundred Six Thousand, Four Hundred Nineteen (206,419) square feet of the Facilities during the Term of the Agreement. The initial estimated Facilities Use Fee shall be paid out in equal installments of Thirty-Six Thousand , One Hundred Twenty-Three Dollars and Thirty-Three Cents (\$36,123.33) 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”), without deduction, offset, prior notice or demand, in lawful money of the United States.

### **Exhibit D – Gardening/Custodial Services**

The District shall provide one (1) Laborer-Gardener (“Laborer-Gardener”), which shall be a District employee subject to the District’s collective bargaining agreement with SEIU. The Charter School shall reimburse the District for the salary and benefits of the Laborer-Gardener, and the cost is subject to any increase due to revisions to the collective bargaining agreement approved by the District and SEIU. The District will provide written notice to the Charter School if any such revisions occur. In consideration of the foregoing, thirty (30) days prior to the commencement of the 2011-2012 school year, the District shall endeavor to notify the Charter School of its estimated monthly charge for the salary and benefits of the Laborer-Gardener. 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, which charge is subject to increase, as stated above. Within one hundred twenty (120) days after the expiration or earlier termination of this Agreement, the District shall provide the Charter School with a reconciliation of the cost of the Laborer-Gardener’s actual salary and benefits throughout the Term. 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.

Charter School shall be responsible for providing and paying directly for custodial services for the Facilities. Said services shall result in a level of performance consistent with custodial services maintained by the District for its other District schools. The Charter School shall bear the cost of such custodial services, including the salary and benefits of the Custodian and the cost of any cleaning supplies and tools necessary for the Custodian to provide services. The Charter School shall purchase, store and provide all consumable materials which the custodian shall use in provisioning the facilities’ restrooms, including but not limited to toilet paper, soap, and paper towels. In the event that Charter School fails to meet these standards, the District may, at its sole option, provide custodial services for the Facilities, and the Charter School will become responsible for the salary and benefits of the District-supplied custodian and/or Plant Manager, along with the cost of the cleaning supplies, tools and materials used by the custodial staff.

Sacramento City Unified School District

# Facilities Use Agreement

Sol Aureus College Preparatory

2011-2013

## FACILITIES USE AGREEMENT

This Facilities Use Agreement ("Agreement") is made by and between Sacramento City Unified School District ("District") and Sol Aureus College Preparatory, a California non-profit public benefit corporation ("Non-Profit"), which operates S.A.C. Prep, a charter school ("Charter School"). The Non-Profit and District are collectively referred to as the "Parties."

### RECITALS

- A. WHEREAS, the District and its charter schools are partners in the public education of students and it is the District's intent to ensure that its facilities are shared equally with all of its students, including those students who attend its charter schools housed in District facilities.
- B. WHEREAS, District is the owner of real property located at Bear Flag Elementary School, 6620 Gloria Drive, Sacramento, California ("Site").
- C. WHEREAS, Charter School is a charter school duly formed and approved by the District under the laws of the Charter Schools Act of 1992 (Education Code §§ 47600, *et seq.*) serving students in grades five through eight in the 2011-2013 school year.
- D. WHEREAS, Charter School desires to use certain District facilities located on the Site for its public charter school program.
- E. WHEREAS, the Parties intend this Agreement to satisfy their obligations under Education Code Section 47614 and Title 5 of the California Code of Regulations Section 11969, *et seq.*, adopted by the State Board of Education ("Proposition 39"), which among other things require a written agreement regarding the allocating of facilities under Proposition 39, for the 2011-2013 school year.

### AGREEMENT

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

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

3. Term. The term of this Agreement shall be from August 1, 2011, to July 31, 2013 ("Term"), unless earlier terminated as provided herein.
4. Facilities Use Fee. The dollar amount to be paid by Charter School, per square foot, for use of the Facilities contemplated herein during the Term ("Facilities Use Fee") will be calculated by District pursuant to Title 5, California Code of Regulations, section 11969.7. To calculate the Facilities Use Fee, 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 District after the Term of the Agreement begins. Therefore, the District will provide an initial estimated Facilities Use Fee, subject to amendment when the preceding fiscal year figures become final. The initial estimated Facilities Use Fee and terms of payment are further defined in Exhibit C.

Within ninety (90) days of the beginning of the Term, or as soon as the actual facilities costs and total space figures for the prior fiscal year become available, whichever is later, the District shall provide notice to the Charter School of any *amended* Facilities Use Fee calculations based on the actual data for the prior fiscal year. Amounts owed to or by the Charter School due to this calculation will be credited or added to subsequent remaining monthly installment payments of the 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 Charter School of any late fees or interest shall in no event excuse or cure any default by Charter School nor waive District's legal rights and remedies with respect to such default.

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

5. Over-Allocation. The District reserves the right to collect over-allocation and other applicable fees and reimbursements from the Charter School, pursuant to Title 5, California Code of Regulations, Section 11969.8. The Charter School's projected in-District Average Daily Attendance ("ADA") for the 2011-2012 school year, and upon which the Facilities are provided, is **112**.
6. Dispute Resolution. The Parties agree to attempt to resolve all disputes regarding this Agreement, including the alleged violation, misinterpretation, or misapplication of the Agreement, pursuant to the dispute resolution procedures identified in the Charter School's charter. Notwithstanding the foregoing, those disputes that may result in revocation of Charter School's charter, pursuant to Education Code section 47607, are not required to go through the dispute resolution process.

7. Use.

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

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

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

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

(e) Security Badges. The District will provide security badges to the Charter School for its staff. The Charter School will pay for the cost of the security badges. Charter School staff shall wear these badges to use as evidence that they are lawfully on the premises. Charter School is entitled to up to twenty-five (25) District badges. Lost or stolen badges shall be replaced at a cost of \$5.00 per badge.

(f) Civic Center Act. The Charter School agrees to comply with the provisions of the Civic Center Act (Education Code Section 38131, *et seq.*) in making use of the Facilities accessible to members of the community. The Parties understand that the Facilities are to be primarily used for school programs and activities and as such any use of the Facilities by members of the community shall not interfere with school activities. District Board Policy and Administrative Regulations related to the Civic Center Act shall control scheduling, use and collection of fees related to use of the Facilities by members of the public. Consistent with that policy and the regulations, the District shall be solely responsible for coordinating access to the Facilities under the Civic Center Act and shall

require users to provide appropriate proof of insurance related to use of the Facilities and to indemnify and hold harmless the District and Charter School for injury, risk of loss, or damage to property as a result of that access by members of the community. The District agrees to promptly clean and repair, if necessary, any portion of the Facilities used by members of the community immediately following such use. All requests for use of the Facilities made directly to the Charter School shall be forwarded to the District for coordination of use consistent with Board Policy and Administrative Regulations.

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

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

The Charter School shall reimburse the District for the cost of utilities at the Site, as charged to the District by its utility providers, pro-rated to reflect use by other users of the Site. Thirty (30) days prior to the commencement of the 2011-2012 school year, the District shall endeavor to notify the Charter School of its estimated monthly charge for

utilities. The Charter School shall pay such charge to the District throughout the Term on a monthly basis concurrent with the Charter School's payment of the Facilities Use Fee to the District pursuant to Section 4 of this Agreement. Within one hundred twenty (120) days after the expiration or earlier termination of this Agreement, the District shall provide the Charter School with a reconciliation of the Charter School's actual utility usage throughout the Term and the cost thereof. The District shall either refund the Charter School for any overpayment or shall invoice the Charter School for any underpayment. The Charter School shall reimburse the District for such underpayment, if any, within thirty (30) days after receipt of said invoice.

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

10. Proposition 39/Conditions Reasonably Equivalent.

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

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

11. Custodial Services.

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

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

13. Operations and Maintenance.

(a) The cost for the ongoing operations and maintenance of the Facilities and furnishings and equipment is calculated into the Facilities Use Fee of Section 4 of this Agreement.

The District shall be responsible for providing the wiring/MIS infrastructure and maintaining it in its condition as of July 1, 2011. Any upgrades or improvements to the wiring/MIS infrastructure shall be the responsibility of the Charter School, in compliance with Section 14 ("Alterations and Additions"). The Charter School is responsible for the cost of internet service provided at the commercial rate.

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

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

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

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

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

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

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

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

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

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

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

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

18. Insurance. The Charter School shall comply with insurance provisions contained within its charter and any Memoranda Of Understanding between the Parties.
19. Damage to or Destruction of School Site.
  - (a) Cost. The cost of restoring the Facilities under this Section shall be borne by the Charter School if the cause of the casualty is the negligence or intentional act of the Charter School, its employees, agents, students or invitees. The cost of restoring the Facilities under this Section shall be borne by the District if the cause of the casualty is the negligence or intentional act of the District, its employees, agents, or invitees. The Parties shall tender the cost of restoring the Facilities to their respective insurance carriers if the casualty is caused by a third party.
  - (b) Partial Damage – Insured. If the Facilities are damaged by any casualty which is covered under fire and extended coverage insurance carried by District, then District may restore such damage provided insurance proceeds are available to pay eighty percent (80%) or more of the cost of restoration and provided such restoration can be completed within ninety (90) days after the commencement of the work in the opinion of a registered architect or engineer appointed by District. In such event this Agreement shall continue in full force and effect, except that Charter School shall be entitled to proportionate reduction of use payments while such restoration takes place, such proportionate reduction to be based upon the extent to which the restoration efforts interfere with Charter School's business in the Facilities. The District shall provide the Charter School alternative space in the District for any part of the Charter School program that is displaced by the partial damage and/or the repair work of the same. If the Charter School secures alternative space then there shall be no diminution in the use payments during the period of the restoration.
  - (c) Total Destruction. If the Facilities are totally destroyed (defined as the destruction of more than fifty percent (50%) of the usable classroom space) or the Facilities cannot be restored as required herein under applicable laws and regulations, notwithstanding the availability of insurance proceeds, then this Agreement shall be terminated effective the date of the damage. Immediately upon the effective date of the damage, the District must

provide a reasonably equivalent school facility to the Charter School as soon as reasonable so as to avoid any interruption in the educational program of the Charter School.

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

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

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

(e) The failure by Charter School to maintain ADA of eighty (80) or more in-District students as the term "in-District students" is defined in Proposition 39.

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

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

27. Miscellaneous.

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

District's knowledge of such preceding default at the time of the acceptance of such charge.

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

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

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

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

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

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

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

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

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

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

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

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

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

To District:

Sacramento City Unified School District  
Attn: Mary Shelton, Chief Accountability Officer  
5735 47th Avenue  
Sacramento, CA 95824  
Facsimile 916-643-9489

To Non-Profit or Charter School:

Attn: Alton Nelson  
Sol Aureus College Preparatory Charter  
2118 Meadowview Road  
Sacramento, CA 95832

Facsimile: 916-421-0601

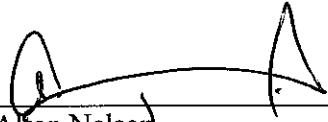
(o) Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original of the Agreement. Signatures transmitted via facsimile or portable document format ("pdf") to other Parties to this Agreement shall be deemed equivalent to original signatures on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

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

Non-Profit and Charter School

District

By:

  
Alton Nelson  
Founder/ Principal

By:

Jonathan P. Raymond,  
Superintendent

Date:

5/23/11

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:

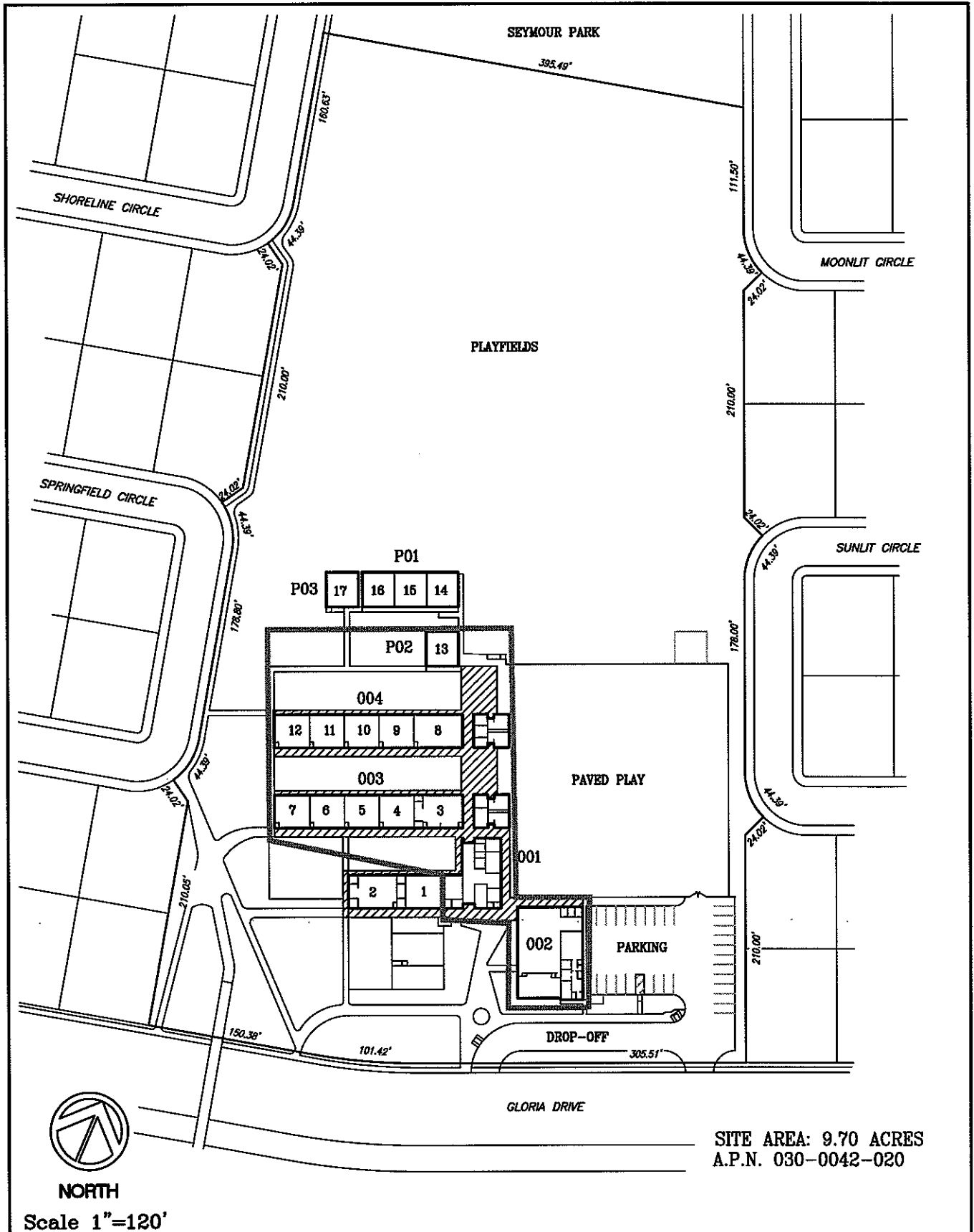
Abstentions:

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

## EXHIBIT A

Facilities to be provided: Except as otherwise provided herein, Charter School will have use of Rooms 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and office space located in the Bear Flag Elementary School Campus (the "Charter Building"). Such rooms in the Charter Building will be used for classrooms, offices, and storage of the Charter School. The District's Child Development Program and Special Education shall have exclusive use of room 1 and 2. Portable 14-17 are not included in this agreement. Charter School will have usage of Multi-purpose rooms and athletic fields. Parking for Charter School staff and visitor parking will be provided at the southeast corner of the campus.

## EXHIBIT B



Bear Flag Elementary School (017)  
 6620 Gloria Drive  
 SACRAMENTO CITY UNIFIED SCHOOL DISTRICT

# EXISTING SITE DIAGRAM

DECEMBER 2003

## EXHIBIT C

Charter School shall pay District an *initial* estimate Facilities Use Fee of Seventy-Three Thousand Nine Hundred Thirty-Four Dollars and Seventy Cents (\$73,934.70), based on a pro rata facilities cost estimate of Two Dollars and Ten Cents (\$2.10) per square foot for the use of approximately Thirty-Five Thousand Two Hundred Seven (35,207) square feet of the Facilities during the Term of the Agreement. The *initial* estimate Facilities Use Fee shall be paid out in equal installments of Six Thousand One Hundred Sixty-One Dollars and Twenty-Three Cents (\$6,161.23) 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"), without deduction, offset, prior notice or demand, in lawful money of the United States.

## EXHIBIT D

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

Sacramento City Unified School District

# Facilities Use Agreement

Yav Pem Suab Academy

2011-2013

## FACILITIES USE AGREEMENT

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

### RECITALS

- A. WHEREAS, the District and its charter schools are partners in the public education of students and it is the District's intent to ensure that its facilities are shared equally with all of its students, including those students who attend its charter schools housed in District facilities.
- B. WHEREAS, District is the owner of real property located at 7555 South Land Park Drive, Sacramento, California ("Site").
- C. WHEREAS, Charter School is a charter school duly formed and approved by the District under the laws of the Charter Schools Act of 1992 (Education Code §§ 47600, *et seq.*) serving students in grades Kindergarten through 6th grade in the 2011-2012 and 2012-2013 school years.
- D. WHEREAS, Charter School desires to use certain District facilities located on the Site for its public charter school program.
- E. WHEREAS, the Parties intend this Agreement to satisfy their obligations under Education Code Section 47614 and Title 5 of the California Code of Regulations Section 11969, *et seq.*, adopted by the State Board of Education ("Proposition 39"), which among other things require a written agreement regarding the allocating of facilities under Proposition 39, for the 2011-2012 and 2012-2013 school years.

### AGREEMENT

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

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

are attached hereto and incorporated herein by reference, to the Charter School under the terms and conditions set forth in this Agreement.

3. Term. The term of this Agreement shall be from August 1, 2011, to July 31, 2013 ("Term"), unless earlier terminated as provided herein.
4. Facilities Use Fee. The dollar amount to be paid by Charter School, per square foot, for use of the Facilities contemplated herein during the Term ("Facilities Use Fee") will be calculated by District pursuant to Title 5, California Code of Regulations, section 11969.7. To calculate the Facilities Use Fee, 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 District after the Term of the Agreement begins. Therefore, the District will provide an initial estimated Facilities Use Fee, subject to amendment when the preceding fiscal year figures become final. The initial estimated Facilities Use Fee and terms of payment are further defined in Exhibit C.

Within ninety (90) days of the beginning of the Term, or as soon as the actual facilities costs and total space figures for the prior fiscal year become available, whichever is later, the District shall provide notice to the Charter School of any *amended* Facilities Use Fee calculations based on the actual data for the prior fiscal year. Amounts owed to or by the Charter School due to this calculation will be credited or added to subsequent remaining monthly installment payments of the 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 Charter School of any late fees or interest shall in no event excuse or cure any default by Charter School nor waive District's legal rights and remedies with respect to such default.

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

5. Over-Allocation. The District reserves the right to collect over-allocation and other applicable fees and reimbursements from the Charter School, pursuant to Title 5, California Code of Regulations, Section 11969.8. The Charter School's projected in-District Average Daily Attendance ("ADA") for the 2011-2012 school year, and upon which the Facilities are provided, is **221**.
6. Dispute Resolution. The Parties agree to attempt to resolve all disputes regarding this Agreement, including the alleged violation, misinterpretation, or misapplication of the Agreement, pursuant to the dispute resolution procedures identified in the Charter School's charter. Notwithstanding the foregoing, those disputes that may result in

revocation of Charter School's charter, pursuant to Education Code section 47607, are not required to go through the dispute resolution process.

7. Use.

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

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

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

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

(e) Security Badges. The District will provide security badges to the Charter School for its staff. The Charter School will pay for the cost of the security badges. Charter School staff shall wear these badges to use as evidence that they are lawfully on the premises. Charter School is entitled to up to twenty-five (25) District badges. Lost or stolen badges shall be replaced at a cost of \$5.00 per badge.

(f) Civic Center Act. The Charter School agrees to comply with the provisions of the Civic Center Act (Education Code Section 38131, *et seq.*) in making use of the Facilities accessible to members of the community. The Parties understand that the Facilities are to be primarily used for school programs and activities and as such any use of the Facilities by members of the community shall not interfere with school activities. District Board Policy and Administrative Regulations related to the Civic Center Act shall control

scheduling, use and collection of fees related to use of the Facilities by members of the public. Consistent with that policy and the regulations, the District shall be solely responsible for coordinating access to the Facilities under the Civic Center Act and shall require users to provide appropriate proof of insurance related to use of the Facilities and to indemnify and hold harmless the District and Charter School for injury, risk of loss, or damage to property as a result of that access by members of the community. The District agrees to promptly clean and repair, if necessary, any portion of the Facilities used by members of the community immediately following such use. All requests for use of the Facilities made directly to the Charter School shall be forwarded to the District for coordination of use consistent with Board Policy and Administrative Regulations.

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

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

The Charter School shall reimburse the District for the cost of utilities at the Site, as charged to the District by its utility providers, pro-rated to reflect use by other users of the Site. Thirty (30) days prior to the commencement of the 2011-2012 school year, the District shall endeavor to notify the Charter School of its estimated monthly charge for utilities. The Charter School shall pay such charge to the District throughout the Term on a monthly basis concurrent with the Charter School's payment of the Facilities Use Fee to the District pursuant to Section 4 of this Agreement. Within one hundred twenty (120) days after the expiration or earlier termination of this Agreement, the District shall provide the Charter School with a reconciliation of the Charter School's actual utility usage throughout the Term and the cost thereof. The District shall either refund the Charter School for any overpayment or shall invoice the Charter School for any underpayment. The Charter School shall reimburse the District for such underpayment, if any, within thirty (30) days after receipt of said invoice.

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

10. Proposition 39/Conditions Reasonably Equivalent.

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

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

11. Gardening/Custodial Services.

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

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

13. Operations and Maintenance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19. Damage to or Destruction of School Site.

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

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

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

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

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

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

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

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

27. Miscellaneous.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

To District:

Sacramento City Unified School District  
Attn: Mary Shelton, Chief Accountability Officer  
5735 47th Avenue  
Sacramento, CA 95824  
Facsimile 916-643-94889

To Non-Profit or Charter School:

Yave Pem Suab Academy  
Attn: Dennis Mah, Superintendent  
7555 South Land Park Drive  
Sacramento, CA 95831  
Facsimile 916-691-9088

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

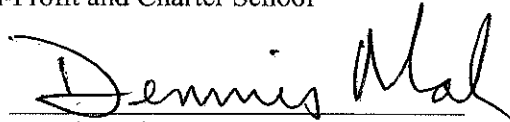
or portable document format ("pdf") to other Parties to this Agreement shall be deemed equivalent to original signatures on counterparts.

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

Non-Profit and Charter School

District

By:



Dennis Mah  
Superintendent

By:

Jonathan P. Raymond,  
Superintendent

Date:

4-25-2011

Date:

\*see attached letter of concern

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:

Abstentions:

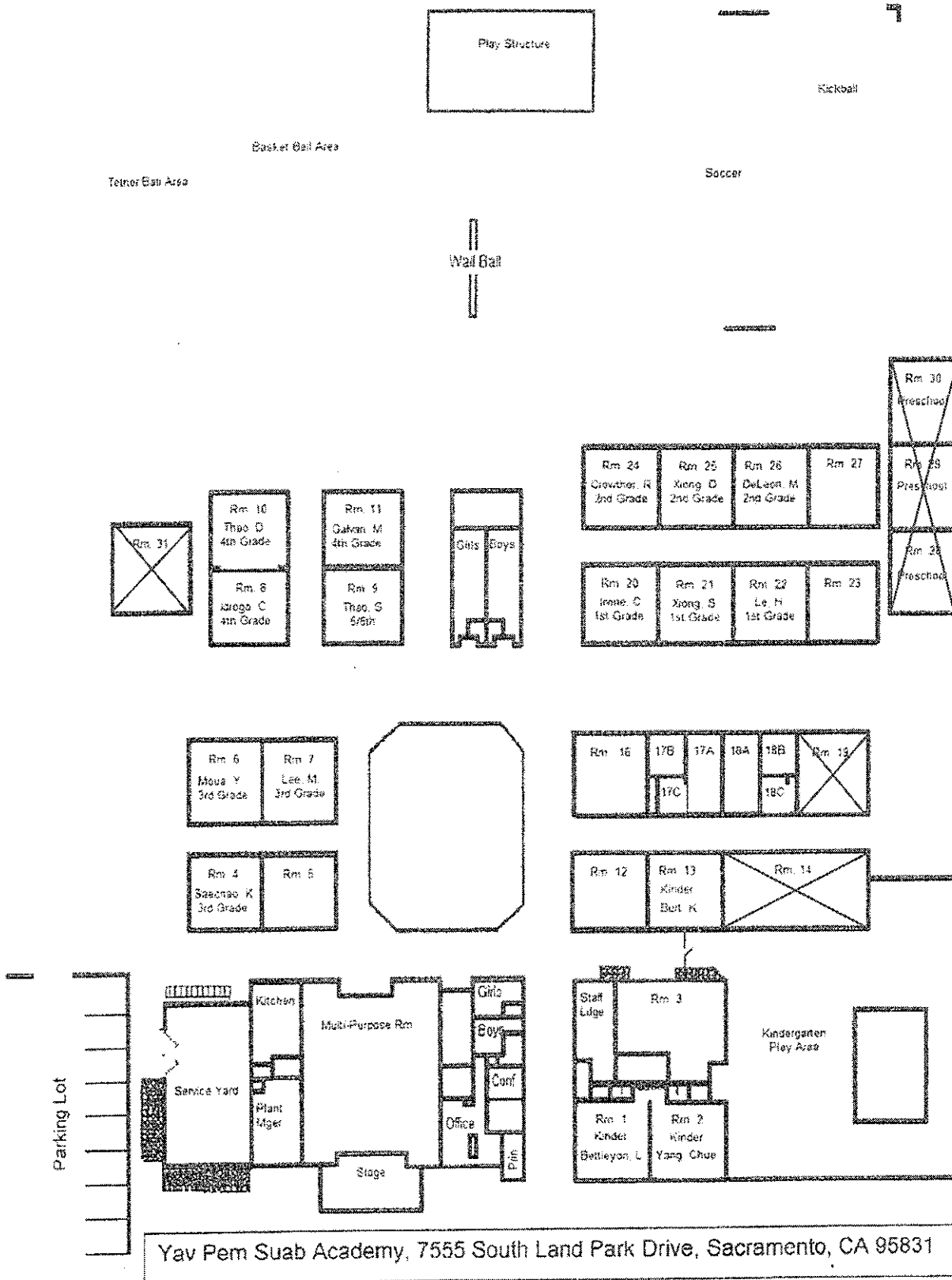
\_\_\_\_\_  
Secretary to the Board of Education

#### Exhibit A –Facilities

A description of the Facilities is as follows: The entire Site, except for the following Classrooms: 14, 19, 28, 29, 30 and 31. Rooms not allocated as Facilities are so marked on Exhibit B.

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

## EXHIBIT B



Yav Pem Suab Academy, 7555 South Land Park Drive, Sacramento, CA 95831

## EXHIBIT C

Charter School shall pay District an initial estimate Facilities Use Fee of Eighty-Six Thousand Seven Hundred forty Dollars and fifty Cents (\$86,740.50), based on a pro rata facilities cost estimate of Two Dollars and Ten Cents (\$2.10) per square foot for the use of approximately Forty-One Thousand Three Hundred Five (41,305) square feet of the Facilities during the Term of the Agreement. The initial estimate Facilities Use Fee shall be paid out in equal installments of Seven Thousand Two Hundred Twenty-Eight Dollars and Thirty-Eight Cents (\$7,228.38) 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"), without deduction, offset, prior notice or demand, in lawful money of the United States.

## EXHIBIT D

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