

## 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, which operates the Language Academy of Sacramento Charter School, a charter school (“Charter School”). The Language Academy of Sacramento and District are collectively referred to as “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 Fruit Ridge Elementary School, 4625 44th 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 (Educ. Code §§ 47600, *et seq.*) serving students in grades five through eight.
- 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 2009-10, 2010-11, and 2011-12 school years. (Term to be determined).

### 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 Language Academy of Sacramento, a California non-profit public benefit corporation.

- 1. Recitals. The recitals set forth above are incorporated herein and made part of this Agreement.
- 2. Facilities. Use of the Facilities shall be solely for the purposes set forth in the Charter School’s charter and on the terms and conditions set forth herein. The District grants use of the following facilities (“Facilities”) located on the Site, as depicted in Exhibit A, which is attached hereto and incorporated herein by reference, to the Charter School under the terms and conditions set forth in this Agreement: **[Staff will negotiate and fill**

in specifics regarding facilities to be provided at LAS. These terms will be negotiated with representatives of this site. Presently, the facilities for LAS are described in the current FUA as follows:

- 1.1 Charter School shall hereby be entitled to use that portion of the School Site as set forth in Exhibit A attached hereto as the Charter School Facilities (the “Facilities”). It is acknowledged that Charter School intends to use the Facilities as an educational facility as described in the Charter School’s charter and for administrative office space. It is also acknowledged that the parties will jointly occupy the School Site and agree to the joint use provisions set forth in this Agreement.**
  
- 1.2 Leases Portable Classrooms. In addition to the other classrooms set forth in Exhibit A, Charter School is authorized to continue to use those portable classrooms that are included in the Facilities and as identified on Exhibit A as rooms 39 and 40 (“Portable Classrooms”). The Parties agree that the Portable Classrooms have been leased by Charter School and placed on the School Site with the permission of District. As to the Portable Classrooms, Charter School agrees to the following conditions in addition to any other terms and/or conditions of this Agreement:**
  - 1.2.1 Charter School is responsible for all contracts, agreements fees and/or approvals required for the placement and use of the Portable Classrooms by Charter School;**
  
  - 1.2.2 The locations of the Portable Classrooms on the School Site shall be determined by District.**
  
  - 1.2.3 With the exception of indirect costs related to staff time for negotiation of this Agreement or as otherwise separately negotiated, the District shall not incur any expenses, nor be liable for costs or claims, related to the placement and use of the Portable Classrooms;**
  
  - 1.2.4 Charter School agrees to remove the Portable Classrooms upon termination of this Agreement and shall return the School Site to the condition of the School Site before the placement of the Portable Classrooms.**
  
- 1.3 Charter School shall be entitled to use a modular structure provided by the District for administrative office space (“Administration Annex”) subject to the following additional conditions:**
  - 1.3.1 The location of the Administration Annex on the School Site shall be determined by District**
  
  - 1.3.2 District shall retain ownership of the Administration Annex.**
  
  - 1.3.3 Charter School agrees to return the Administration Annex in the same**

condition in which it was received, normal wear and tear excepted.

- 1.4 **The Charter School and District agree to negotiate, in good faith, any cost sharing arrangements associated with permanent capital improvements necessary for the School Site required to allow the Portable Classrooms and Administration Annex to be placed and operated on the School Site.**
  
- 1.5 **Shared facilities/Scheduling. The parties acknowledge and agree that the Charter School and District will jointly use the areas and facilities at the School Site as set forth in Exhibit A and Exhibit B. Prior to the beginning of school, the site administrators of the Charter School and the Fruit Ridge Elementary School shall meet and cooperatively schedule use of the following facilities:**
  - 1.5.1 **Play areas**
  
  - 1.5.2 **Library**
  
  - 1.5.3 **Multi-purpose Room**
  
  - 1.5.4 **Cafeteria**
  
  - 1.5.5 **Room 25**
  
  - 1.5.6 **Student Restrooms (Rooms as agreed upon by Charter School and Fruit Ridge Elementary School Principals and District Custodial Supervisor)**
  
3. **Term. The term of this Agreement shall be for three school years, extending August 1, 2009, to June 30, 2012 (“Term”), unless earlier terminated as provided herein or extended by written agreement signed by the Parties and ratified by the District’s Governing Board.**
  
4. **Facilities Use Fee. Charter School shall pay District \_\_\_\_\_ (\$\_\_\_\_\_) [to be negotiated] per square foot (“Facilities Fee”) annually for use of the Facilities for the term of the Agreement. Payments shall be made in twelve equal installments in the amount of \_\_\_\_\_ (\$\_\_\_\_\_). Payments shall be payable in advance on the first day of each month, without deduction, offset, prior notice or demand, in lawful money of the United States. If payment is made more than fifteen (15) days late, a late fee of one percent (1%) shall apply and interest shall accrue after thirty (30) days at the Bank of America’s or its successor’s reference rate plus three percent (3%), not to exceed the maximum rate allowed by law, and shall not excuse or cure any default by Charter School.**

The Facilities Fee may be subject to an adjustment after the District recalculates its facilities costs at the close out for the fiscal year (“Adjustment”). In the event that an Adjustment is required, the District shall prorate the remaining monthly payments to reflect the Adjustment to the Facilities Fee. The Parties agree that the Facilities Fee is in

lieu of the Charter School paying a pro rata share for in-district students and any actual costs for out-of-district students.

**If the Charter School's in-district ADA is, at any time, less than as presented in its Proposition 39 Request for Facilities, then the District reserves its rights 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. On the first day of each month, and within three (3) school days of any written request by District, the Charter School shall provide enrollment information, including but not limited to student names, addresses, telephone numbers, parents' names, and school district of residence.**

5. Oversight Fee. The parties agree that the District will incur costs in connection with its performance of supervisory oversight of the Charter School as required by law, and that it is not in the best interests of either Party to require a mechanical assessment, accounting, billing and payment process to compensate the District for such costs. The parties further agree that the District is not providing the Charter School with substantially rent-free facilities as referenced by Education Code section 47613(b). Therefore, the parties agree that the actual cost of the District's supervisory oversight of the Charter School is one percent (1%) of all Charter School's general purpose entitlement and categorical block grants, as defined in subdivisions (a) and (b) of Education Code section 47632. Although calculated on an annual basis, the District shall withhold the one percent (1%) oversight fee on a monthly basis from the Charter School's in lieu property tax disbursement, pursuant to Education Code section 47635, with reconciliation to take place at the end of the fiscal year.
6. Dispute Resolution. Any and all disputes arising out of the interpretation or performance of this Agreement shall be subject to the following procedure, which shall supersede the dispute resolution procedure set forth in the Charter School's charter. Notwithstanding the foregoing, if any such dispute concerns facts or circumstances that may be cause for revocation of the Charter School's charter, the District shall not be obligated by the terms of this section as a precondition to revocation.
  - (a) The Superintendent of the District (or his or her designee), the Principal of Fruit Ridge Elementary School and the Executive Director of the Charter School shall each appoint one (1) representative to form a "Site Committee." If a Site Committee was previously appointed in attempt to resolve a prior dispute, the membership of such committee shall be deemed to continue in service unless (1) any member is no longer employed by the party such member represents, or (2) any two parties request, in writing, that the third party appoint a new member to replace an existing member, such requests to be made solely in the interest of furthering the resolution of disputes, or (3) the Superintendent of the District (or his or her designee), the Principal of Fruit Ridge Elementary School, or the Executive Director of the Charter School replace their own appointee. The Site Committee shall meet to attempt informal resolution of the dispute. The Site Committee shall attempt to formulate proposed solutions to the dispute, and shall present such solutions to the party each such member represents.

- (b) If such efforts do not yield a resolution within thirty (30) days of the first such meeting of the Site Committee to resolve each such dispute, the Superintendent of the District, the Principal of Fruit Ridge Elementary School and the Executive Director of the Charter School shall meet and confer in good faith with the Site Committee at least once and up to three times in an effort to reach a resolution of the dispute.
- (c) If the above efforts do not yield a resolution, the District and the Charter School shall follow the dispute resolution process set forth in the Charter School's charter.

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 may enroll no more than \_\_\_\_\_ students. Over-enrollment of students, pursuant to the terms of this provision, is a material breach of this Agreement. On the first day of each month, and within three (3) school days of any written request by District, the Charter School shall provide enrollment information, including but not limited to student names, addresses, telephone numbers, parents' names, and school district of residence. The Charter School shall provide adequate and appropriate supervision for Charter School students and employees using the Facilities.
- 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.
- 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 in all respects, including as particularly related to the

Facilities. The Charter School agrees to secure all necessary permits or clearances needed to occupy the Facilities.

- e) 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 by 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.

8. Furnishings and Fixtures.

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 August 1, 2009. 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. All furniture, fixtures, and equipment that is not the property of the District or is 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. 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 disturbance or labor dispute 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 be responsible for the cost of its pro-rata share of the Site's enrolled students for all utilities consumed at the Facilities. The

District shall invoice the Charter School for the actual cost of utilities on a quarterly basis. The Charter School shall pay the invoice within thirty (30) days.

10. Proposition 39/Conditions Reasonably Equivalent.

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.

Charter School represents and warrants to the District that the Charter School has investigated and inspected, independently or through agents of Charter School's own choosing, the condition of the Facilities and the suitability of the Facilities for Charter School's intended use. 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 Facilities, the physical or environmental condition of the Facilities or any other property beneath, adjacent to, or otherwise related to the Facilities.

11. Custodial Services. District shall provide custodial services for the Facilities consistent with services provided for other District schools. Custodial services will be performed by custodial employees of the District assigned to Fruit Ridge Elementary School. The Charter School shall reimburse the District for the salary and benefits of the custodians and their supervisors, based upon the Charter School's pro rata share of the student enrollment at the Site. The Charter School shall be invoiced by the District to the Charter School on a monthly basis. The Site's total share of these salary and benefits will be calculated by the District. Each invoice for custodial and maintenance services shall be paid within thirty (30) days of receipt.

The person responsible for Plant Management duties at Fruit Ridge Elementary School shall provide on-site supervision of and direction to the custodians. If any performance or bargaining issue arises related to a District custodian, the Charter School shall refer the issue to the District's plant manager for resolution.

12. Nutritional Services. The District shall provide the Charter School with food services and any related services to ensure compliance with, and funding from, State and federal child nutrition programs. A fee for such services shall be charged to the Charter School of \$\_\_\_\_\_ per unit of Charter School ADA. The Charter School's ADA shall be the P-1 ADA for the appropriate school year. The District and the Charter School agree that a "per ADA basis" is the fairest and most efficient means of determining the actual cost of providing each service to the Charter School. Charges for nutritional services shall be invoiced quarterly, and shall be due and payable on the first day of each quarter (July 1, October 1, January 1, and April 1) during the term of this Agreement.

13. Other Administrative Services. At any time during the term of this Agreement, the Charter School may request, and the District may in its sole discretion provide, such

additional administrative services as the Charter School may require. The terms of the District's provision of such services shall be memorialized in a writing executed by both parties, and the District shall provide such services in a manner and at a level consistent with the District's provision of such services to other charter schools of the District. Unless otherwise noted in the writing memorializing any such service, as set forth in section 11, a fee of \$\_\_\_\_\_ per ADA for each such service shall be charged to the Charter School on a per ADA basis and such fee shall be due and payable by the Charter School on the first day of each quarter during the term of this Agreement.

14. Maintenance and Repair.

- a) The ongoing operations and maintenance of the Facilities and equipment is the responsibility of District. The District shall also be responsible for providing the wiring/MIS infrastructure and maintaining it in its condition as of June 30, 2009. 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").
- 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. District shall be responsible for major maintenance and repair of the buildings and grounds on the Facilities, except to the extent repairs or major maintenance, other than normal wear and tear, are required as a result of Charter School's occupancy of the Facilities. Charter School shall reimburse District for the cost of such repairs for extraordinary maintenance. For the purposes of this section, "major maintenance" includes the major repair or replacement of plumbing, heating, ventilation, air conditioning, electrical, roofing, and floor systems, exterior and interior painting, grounds maintenance, and any other items considered deferred maintenance under Education Code section 17582. The District shall maintain and operate the Facilities at a level comparable with other District schools.
- c) Upon the expiration or earlier termination of this Agreement, Charter School shall surrender the Facilities in the same condition as received, ordinary wear and tear excepted.

15. 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 Deputy Superintendent/CFO. 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 law including the Field Act, Americans with Disabilities Act, the Fair Employment and Housing Act and other applicable building code standards.

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, 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 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.

16. 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. Charter School shall provide District with keys to unlock all necessary doors in the Facilities, excluding the Charter School's vaults and safes.
17. Employees, Contractors and Independent Contractors. The Charter School and the District, their employees, agents, contractors and subcontractors shall comply with the requirements of Education Code sections 45125.1 and 45125.2 related to access to the Facilities and protection of minor students.
18. Indemnity. The Language Academy of Sacramento 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, liability, expenses and costs for any injury, death or damage to any person or property arising from the Charter School's use of the Facilities or from the conduct of its business or from any activity, work, or other things done, permitted or suffered by the Charter School in or about the Facilities, excepting those claims, demands, actions, suits, losses, liability, expenses and costs arising out of the negligent or intentional acts of the District, agents, officers and invitees.

The Language Academy of Sacramento 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, or arising from any act, omission or negligence of the Charter School, or any officer, agent, employee, guest, or invitee of the Charter School, 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, liability, 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 or from any activity, work, or other things done, permitted, suffered, or contracted by the District in or about the Facilities, excepting those claims, demands, actions, suits, losses, liability, expenses and costs arising out of or relating to 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, or arising from any act, omission or negligence of the District, or any officer, agent, guest, or invitee of the District, 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.

19. **Insurance.** [DISTRICT SHOULD CONFIRM LIMITS AND THE ABOVE INDEMNITY LANGUAGE WITH ITS INSURANCE PROVIDER]

- a) **Bodily Injury and Property Damage.** The District shall maintain first party property insurance for the Facilities. The Language Academy of Sacramento shall, at all times during the term of this Agreement, and at its own cost and expense procure and continue in force the following insurance coverage: Bodily Injury and Property Damage Liability insurance with a combined single limit for bodily injury and property damage of not less than \$\_\_\_\_\_. Such minimum limits of policies shall in no event limit the liability of the Language Academy of Sacramento hereunder. Such insurance shall name the District as an additional insured. Insurance shall be with companies having a rating of not less than A- in "Best's Insurance Guide". The Charter School shall furnish from the insurance companies or cause the insurance companies to furnish certificates of coverage to the District. No such policy shall be cancelable or subject to reduction of coverage or other modification or cancellation except after thirty (30) days prior written notice to the District by the insurer and with the consent of the District thereto. The Charter School shall, at least twenty (20) days prior to the expiration of such policies, furnish the District with renewals or binders. The Charter School agrees that if the Charter School does not take out and maintain such insurance, then the District may (but shall

not be required to) procure said insurance on the Charter School's behalf and charge the Charter School the premiums together with a twenty-five percent (25%) handling charge, payable upon demand. The Charter School shall have the right to provide such insurance coverage pursuant to blanket policies obtained by the Charter School provided such blanket policies expressly afford coverage to the Facilities and to the Charter School as required by this Agreement.

20. 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.
- d) Damage Near the End of Term. Notwithstanding anything to the contrary contained in this Section 19, District shall not have any obligation whatsoever to repair, reconstruct or restore the Facilities when the damage resulting from any casualty covered under this Section 19 occurs during the last forty-five (45) days of the term of this Agreement or any extension thereof.

- e) Restoration of Fixtures. The District shall not be required to repair any injury or damage by fire or other cause, or to make any restoration or replacement of any panels, decorations, partitions, office fixtures, or any other improvements or property installed in the Facilities by Charter School or at the direct or indirect expense of Charter School. Charter School may restore or replace same if damaged. Charter School shall have no claim against District for any damage suffered by reason of any such damage, destruction, repair or restoration; nor shall Charter School have the right to terminate this Agreement as a result of any statutory provision now or hereafter in effect pertaining to the damage and destruction of the Facilities, except as expressly provided herein.
21. 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.
22. 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 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.
23. 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.
24. 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.
25. Smoking. The Facilities shall be non-smoking and no smoking shall be allowed in or on District property and Facilities, including but not limited to all balconies, courtyards, walkways, and parking areas.
26. 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 of a charter school.

- b) The failure by Charter School to make timely payment required under this Agreement, where such failure shall continue for a period of twenty (20) days after written notice thereof by the District to the Charter School. Such written notice shall reference this paragraph and shall be separate from any regular invoice.
- c) The failure by Charter School to observe or perform any of the express covenants, conditions or provisions of this Agreement.
- d) The failure by Charter School to maintain ADA of eighty (80) or more in-District students, as the term “in-District students” is defined by Proposition 39.
- e) Revocation or nonrenewal of Charter School’s charter.

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. 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 Fees shall bear interest from the date due at the minimum 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 during the Term of this Agreement.

- 27. 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.
- 28. Termination for Convenience. District may terminate this Agreement, without cause, upon giving not less than ninety (90) days written notice of termination. If District chooses to terminate the Agreement under this section, the District shall relocate the Charter School, at the District’s expense, to a comparable facility suitable for the Charter School, subject to the Charter School’s approval, which approval shall not be unreasonably withheld.
- 29. Miscellaneous.
  - a) Waiver. The waiver by either Party of any term, covenant or condition herein contained shall not be deemed to 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 and or 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 Charter and 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 Charter and any Agreement between the Charter School and the District, the terms of this Agreement shall prevail and shall be deemed an amendment to the 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 Charter School shall be sent by United States Mail, postage prepaid, addressed to Charter School at the Facilities 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:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

To Charter School:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

- o) Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original of the Agreement. Facsimile signature pages transmitted 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 of 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.

Charter School

District

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

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

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

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

Approved and ratified this \_\_\_\_\_ day of \_\_\_\_\_, 2009, 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 – Map of Facilities**