

**CHICO UNIFIED SCHOOL DISTRICT BOARD OF EDUCATION**

**Special Session**

**Tuesday, May 25, 2010**

**5:00 p.m. Closed Session; 6:00 p.m. Open Session**

**Chico Unified School District Office/Large Conference Room**

**1163 East Seventh St., Chico, CA 95928**

**AGENDA**

**5:00pm**

**1. CALL TO ORDER**

**2. CLOSED SESSION**

1. Conference with Legal Counsel

Anticipated Litigation

Significant exposure to litigation pursuant to Government Code Section 54954.5(b)

Two cases

Attending:

Kelly Staley, Superintendent

Bob Feaster, Assistant Superintendent

Jan Combes, Assistant Superintendent

Sara Simmons, Director

Mary Leary, Director

John Bohannon, Principal

John Yeh, Attorney at Law

2. Public Employment: Terms of Contract

Per Government Code §54957

Title: Superintendent

Title: Assistant Superintendent, Business Services

Title: Assistant Superintendent, Human Resources

**6:00pm**

**3. RECONVENE TO REGULAR SESSION**

1. Call to Order

2. Report Action Taken in Closed Session

**4. DISCUSSION/ACTION CALENDAR**

1. EDUCATIONAL SERVICES

1. Discussion/Action: Acceptance and Approval of Documents Related to Chico Country Day School Proposition 1D Modernization of Campus at 102 W. 11<sup>th</sup> Street, Chico, CA (Sara Simmons and Mary Leary) **(60 minutes)**

**7:00pm**

**5. ADJOURNMENT**

Jann Reed, President  
Board of Education  
Chico Unified School District

The Chico Unified School District Board of Education welcomes you to this meeting and invites you to participate in matters before the Board.

**INFORMATION, PROCEDURES AND CONDUCT  
OF CUSD BOARD OF EDUCATION MEETINGS**

***No disturbance or willful interruption of any Board meeting shall be permitted. Persistence by an individual or group shall be grounds for the Chair to terminate the privilege of addressing the meeting. The Board may remove disruptive individuals and order the room cleared, if necessary. In this case, further Board proceedings shall concern only matters appearing on the agenda.***

**CONSENT CALENDAR**

The items listed on the Consent Calendar may be approved by the Board in one action. However, in accordance with law, the public has a right to comment on any consent item. At the request of a member of the Board, any item on the consent agenda shall be removed and given individual consideration for action as a regular agenda item. Board Bylaw 9322.

**STUDENT PARTICIPATION**

At the discretion of the Board President, student speakers may be given priority to address items to the Board.

**PUBLIC PARTICIPATION FOR ITEMS ON THE AGENDA (Regular and Special Board Meetings)**

The Board shall give members of the public an opportunity to address the Board either before or during the Board's consideration of each item of business to be discussed at regular or special meetings.

- Speakers will identify themselves and will direct their comments to the Board.
- Each speaker will be allowed five (5) minutes to address the Board.
- In case of numerous requests to address the same item, the Board may select representatives to speak on each side of the item.

**PUBLIC PARTICIPATION FOR ITEMS NOT ON THE AGENDA (Regular Board Meetings only)**

The Board shall not take action or enter into discussion or dialog on any matter that is not on the meeting agenda, except as allowed by law. (Government Code 54954.2) Items brought forth at this part of the meeting may be referred to the Superintendent or designee or the Board may take the item under advisement. The matter may be placed on the agenda of a subsequent meeting for discussion or action by the Board.

- Public comments for items not on the agenda will be limited to one hour in duration.
- Initially, each general topic will be limited to 3 speakers.
- Speakers will identify themselves and will direct their comments to the Chair.
- Each speaker will be given five (5) minutes to address the Board.
- Once 2 speakers have shared a similar viewpoint, the Chair will ask for a differing viewpoint. If no other viewpoint is represented then a 3<sup>rd</sup> speaker may present.
- Speakers will not be allowed to yield their time to other speakers.
- After all topics have been heard, the remainder of the hour may be used by additional speakers to address a previously raised issue.

**WRITTEN MATERIAL:**

The Board is unable to read written materials presented during the meeting. If any person intends to appear before the Board with written materials, they should be delivered to the Superintendent's Office or delivered via e-mail to the Board and Superintendent 10 days prior to the meeting date.

**COPIES OF AGENDAS AND RELATED MATERIALS:**

- Available at the meeting
- Available on the website: [www.chicousd.org](http://www.chicousd.org)
- Available for inspection in the Superintendent's Office prior to the meeting
- Copies may be obtained after payment of applicable copy fees

**AMERICANS WITH DISABILITIES ACT**

Please contact the Superintendent's Office at 891-3000 ex. 149 should you require a disability-related modification or accommodation in order to participate in the meeting. This request should be received at least 48 hours prior to the meeting in order to accommodate your request.

Pursuant to Government Code 54957.5, If documents are distributed to board members concerning an agenda item within 72 hours of a regular board meeting, at the same time the documents will be made available for public inspection at the Chico Unified School District, Superintendent's Office located at 1163 East Seventh Street, Chico, CA 95928 or may be viewed on the website: [www.chicousd.org](http://www.chicousd.org).

**TITLE: Acceptance and Approval of Documents Related to Chico Country Day School Proposition 1D Modernization of Campus at 102 W. 11<sup>th</sup> Street, Chico, CA**

Action:   x  

Consent:       

Information:       

May 25, 2010

**Prepared by:** Sara Simmons, Director and Mary K. Leary, Director

**Background Information**

Chico Country Day School (CCDS) has been approved by the State Allocation Board for a preliminary apportionment for modernization of portions of Chico Unified School District (CUSD) property located at 102 W. 11<sup>th</sup> Street, currently occupied by CCDS.

The final application process requires CUSD Board approval of the following documents which are attached:

1. "Addendum to Charter Facilities Agreement by and between Chico Unified School District and Chico Country Day School" approved and ratified by the Chico Country Day School Board of Directors on May 13, 2009 and signed by Chico Country Day School Board Chair Chuck Tatreau.
2. "Use Agreement by and between Chico Unified School District and Chico Country Day School" approved and ratified by the Chico Country Day School Board of Directors on May 13, 2009 and signed by Chico Country Day School Board Chair Chuck Tatreau.
3. "Memorandum of Understanding" to be entered into by the State of California State Allocation Board, State of California School Finance Authority, the District and CCDS.
4. "Funding Agreement" to be entered into by the State of California School Finance Authority and CCDS.

**Educational Implications**

Modernized facilities are advantageous to the students, staff, and the community at large.

**Fiscal Implications**

CCDS is authorized to seek a maximum loan of \$4,218,531 from the California School Finance Authority. This represents a 50% match for their portion of the Proposition 1D project. The remaining 50% will come as a grant from Proposition 1D funds.

CUSD staff has reviewed the projected loan amounts as well as the debt service and concluded that, given the projections and assumptions of CCDS, the school should be able to repay their portion of the loan amount. Additionally, although CCDS students do not generate ADA for CUSD, the District does retain ownership of the facility CCDS currently occupies.

If CCDS defaults on the loan, CCDS is solely responsible to repay said loan.

If CUSD revokes or denies renewal of CCDS's charter, the District first must offer the site to another charter school authorized by CUSD that is eligible and willing to assume the loan. If no charter school assumes the loan, the liability would be the responsibility of CUSD.

**Additional Information**

The Board Chairs of CCDS and CUSD have negotiated a tentative five-year Memorandum of Understanding concurrent with the term of CCDS's charter renewal. The CUSD Board believes this additional document further delineates and clarifies the relationship between CUSD and CCDS.

**ADDENDUM TO CHARTER FACILITIES AGREEMENT  
BY AND BETWEEN CHICO UNIFIED SCHOOL DISTRICT  
AND CHICO COUNTRY DAY SCHOOL**

This Addendum to the Charter Facilities Agreement between the Chico Unified School District and Chico Country Day School is made this \_\_\_ day of May, 2009.

**RECITALS**

**WHEREAS**, the Chico Unified School District ("District") and Chico Country Day School ("Charter School") have entered into a Charter Facilities Agreement ("Agreement") dated October 11, 2006, with a term ending June 30, 2010; and

**WHEREAS**, in or around April 2007, Charter School made an Application for a Charter School Preliminary Apportionment to the State of California under Education Code section 17078.52 for a Preliminary Apportionment for the rehabilitation of certain facilities ("Rehabilitated School Facility") located at 102 West 11<sup>th</sup> Street, Chico, CA 95928 (the "School Site"), as described with more particularity in **Exhibits "A" and "B"**; and

**WHEREAS**, in or around May 2007, the District and Charter School entered into an "Agreement Between Chico Unified School District and Chico Country Day School – Proposition 1D State School Facilities Program Rehabilitation Funds"; and

**WHEREAS**, the Office of Public School Construction has notified Charter School that it is eligible for a charter school preliminary apportionment under the School Facility Program; and

**WHEREAS**, the parties anticipate that Charter School will initiate the necessary steps to commence design and construction of the Rehabilitated School Facility ("Project") at the Site during the term of the Charter Facilities Agreement; and

**WHEREAS**, under the Charter Facilities Agreement, Charter School has the right to the use and occupation of the facilities located at the School Site, as describe with more particularity in **Exhibit "C"**.

**NOW THEREFORE**, in consideration of the covenants and agreements hereinafter set forth, the parties agree as follows:

**Section 31. Use and Occupation of School Site.** It is the intent of the parties that Charter School shall continue use and occupation of the School Site under this Charter Facilities Agreement, and under the terms of Education Code section 47614 ("Proposition 39"), except where modified herein, for the duration of the term of this Agreement, and during the duration of the Project. It is the intent of the parties that the terms of this Charter Facilities Agreement and Proposition 39 shall not apply to the use

and occupation of the Rehabilitated School Facility. Should title to the Rehabilitated School Facility vest and be perfected in the District pursuant to Education Code section 17078.57 during the term of this Agreement, the parties agree to renegotiate a separate successor agreement to reflect Charter School's use and occupation of the Rehabilitated School Facility at the School Site.

**Section 32. Duty to Maintain Interim Facilities.** In the event that Charter School installs or causes to be installed any interim facilities pending, related to, or as a consequence of the rehabilitation, Charter School shall assume full responsibility for the cost of installation, maintenance, insurance, repair and removal of the interim facilities, including deferred maintenance under Education Code section 17582. The obligations set forth in Section 9 of the Agreement with respect to installation of improvements shall apply with equal force to the installation of interim facilities.

**Section 33. Deferred Maintenance.** Charter School agrees that, at all times during the term of this Agreement, as consideration for the District allowing it to claim the full square footage of the School Site in its application for a Preliminary Apportionment, it will assume responsibility for all deferred maintenance for all structures at the School Site, including but not limited to those items of major repair or replacement listed in Education Code section 17582.

**Section 34. Full and Complete Satisfaction.** The parties agree that the provision of facilities pursuant to the Agreement constitutes full and complete satisfaction of the District's obligation to provide facilities to the Charter School under Education Code section 47614 and the Proposition 39 regulations (CCR, Title 5, Section 11969.9) for the entire term of the Agreement. The parties further agree that any reconfiguration of the facilities at the site related to the installation of the Rehabilitated Facilities shall not confer upon Charter School any additional rights under Education Code section 47614 and the Proposition 39 regulations (CCR, Title 5, Section 11969.9) for the entire term of the Agreement. Charter School waives the right to request additional facilities during the entire term of the Agreement. Charter School also agrees that the Rehabilitated School Facility shall not give rise to an obligation on the part of the District to provide furnishings and equipment under Proposition 39 to those classrooms contained within the Rehabilitated School Facility.

**Section 35. Term** The terms of this Agreement shall continue in effect up to and including June 30, 2010, unless it is modified or terminated by mutual agreement between by the parties beforehand. Each party has the right to request, upon 10 days written notice to the other party, to present proposed revisions to the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

CHICO UNIFIED SCHOOL DISTRICT

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

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

Signature: \_\_\_\_\_

CHICO COUNTRY DAY SCHOOL

By: Chuck Tatreau

Title: Board Chair

Signature: Chuck Tatreau

Approved and ratified by the CHICO COUNTRY DAY SCHOOL Board of Directors on \_\_\_\_\_, 2009.

## USE AGREEMENT

by and between

### CHICO UNIFIED SCHOOL DISTRICT and CHICO COUNTRY DAY SCHOOL

This Use Agreement (the "Agreement"), is entered into on May \_\_\_\_\_, 2009 (the "Effective Date"), by and between Chico Unified School District, a school district duly organized and validly existing under and by virtue of the laws of the State of California ("District"), and Chico Country Day School, a California nonprofit public benefit corporation ("Charter School").

### RECITALS

WHEREAS, Charter School has applied to the State Allocation Board and the California School Finance Authority (individually or collectively referred to as the "State") for financing of modernization and rehabilitation of school facilities ("Rehabilitated School Facility") located on certain real property described in Exhibit "A", attached hereto and incorporated herein (the "School Site") owned by the District;

WHEREAS, the District shall provide the use of the School Site to Charter School for the operation of its charter school program; and

WHEREAS, the District and Charter School now desire to enter into an agreement for the design and construction of the Rehabilitated School Facility ("Project") and use of the School Site subject to the terms and conditions contained in this Agreement under the Proposition 1D statutes and regulations.

"Whereas the Rehabilitated School Facility that is the subject of the Project shall, for the purposes of this Agreement and for the application of the Education Code Section 17078.52, be defined as and limited to the construction of no more than 17,337.63 Square Footage of Non-Toilet Facilities and 840.37 Square Footage of Toilet Facilities on the 3 acres located on 102 West 11<sup>th</sup> Street, Chico, CA 95928, as described with more particularity in Exhibit B, "Application for Charter School Preliminary Apportionment School Facility Program SAB 50-09".

WHEREAS, the Parties intend that this Agreement shall operate in conjunction with the "Charter Facilities Agreement by and between Chico Unified School District and Chico County Day School" ("CFA"), dated October 11, 2006, with a term ending June 30, 2010, and the Addendum thereto, dated May \_\_\_\_\_, 2009, and those documents are attached hereto as Exhibits "C" and "D" and are hereby incorporated by reference; and

WHEREAS, the parties intend that the CFA and Addendum, attached hereto as Exhibits "C" and "D," govern Charter School's use and occupation of the Site only, as described more fully therein, under Proposition 39 (Education Code section 47614), and not of the Rehabilitated

School Facility.

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

**ARTICLE 1  
USE OF THE SCHOOL SITE**

1.1. **Use of the School Site.** Pursuant to California Education Code section 17078.62, the District shall make the Rehabilitated School Facility available to Charter School for the operation of a charter school program, subject to the terms and conditions set forth in this Agreement. Prior to commencing use of the Rehabilitated School Facility, Charter School will provide the District with a copy of a valid certificate of occupancy or equivalent issued by the California Division of the State Architect ("DSA").

1.2. **Term.** The term of this Agreement shall commence on the Effective Date and shall continue until the project has been COMPLETED upon which time a new agreement will be negotiated. The project is determined to be completed when the Office of Public School Construction audit has been finalized and the Department of the State Architect close out of the project has been completed.

1.3. **Design and Construction of School Site.**

1.3.1. **Responsibility for Construction of Project.** Charter School shall fund all design, construction and improvements on the Rehabilitated School Facility as well as pay for any and all costs related to infrastructure upgrades in accordance with Charter School's building and landscaping plans, as well as all applicable laws, rules and regulations.

1.3.2. **Alterations and Repairs.** Subject to subpart C of this Article and Section 9 of the "Charter Facilities Agreement by and between Chico Unified School District and Chico Country Day School," Charter School shall have the right to make additions, repairs, alterations, changes or improvements, in, on or to the Rehabilitated School Facility; and provided further, that Charter School shall pay, prior to delinquency, for all such work done by it or upon its order. Charter School shall make, at its own expense, any and all necessary repairs to, or replacement of, any equipment, structures or other physical improvements placed by it upon the School Site in order to comply with any and all applicable regulations, laws or ordinances of the State. In no event shall Charter School's alterations, repairs, modification or changes materially adversely affect the value of the School Site.

1.3.3. **District/DSA Review and Approval.**



1.3.3.1. District acknowledges and agrees that the DSA is the agency that has the formal project review and approval function for the construction of charter schools. The parties acknowledge DSA shall receive and approve Charter School's plans and specifications for the construction of the Rehabilitated School Facility and that Charter School shall provide a copy of said approved plans and specifications to the District.

1.3.3.2. Charter School shall require all contractors and subcontractors to maintain contractor's insurance and performance bonds for the duration of the Project, as well as any other work performed at the School Site.

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

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

1.4. Installation of Charter School's Equipment. Charter School may at any time, and from time to time, in its sole discretion and at its own expense, install or permit to be installed other items of equipment in or upon the School Site. All such items shall remain the sole property of Charter School and may be removed or modified by Charter School at any time, provided that Charter School shall repair and restore any and all damage to the School Site resulting from the installation, modification, or removal of any such items.

1.5. District's Disclaimer of Warranties. The District is not aware of any defect in or condition of the School Site or Rehabilitated School Facility that would prevent their use for the Charter School's purpose or for the Project. The District has not received any notices of any violation of statute, ordinance, regulation, order or holding from any state or federal agency with jurisdiction over the Rehabilitated School Facility or School Site that calls into question the appropriateness or sufficiency of the premises for their intended purpose. Charter School acknowledges that neither the District nor District's agents have made any representation or warranty as to the suitability of the Premises for the Project or to the conduct of Charter School's business. Any agreements, warranties or representations not expressly contained herein shall in no way bind either District or Charter School, and District and Charter School expressly waive all claims for damages by reason of any statement, representation, warranty, promise or agreement, if any, not contained in this Agreement.

**ARTICLE 2**  
**REPRESENTATIONS AND WARRANTIES OF CHARTER SCHOOL;**  
**REPRESENTATIONS AND WARRANTIES OF THE DISTRICT**

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

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

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

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

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

2.2.5. **Limitation on Use of School Site.** During the term of this Agreement, the Rehabilitated School Facility and School Site will be used by Charter School for the purpose of performing those activities and services consistent with the operation of a charter school program, the Civic Center Act, and consistent with the permissible scope of Charter School's organizational documents.

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

2.3. **Representations and Warranties of the District.** The District hereby represents and warrants to Charter School as follows:

- 2.3.1. Valid Existence. The District is a school district duly organized and validly existing under the laws of the State of California.
- 2.3.2. Power to Enter into Agreement. The District is authorized under the laws of the State of California to enter into this Agreement and perform all of its obligations hereunder.
- 2.3.3. Due Authorization. The District has been duly authorized to execute and deliver this Agreement under the terms and provisions of a resolution of the Board of Trustees of the District approving the form and authorizing the execution of this Agreement.
- 2.3.4. Enforceability of Agreement. District represents and warrants that all requirements have been met and procedures have occurred in order to ensure the enforceability of this Agreement (except as such enforceability may be limited by bankruptcy, insolvency, or other laws affecting creditors' rights generally and by the application of equitable principles) and the District further represents and warrants that this Agreement is a valid and binding obligation of the District, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency or other laws affecting creditors' rights generally and by the application of equitable principles.

### ARTICLE 3 PAYMENTS

3.1. Payments. Pursuant to the Funding Agreement with the State of California, Charter School has agreed to pay its fifty percent (50%) share of the Local Matching Share obligation to the State Allocation Board (the "Payments") in consideration for the State financing the Project. The parties to this Agreement hereby acknowledge and agree that the District is not liable to the State for the Payments (except as provided in California Education Code section 17078.62(b)(4), which section requires the District to notify the California School Finance Authority and take possession of the Rehabilitated School Facility and make the Rehabilitated School Facility available for continued use as a public school facility before the District is liable to the State), and that the District is not a guarantor or warrantor of Charter School's Payments. The parties agree that the terms of California Education Code section 17078.62 apply only to the Rehabilitated School Facility.

3.2. Additional Payments. In addition to the Payments, Charter School shall pay all fees and public charges of whatever nature assessed against the Rehabilitated School Facility or School Site, including, but not limited to, the payment of all taxes, and cost associated with telephone, water, sewer, gas, heat, electricity, garbage disposal, trash disposal, and all other services and utilities (herein called the "Additional Payments"). Such Additional Payments shall be paid by Charter School prior to delinquency. The parties to this Agreement hereby

acknowledge and agree that the District is not liable for the Additional Payments (except as provided in California Education Code section 17078.62(b)(4), which section requires the District to notify the California School Finance Authority and take possession of the Rehabilitated School Facility and make the Rehabilitated School Facility available for continued use as a public school facility before the District is liable to the State), and that the District is not a guarantor or warrantor of the Additional Payments.

#### **ARTICLE 4 CHARTER SCHOOL 'S OBLIGATIONS**

4.1. **Licensing; Accreditation.** Charter School shall, at its own cost and expense, maintain all accreditations, licenses, permits and other governmental approvals necessary for the operation of the School Site, design and construction of the Rehabilitated School Facility, and the charter school program.

4.2. **Maintenance of the School Site by Charter School.** Charter School agrees that, at all times during the term of this Agreement, Charter School will, at its own cost and expense, maintain, preserve, and keep the School Site and every portion thereof in good repair, working order, and condition and that Charter School will from time to time make or cause to be made all necessary and proper repairs, replacements, and renewals, including repair and maintenance of roofs and all other improvements on the School Site, performing exterior and interior painting of the same when necessary, performing both ordinary and extraordinary, foreseen and unforeseen repairs and maintenance, keeping the parcel, including all landscaping thereon, in good, safe and orderly condition, free of dirt, weeds, rubbish, debris and unlawful obstructions, properly lighted; and repair, restoration and maintenance of same at such Charter School's cost and expense. Charter School agrees that, at all times during the term of this Agreement, as consideration for the District allowing it to claim the full square footage of the School Site in its application for funding under Proposition 1D, it will assume responsibility for all deferred maintenance for all structures at the School Site, including but not limited to those items of major repair or replacement listed in Education Code section 17582.

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

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

to the Rehabilitated School Facility or School Site, and any equipment or other property acquired by Charter School in substitution for, as a renewal or replacement of, or a modification, improvement or addition to the Rehabilitated School Facility or School Site.

- 4.3.2. Agreement-Related Taxes Imposed on Charter School. Charter School shall also pay directly or pay as Additional Payments hereunder such amounts, if any, in each year as shall be required by the District for the payment of all license and registration fees and all taxes (including, without limitation, income, excise, license, franchise, capital stock, recording, sales, use, value-added, property, occupational, excess profits and stamp taxes), levies, imposts, duties, charges, withholdings, assessments, and governmental charges of any nature whatsoever, together with any additions to tax, penalties, fines or interest thereon, including, without limitation, penalties, fines, or interest arising out of any delay or failure by Charter School to pay any of the foregoing, hereinafter levied or imposed against the District with respect to the School Site and/or this Agreement by any governmental authority.
- 4.3.3. Utility Charges. Charter School shall be responsible for any utility hook-up and connection fees and costs. In addition, Charter School shall pay or cause to be paid all gas, water, steam, electricity, heat, power, air conditioning, telephone, utility, and other charges incurred in the operation, maintenance, use, occupancy, and upkeep of the School Site.
- 4.3.4. Charter School shall pay, prior to delinquency, all lawful taxes, assessments, or charges which at any time may be levied against the School Site.

4.4. Liens on School Site or Rehabilitated School Facility. In the event Charter School shall at any time during the term of this Agreement cause any alterations, additions, improvements, renovations, modifications, expansions, or any repair, reconstruction or rehabilitation or other work to be done or performed, or materials to be supplied, in or upon the Rehabilitated School Facility or School Site (collectively and generally referred to as "Future Work"), Charter School shall pay, when due, all sums of money that may become due for, or purporting to be for, any labor, services, materials, supplies, or equipment furnished or alleged to have been furnished to or for Charter School in, upon or about the Rehabilitated School Facility or School Site for future work and shall keep the Rehabilitated School Facility and School Site free of any and all mechanics' or materialmen's liens or other liens against the Rehabilitated School Facility or School Site other than those liens, if any, already in place as of the date hereof. In the event any such lien attaches to or is filed against the Rehabilitated School Facility or School Site, Charter School shall cause each such lien to be fully discharged and released at the time the performance of any obligation secured by any such lien matures or becomes due, except that if Charter School desires to contest any such lien it may do so in good faith. If any

such lien is reduced to final judgment and such judgment or such process as may be issued for the enforcement thereof is not promptly stayed, or if so stayed and said stay thereafter expires, Charter School shall forthwith pay (or cause to be paid) and discharge such judgment. Charter School agrees to and shall, to the maximum extent permitted by law, indemnify and hold the District, its governing board, agents, successors and assigns, harmless from and against, and defend each of them against, any claim, demand, loss, damage, liability or expense (including attorney's fees) as a result of any such lien or claim of lien against the Rehabilitated School Facility or School Site resulting from said future work.

4.5. Environmental Covenants.

4.5.1. Compliance with Laws; No Hazardous Substances. Charter School will comply with all Applicable Environmental Laws with respect to the School Site and Rehabilitated School Facility and will not use, store, generate, treat, transport, or dispose of any Hazardous Substance thereon or in a manner that would cause any Hazardous Substance to later flow, migrate, leak, leach, or otherwise come to rest on or in the School Site or Rehabilitated School Facility in violation of said Applicable Environmental Laws. In the event Charter School breaches this provision, Charter School shall indemnify the District for any injury or loss associated therewith.

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

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

4.5.2.2. "Applicable Environmental Laws" means and shall include, but shall not be limited to, the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 USC Sections 9601 et seq.; the Resource Conservation and Recovery Act ("RCRA"), 42 USC Sections 6901 et seq.; the Federal Water Pollution Control Act, 33 USC Sections 1251 et seq.; the Clean Air Act, 42

USC Sections 7401 et seq.; the California Hazardous Waste Control Law ("HWCL"), California Health & Safety Code Sections 25100 et seq.; the Hazardous Substance Account Act ("HSAA"), California Health & Safety Code Sections 25300 et seq.; the Porter-Cologne Water Quality Control Act (the "Porter-Cologne Act"), California Water Code Sections 1300 et seq.; the Air Resources Act, California Health & Safety Code Sections 3900 et seq.; the Safe Drinking Water & Toxic Enforcement Act, California Health & Safety Code Sections 25249.5 et seq.; and the regulations under each thereof; and any other local, state, and/or federal laws or regulations, whether currently in existence or hereafter enacted, that govern: (i) the existence, cleanup, and/or remedy of contamination on property; (ii) the protection of the environment from spilled, deposited, or otherwise emplaced contamination; (iii) the control of hazardous wastes; or (iv) the use, generation, transport, treatment, removal, or recovery of Hazardous Substances, including building materials.

- 4.5.3. Notification. Charter School will transmit copies of all notices, orders, or statements received from any governmental entity concerning violations or asserted violations of Applicable Environmental Laws with respect to the School Site or Rehabilitated School Facility and any operations conducted thereon or any conditions existing thereon to the District and the State, and Charter School will notify the District and the State in writing immediately of any release, discharge, spill, or deposit of any Hazardous Substance that has occurred or is occurring that in any way affects or threatens to affect the Rehabilitated School Facility or School Site, or the people, structures, or other property thereon, provided that no such notification shall create any liability or obligation on the part of the District or the State.
- 4.5.4. Access for Inspection. Charter School will permit the State and the District, its successors, assigns, agents, or any experts designated by the State and/or the District to have full access to the Rehabilitated School Facility and School Site with prior written notice to Charter School or the school principal during reasonable business hours for purposes of such independent investigation of compliance with all Applicable Environmental Laws, provided that the District and the State have no obligation to do so, or any liability for any failure to do so, or any liability should it do so.
- 4.5.5. Compliance with California Environmental Quality Act: Except as set

forth in Section 4.5.6, Charter School shall assume all costs and responsibility for compliance with the terms of California Public Resources Code section 21000 et seq. (California Environmental Quality Act) that result from its use, occupancy, modification or repair of the Rehabilitated School Facility or School Site and shall hold harmless the District against all costs, expenses, and liability for doing so. Charter School shall not be responsible for legal compliance or for environmental conditions that existed prior to Charter School's occupancy of the Rehabilitated School Facility and the School Site

- 4.5.6. Release of all Claims and Demands. Charter School hereby releases the District, its governing board, employees and agents (collectively, the "released parties"), from any and all claims, demands, debts, liabilities, and causes of actions of whatever kind or nature which Charter School or any of its employees or agents may have, claim to have, or which may hereafter accrue against the released parties or any of them, arising out of or relating to or in any way connected with Hazardous Substances presently in, on or under, or now or hereafter emanating from or migrating onto or under the SCHOOL SITE. In connection with such release, Charter School hereby waives any and all right conferred upon it by the provisions of section 1542 of the California Civil Code, which reads as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

4.6. Title to the Property. Charter School will at all time protect and defend, at its own cost and expense, the title to the Rehabilitated School Facility and School Site from and against all claims, liens, and legal processes of creditors, and keep the Rehabilitated School Facility and School Site and the title free and clear of all such claims, liens and processes except for the liens created or expressly permitted by the terms of the Funding Agreement and the Charter School Facilities Program.

4.7. Right of Entry. Charter School shall permit District, its agents, representatives or employees, to enter upon the Site for the purpose of inspecting same or to make repairs, alterations, or additions to any portion of the Site. District shall attempt to give reasonable notice where practicable but shall not be obligated to do so in the event of emergency or imminent threat to health or safety of occupants. Charter School shall provide the District with a master key so that the District may access the School Site only in the event of an emergency.

4.8. Assignment and Subleasing by Charter School. This Agreement shall not be mortgaged, pledged, assigned, sublet, encumbered, or transferred by Charter School by voluntary



act or by operation of law or otherwise, except with the prior written consent of the District, which consent shall not be unreasonably withheld. No such mortgage, pledge, assignment, sublease or transfer shall in any event affect or reduce the obligation of Charter School to make the Payments and Additional Payments required hereunder. Nothing in this Agreement is intended to negate charter schools ability to partnership with either the City of Chico or the Chico Area Recreation District (CARD) for purposes related to Charter School purposes.

4.9. **Civic Center Act.** Although Charter School shall have the exclusive use of the Site, Charter School agrees to comply with the provisions of the Civic Center Act (Education Code section 38131 et seq.) in making use of the non-classroom facilities and grounds accessible to members of the community. For purposes of compliance with the Civic Center Act with respect to the Site, the Charter School Board of Directors shall hold the same powers and obligations applicable to School District Boards of Trustees under Education Code sections 38130-38139 and shall also follow District Board Policy and Administrative Regulations in making use of the facilities accessible to members of the community.

4.10. **Future Work.** Charter School shall be solely responsible for securing the permits, approvals and other entitlements for all Future Work, as it did for the School Site under the Charter School Facilities Program.

4.11. **Project Costs.** Charter School hereby acknowledges and agrees that the District shall in no way be responsible for any costs whatsoever relating to the Project. Charter School shall be totally responsible for all such costs and shall immediately reimburse the District should the District incur any such costs for any reason.

4.12. **District Oversight:** Consistent with the District's oversight duties as set forth in Education Code section 47600 et seq., Charter School shall provide the District with regular updates, no less than once a month, on the progress of the Project, including but not limited to the design and construction of the Rehabilitated School Facility, and shall promptly respond to all requests for information by the District pursuant to Education Code section 47604.3.

## ARTICLE 5 DISTRICT'S OBLIGATIONS

5.1. **Title to the Rehabilitated School Facility.** The District's sole obligation with respect to the Rehabilitated School Facility is to hold title to the Rehabilitated School Facility in trust for the benefit of the State public school system in accordance with Education Code section 17078.62. In the event Charter School ceases to use the Rehabilitated School Facility for its charter school purposes, the District shall apply the usage and priority provisions of Education Code section 17078.62. Charter School shall cooperate and assist with any transition that may take place pursuant to the priority provisions. The parties agree that the provisions of Education Code section 17078.62 shall apply solely to the Education Code section 17078.62 and not to any other structure, building, improvement, encumbrance, easement at the School Site, or to the real property contained therein.

5.2. **Funding the School Site.** The District shall have no obligation to provide funding to Charter School for the planning, design, construction, operation and/or maintenance of the School Site.

5.3. **Future Work.** Any Future Work performed by, at the direction of, or for the benefit of Charter School shall be subject to Section 9 of the "Charter Facilities Agreement by and between Chico Unified School District and Chico Country Day School," After completion of the Rehabilitated School Facility, Charter School shall not construct or install any improvements (as defined in Civil Code 660) on the School Site or otherwise alter the School Site without the prior written consent of District, and if required, the Division of the State Architect.

## ARTICLE 6 INDEMNIFICATION

6.1. **Liability of the District.** The District and its governing board, officers, agents, and employees shall not be liable to Charter School, to the State, or to any other party whomsoever for any death, injury, or damage that may result to any person or property by or from any cause whatsoever in, on, or about the School Site.

6.2. **Indemnification of the District.** Charter School shall, at its sole cost and expense with counsel acceptable to the District and, to the full extent then permitted by law, indemnify, protect, hold harmless, save, and keep harmless the District, its assignees, its governing board, officers, employees, and agents, from and against any and all liability, obligations, losses, claims, and damages whatsoever, regardless of the expenses in connection therewith, including, without limitation, reasonable counsel fees and expenses, penalties and interest arising out of or as the result of the Charter School's obligations under this Agreement, provided, however, that Charter School shall not have any obligation to indemnify, hold harmless or defend the District, its 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, resulting from or arising out of the negligence or malfeasance of the District, its trustees, officers, employees and agents or any person or entity not subject to the Charter School's control and supervision. In case any action or proceeding is brought, made or initiated against the District relating to any matter covered by Charter School's indemnification obligation, Charter School shall, at its sole cost and expense, resist or defend such claim, action, or proceeding by counsel approved by the District. Notwithstanding the foregoing, the District may retain its own counsel to defend or assist in defending any claim, action, or proceeding, and Charter School shall pay the reasonable fees and disbursements of such counsel.

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

obligations under this Agreement.

The indemnification arising under this section shall continue in full force and effect notwithstanding the full payment of all obligations owed to the State under this Agreement and the Funding Agreement, and the termination of this Agreement for any reason. Charter School and the District mutually agree to promptly give notice to each other of any claim or liability hereby indemnified against following either's learning thereof.

6.3. **Indemnification of the Charter School.** District shall, at its sole cost and expense with counsel acceptable to the Charter School and, to the full extent then permitted by law, indemnify, protect, hold harmless, save, and keep harmless the Charter School, its assignees, its governing board, officers, employees, and agents, from and against any and all liability, obligations, losses, claims, and damages whatsoever, regardless of the expenses in connection therewith, including, without limitation, reasonable counsel fees and expenses, penalties and interest arising out of or as the result of any claim arising out of the District's obligations under this Agreement, provided, however, that the District shall not have any obligation to indemnify, hold harmless or defend the Charter School, its 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 occurring on the Site after District delivers possession of the Site to the Charter School, resulting from or arising out of the negligence or malfeasance of the Charter School, its trustees, officers, employees and agents or any person or entity not subject to the District's control and supervision. In case any action or proceeding is brought, made or initiated against the Charter School relating to any matter covered by District's indemnification obligation, District shall, at its sole cost and expense, resist or defend such claim, action, or proceeding by counsel approved by the Charter School. Notwithstanding the foregoing, the Charter School may retain its own counsel to defend or assist in defending any claim, action, or proceeding, and District shall pay the reasonable fees and disbursements of such counsel.

The indemnification arising under this section shall continue in full force and effect notwithstanding the full payment of all obligations owed to the State under this Agreement and the Funding Agreement, and the termination of this Agreement for any reason. Charter School and the District mutually agree to promptly give notice to each other of any claim or liability hereby indemnified against following either's learning thereof.

## ARTICLE 7 INSURANCE

7.1. **Insurance Coverage.** Charter School shall maintain all insurance coverage that it currently maintains in 2008-2009 under the California Charter Schools Association Joint Powers Authority, in addition to those requirements contained below.

7.2. **Fire and Extended Coverage Insurance.**

7.2.1. **Coverage.** Charter School shall procure or cause to be procured and

maintain or cause to be maintained, throughout the term of this Agreement, insurance against loss or damage to any structures constituting any and all parts of the Rehabilitated School Facility by fire and lightning, with extended coverage insurance, vandalism and malicious mischief insurance, sprinkler system leakage, and plate glass insurance. Said extended coverage insurance shall, as nearly as practicable, cover loss or damage by explosion, windstorm, riot, aircraft, vehicle damage, smoke, and such other hazards as are normally covered by such insurance. Subject to Section 7.4 and 7.5 hereof, the insurance required by this Section may be maintained as part of or in conjunction with any other insurance maintained by Charter School. Full payment of proceeds of such insurance up to the policy limit shall not be contingent on the degree of damage sustained at other facilities owned or leased by Charter School.

- 7.2.2. Amount. Such insurance shall be in an amount equal to the replacement cost (without deduction for depreciation) of all structures constituting any part of the Rehabilitated School Facility, excluding the cost of excavations, of grading and filling, and of the land (except that such insurance may be subject to deductible clauses for any one loss of not to exceed \$10,000). The policy must explicitly waive any co-insurance penalty.
- 7.2.3. Repair or Replacement of Rehabilitated School Facility or School Site. In the event of any damage to or destruction of any part of the Rehabilitated School Facility or School Site caused by the perils covered by such insurance, Charter School, except as hereinafter provided, shall cause the proceeds of such insurance to be utilized for the repair, reconstruction, or replacement of the damaged or destroyed item or items to at least the same good order, repair, and condition as they were in prior to the damage or destruction, insofar as the same may be accomplished by the use of said proceeds.
- 7.2.4. Federal Disaster Relief. Charter School shall promptly apply for Federal disaster aid or State of California disaster aid in the event that the Rehabilitated School Facility or School Site is damaged or destroyed as a result of an earthquake occurring at any time. Any proceeds received as a result of such disaster aid shall be used to repair, reconstruct, restore, or replace the damaged or destroyed portions of the Rehabilitated School Facility or School Site, with any excess proceeds being returned to Charter School.
- 7.2.5. Property Insurance. District shall maintain, for the duration of this Agreement, all-risk real property coverage adequate to cover the replacement cost of all buildings on the School Site and those other

facilities to which the Charter School may have access, except that the Charter School shall maintain such insurance for the Rehabilitated School Facility.. Charter School shall be solely responsible for obtaining adequate personal property or contents insurance for Charter School's personal property located on the Site or elsewhere. In addition, Charter School is solely responsible for insuring its building improvements. District shall be solely responsible for obtaining adequate personal property or contents insurance for District's personal property located on the Premises or elsewhere.

7.3. **Public Liability and Property Damage Insurance.**

- 7.3.1. **Coverage: General & Excess Liability.** The Charter School, at its expense, shall procure and maintain throughout the term of this Agreement General Liability insurance with a minimum per occurrence limit of \$15,000,000 and the deductible/self-insurance retention shall not exceed \$10,000. Insurance shall include coverage for claims against the Charter School, its elected or appointed officials, employees, agents, volunteers and students (including but not limited to interns while acting on behalf of the Charter School) arising out of errors and omissions, abuse and molestation, and employment practices liability. The policy or policies shall name as additional insured/additional covered party the District, its elected or appointed officials, employees, agents and volunteers. The policy or policies shall provide that this insurance shall be primary with respect to any liability or claimed liability arising out of the performance or activities by the Charter School under this Agreement or the Charter School's use of the Premises, and that any insurance procured by the District, its elected or appointed officials, employees, agents and volunteers shall be excess and shall not be called upon to contribute until the limits of the insurance provided hereunder shall be exhausted. District is not responsible for personal property losses suffered by the Charter School, it's elected or appointed officials, employees, agents, volunteers or students.
- 7.3.2. **Automobile Insurance.** Charter School shall maintain automobile liability insurance, including non-owned and hired coverage with a minimum per accident limit of \$15,000,000 for any injuries to persons (including death therefrom) and property damage in connection with the Charter School's activities under this Agreement.
- 7.3.3. **Workers' Compensation Insurance.** Charter School is to procure and maintain, for the duration of this Agreement, Workers' Compensation insurance against claims for injuries to the Charter School's employees in accordance with such insurance as required by the State of California

Labor Code and Employers Liability coverage. Charter School shall maintain workers' compensation insurance covering all Charter School employees working on the Project and at the School Site in the amounts as required by law. Such insurance may be maintained by Charter School as part of or in conjunction with any other insurance maintained by Charter School.

7.3.4. Title Insurance. Charter School shall provide the District with an ALTA owner's policy issued by a company of recognized standing duly authorized to issue the same.

7.4. General Provisions.

7.4.1. Form of Policies. All policies of insurance required by Sections 8.1, 8.2, 8.3 and 8.5 hereof shall name both the District and the State as additional insureds. All policies of insurance required by this Article shall provide that all proceeds thereunder shall be payable to the State and the District pursuant to a lender's loss payable endorsement substantially in accordance with the form approved by the Insurance Services Office and the California Bankers Association. The State and the District shall collect, adjust, and receive all moneys that may become due and payable under any such policies. All policies of insurance required by this Agreement shall provide that the District and the State shall be given thirty (30) days' prior written notice of each expiration thereof or any intended cancellation or substitution thereof, or reduction of the coverage provided thereby.

7.4.2. Ratings. All policies of insurance shall be obtained from companies rated not less than "A" by the A.M. Best Company or in the two highest rating categories of Standard & Poor's and Moody's.

7.4.3. Payment of Premiums. Charter School shall pay when due the premiums for all insurance policies required by this Agreement, and shall promptly furnish evidence of such payments in the form of a certificate of insurance to the District and the State.

7.4.4. Evidence of Insurance. Charter School will deliver to the District and the State in the month of August in each year a Statement of Charter School certifying that such policies satisfy the requirements of this Agreement, setting forth the insurance policies then in force pursuant to this Article, the names of the insurers that have issued the policies, the amounts thereof, and the property and risks covered thereby. If so requested in writing by the District or the State, Charter School shall also deliver to the District or the State certificates or duplicate originals or certified copies of

each insurance policy described in Charter School's officer's certificate.

7.4.5. Reserves Against Deductibles. Charter School shall provide adequate reserves to fund the amount of any deductible allowed under this Article.

7.4.6. Cooperation. In the event Charter School shall fail to maintain the full insurance coverage required by this Agreement or shall fail to keep the Rehabilitated School Facility or School Site in good repair and operating condition, the District may (but shall be under no obligation to) purchase the required policies of insurance and pay the premiums on the same or may make such repairs or replacements as are necessary and provide for payment thereof; and Charter School agrees to reimburse the District all amounts so advanced within thirty (30) days of a written request therefore.

7.4.7. Notice. Charter School shall immediately notify the District and the State, in writing, if any damage occurs or any injury or loss is sustained to all or part of the Rehabilitated School Facility or School Site, or any action or proceeding relating to any damage, injury, or loss is commenced. The District and the State may, but shall not be obligated to, in its own name appear in or prosecute any action or proceeding to enforce any cause of action based on warranty, or for damage, injury or loss to all or part of the Rehabilitated School Facility or School Site, and may make any compromise or settlement of any action or proceeding; provided, however, that no compromise or settlement that materially affects Charter School shall be entered into or agreed to without Charter School's prior written consent, which consent shall not be unreasonably withheld.

7.5: Proof of Insurance. Charter School shall furnish the District with original certificates and amendatory endorsements affecting coverage required by this Agreement. All certificates and endorsements are to be received and approved by the District before commencement of any activities under this Agreement. However, failure to do so shall not operate as a waiver of these insurance requirements. The District reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by this Agreement at any time

## ARTICLE 8 DEFAULT AND REMEDIES

8.1. Events of Default and Remedies. In the event Charter School shall be in default in the performance of any obligation on its part to be performed under the terms of this Agreement, which default continues an unreasonable period of time following written notice and demand for correction thereof to Charter School, District may exercise any and all remedies granted by law, including termination of the Agreement.

**ARTICLE 9**  
**DAMAGE AND DESTRUCTION OF SITE**

9.1 **Partial Damage.** If the Rehabilitated School Facility or School Site is damaged by any casualty which is covered by applicable insurance, and the Charter School still has access to at least sixty percent (60%) of the usable classroom space, then the Rehabilitated School Facility or School Site shall be restored provided insurance proceeds are available to pay for the cost of restoration, and provided such restoration can be completed within one hundred twenty (120) days after the commencement of the work in the opinion of a registered architect or engineer approved by District. In such event, this Agreement shall continue in full force and effect. The District shall provide the Charter School temporary housing on the Rehabilitated School Facility or School Site, or another school site that is near to the Rehabilitated School Facility or School Site for any part of the Charter School program that is displaced by the partial damage and/or the repair work of the same.

9.2 **Total Destruction.** If the Rehabilitated School Facility or School Site is totally destroyed (defined as the destruction of more than forty percent (40%) of the usable classroom space), or the Rehabilitated School Facility or School Site cannot be restored as required herein, 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 will comply with Proposition 39 and provide a school facility to the Charter School as soon as possible so as to avoid any interruption in the educational program of the Charter School.

9.3 **Condemnation.** If all or any part of the Rehabilitated School Facility or School Site shall be taken or appropriated for public or quasi-public use by right of eminent domain, with or without litigation, then the Charter School shall have the right at its option exercisable within thirty (30) days of receipt of notice of such taking to terminate this Agreement as of the date possession is taken by the condemning authority, provided, however, that before Charter School may terminate this Agreement by reason of taking or appropriation as provided hereinabove, such taking or appropriation shall be of such an extent and nature as to impede or impair Charter School's use of more than fifty percent (50%) of the classroom space at the Rehabilitated School Facility or School Site. Charter School does not waive any award to which it might be entitled which may be made in such taking or condemnation (specifically excluding any claim arising out of a claim in right, title, or interest to the Rehabilitated School Facility or School Site, or any fixtures, improvements or appurtenances thereto), together with any and all rights of Charter School now or hereafter arising in or to the same or any part thereof except that nothing in this provision shall create any obligation on the part of the District to pursue any such claim on behalf of the Charter School. No temporary taking (defined as a taking of less than one hundred eighty (180) days of the Rehabilitated School Facility or School Site and/or of Charter School's rights therein or under this Agreement shall terminate this Agreement. If the Charter School exercises its right to terminate this Agreement as provided in this Section, or if the Charter School suffers a partial or temporary taking, the District shall comply with Proposition 39 in providing the Charter School a school facility upon a formal request made under Proposition 39 by the Charter School.



## ARTICLE 10 DISPUTE RESOLUTION

10.1. **Dispute Resolution.** Only as to the dispute relates to Prop 1D rehabilitation, disputes between the Charter School and the District regarding the alleged violation, misinterpretation, or misapplication of this Agreement shall be resolved using the dispute resolution process identified below. The party initiating the dispute resolution process shall prepare and send to the other party a notice of dispute that shall include the following information: (1) the name, addresses and phone numbers of designated representatives of the party; (2) a statement of the facts of the dispute, including information regarding the parties' attempts to resolve the dispute; (3) the specific sections of the Agreement that are in dispute; and (4) the specific resolution sought by the party. Within five (5) days from receipt of the notice of dispute, the representatives from the Charter School shall meet with representatives from the District in an informal setting to try to resolve the dispute.

If the informal meeting fails to resolve the dispute, the party initiating the dispute resolution process shall notify the other party (the responding party) in writing that it intends to proceed to mediation of the dispute and shall request the State Mediation and Conciliation Service to appoint a mediator within seven (7) days to assist the parties in resolving the dispute. The initiating party shall request appointment of a mediator who is available to meet as soon as possible but not later than thirty (30) days after receipt of the request for appointment. If the State Mediation and Conciliation Services are unavailable to appoint a mediator in a timely fashion, then the parties shall agree upon a mediator. The party initiating the dispute shall forward a copy of the notice of the dispute to the appointed mediator. The responding party shall file a written response with the mediator and serve a copy on the initiating party within seven (7) days of the first scheduled mediation. The mediation procedure shall be entirely informal in nature; however, copies of non-privileged exhibits, or exhibits which are not otherwise protected by any right, upon which either party bases its case shall be shared with the other party in advance of the mediation. The relevant facts should be elicited in a narrative fashion to the extent possible, rather than through examination and cross examination of witnesses. The rules of evidence will not apply and no record of the proceedings will be made. If an agreement is reached, the agreement shall be reduced to writing and shall be signed by the District and the Charter School.

This dispute resolution procedure shall not apply to any request for equitable or injunctive relief prior to the mediation to preserve the status quo pending the completion of that process. Except for such an action to obtain equitable or injunctive relief, neither party may commence a civil action with respect to the matters submitted to mediation until after the completion of the initial mediation session, or forty-five (45) days after the date of filing the written request for mediation, whichever occurs first. Mediation may continue after the commencement of a civil action, if the parties so desire

**ARTICLE 11**  
**PROVISIONS OF GENERAL APPLICABILITY**

11.1 **Effective Date.** This agreement becomes effective upon the approval of and execution by the respective Boards as identified on Page 1 of this Agreement.

11.2 **Incorporation of Recitals.** The recitals set forth above, and all defined terms set forth in such recitals and in the introductory paragraph preceding the recitals, are hereby incorporated into this Agreement as if set forth in full.

11.3 **Notices.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, to:

**District:** Chico Unified School District  
1163 E. 7th Street  
Chico, CA 95926  
Attn: Charter School Liaison

**Charter School:** Chico Country Day School  
102 West 11th Street  
Chico, CA 95928  
Attn: Principal

The District and Charter School may, by notice given hereunder, designate any further or different address to which subsequent notices shall be sent.

11.4 **Successors and Assigns.** Whenever in this Agreement either the District or Charter School is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Agreement contained by or on behalf of the District or Charter School shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

11.5 **Effect of Headings.** The headings or titles of the several Articles and Sections hereof shall be solely for convenience of reference and shall not affect the meaning, construction, or effect of this Agreement.

11.6 **Validity and Severability.** If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Agreement and such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein. The District and Charter School hereby declare that they would have adopted this Agreement and each and every other section, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or

more sections, paragraphs, sentences, clauses, or phrases of this Agreement may be held illegal, invalid, or unenforceable.

11.7 **Attorneys' Fees.** If suit is brought by either party to this Agreement to enforce any of its terms, the prevailing party shall be entitled to recover their reasonable attorney's fees and costs.

11.8 **Entire Agreement, Waivers and Amendments.** This Agreement, together with the CFA, incorporate all of the terms and conditions mentioned herein, or incidental to this Agreement and the CFA, and supersedes all negotiations and previous agreements between the parties with respect to all or part of the terms and conditions of this Agreement. All waivers of the provisions of this Agreement must be in writing and signed by an appropriate representative of the party to be charged. The waiver by either party of any breach, term, covenant or condition contained in this Agreement shall not constitute a waiver of any subsequent term, covenant or condition contained herein. Any amendment or modification to this Agreement must be in writing and executed by all of the parties hereto.

11.9 **Interpretation; Governing Law.** This Agreement shall be construed according to its fair meaning and as if prepared by both parties hereto. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

11.10 **Execution in Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the District and Charter School have caused this Agreement to be executed by their duly authorized officers, all as of the date first above written.

THE DISTRICT:

CHICO UNIFIED SCHOOL DISTRICT

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

CHARTER SCHOOL:

CHICO COUNTRY DAY SCHOOL

By: Chris Zerk  
Title: Board Chair

**MEMORANDUM OF UNDERSTANDING**

**By and Among:**

\_\_\_\_\_, a California Charter School;

and

\_\_\_\_\_, a California Public School District;

and

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

**ARTICLE I – PURPOSE**

- A. This Memorandum of Understanding (“MOU”) is made and entered into as of \_\_\_\_\_ (“Effective Date”) by and among the State Allocation Board and the California School Finance Authority (individually or collectively referred to as the “State”); the charter school identified above, a California Charter School operating as a non-profit public benefit corporation in accordance with Education Code Section 47604 (“Charter School”); and the California Public School District identified above (“School District”). The provisions of this MOU shall be effective from and after the Effective Date and shall continue until all duties and obligations of the parties, as stated in this MOU, are carried out.
- B. The Charter School has applied to the State for financing of its charter school facilities project (“Project”) under the Charter School Facilities Program (“CSFP”) established pursuant to Article 12 of Chapter 12.5 of Part 10 of the California Education Code and the regulations for its implementation provided in Title 4, Cal. Code Regs., Section 10151, et seq., and Title 2 Cal. Code Regs., Section 1859.160, et seq., attached hereto and incorporated by reference. A copy of the Charter School’s application and approval documents are attached hereto and incorporated herein by reference as a means of defining the Project.

- C. This MOU is intended to tie together two (2) separate legal agreements: (i) a Funding Agreement by and between the State and the Charter School; and (ii) a Use Agreement by and between the School District and the Charter School. In accordance with the CSFP, the State is the lender of certain monetary funds to the Charter School to enable the Charter School to acquire real property and/or construct improvements thereon. This loan transaction is set forth in the Funding Agreement of which the School District is not a party to because it is not a lender and does not have obligations under said Funding Agreement. In accordance with Section 17078.57(a)(3)(A) of the California Education Code, the School District must hold title to the Project, acquired with the funds loaned by the State under the CSFP, in trust for the benefit of the state public school system. Pursuant to the CSFP, the School District as the holder in trust of the Project must provide the use of the Project to the Charter School for a charter school educational program and, hence, is the basis for the Use Agreement between the School District and the Charter School.

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

- D. This MOU is being entered into in accordance with the requirements of the CSFP. To the extent the MOU is inconsistent or in conflict with the provisions of the CSFP and the implementing regulations, the CSFP and implementing regulations shall prevail.

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

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

- A. The Charter School's Application for final apportionment for the Project has been approved by the State. The Charter School's Apportionment ("Apportionment") is contingent upon the Charter

School paying its 50% Local Matching Share obligation, which will be paid to the State by way of payments pursuant to the Funding Agreement.

- B. The Charter School's Application for final apportionment for the Project has been approved by the State in the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), less any amounts received through advance apportionment. The State will provide funding for fifty percent (50%) of the approved costs for the Project in the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) less any amounts received through advance apportionment, and the Charter School will be responsible for the remaining balance of the approved costs for the Local Matching Share for the Project in the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_). [If applicable] Advance apportionments were previously approved by the State in amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) and \_\_\_\_\_ Dollars (\$ \_\_\_\_\_).
- C. The Charter School will receive initial funding from the State for the Local Matching Share, less any lump sum payments made by, or on behalf of, the Charter School.

## 2.2 Conditions for Release of Funding

- A. The following conditions must be satisfied before the State will release funding:
- (1) The Charter School has complied with all funding release conditions contained in Section 2.2 of the Funding Agreement.
  - (2) The Charter School agrees to utilize its apportionment for purposes consistent with the CSFP, and consistent with the purposes for which it was approved.
  - (3) Each party is duly authorized to enter, deliver, and perform this Memorandum of Understanding, the Funding Agreement, as applicable to the appropriate parties, and the Use Agreement, as applicable to the appropriate parties.

### **2.3 Charter School Facilities**

- A. The Charter School's Project includes the real property and all improvements, repairs, replacements, substitutions, and modifications located or to be constructed on the property, and built or acquired with State funds, as described in its application for funding under CSFP ("Facilities").
- B. The Charter School's Facilities are located at San Bernardino County, California, and is more particularly described on Exhibit "C" of the Funding Agreement, attached hereto.
- C. The Facilities are physically located within the geographical jurisdiction of the School District and the high school attendance area generating eligibility for funding, if applicable.
- D. The Charter School has satisfied itself as to the suitability of the Facilities by its own inquiries and tests. The Charter School shall, by entering into and occupying the Facilities, be deemed to have accepted the Facilities and to have acknowledged that they are in good order, condition and repair.
- E. The State and/or the School District shall not have any obligation for construction work or improvements on or to the Facilities. The Charter School has made a thorough and independent examination of the Facilities and all matters related to its decision to enter into this Agreement. The Charter School is thoroughly familiar with all aspects of the Facilities and is satisfied that they are in an acceptable condition and meet its needs. The Charter School is solely responsible for identifying the real property, evaluating the condition of the title and suitability of the land for the Charter School's intended purpose, and negotiating and closing the acquisition of the real property. In addition, the Charter School is solely responsible for the construction of all improvements, repairs, replacements, substitutions, and modifications located or to be constructed on the real property. Pursuant to the CSFP, the School District is obligated to take title to the Project in trust for the benefit of the state public school system but such obligation does not make the School District a guarantor or warrantor of the Project.

### **2.4 Payments**

- A. The Charter School shall make payments to the State, as provided in the Funding Agreement in satisfaction of the requirements of the CSFP.

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

### **ARTICLE III – SECURITY PROVISIONS**

- A. The Charter School will convey to and the School District will accept conveyance of the good, absolute and marketable title to the Project in fee simple, free and clear of any mortgage, deeds of trust, liens (monetary or otherwise), claims, charges or other encumbrances or matters of any nature whatsoever other than those included in any other provisions of this Agreement upon satisfaction of all of the following conditions:

(1)(a) If the funding shall be used to acquire real property, the Charter School, at its sole cost and expense, shall structure the closing of the escrow for the acquisition of the real property for a back-to-back conveyance of title from the seller to the Charter School, and simultaneously in the same closing of escrow, from the Charter School to the School District as trustee of the real property on behalf of the state public school system. The Charter School must notify the State and the School District when CSFP funds are received by the Charter School. Within 30 days of receipt of CSFP funds, the Charter School shall provide evidence to the State and the School District that title to the real property has been transferred to the School District. If the Charter School fails to meet this requirement, the Charter School will be in default of this Agreement.

(1)(b) If title to the property is already held by the Charter School, the Charter School, at its sole cost and expense, shall cause to prepare a conveyance instrument, acceptable to the School District and the State, which shall convey title to the real property from the Charter School to the School District as trustee on behalf of the public school system. The Charter School must notify the State and the School District when CSFP funds are received by the Charter School. Within 30 days of receipt of CSFP funds, the Charter School must provide evidence to the State that title to the real property has been transferred to the School District. If Charter School fails to meet this requirement, Charter School will be in default of this Agreement.



- (2) The Charter School shall provide proof satisfactory to the State and the School District that all liens and encumbrances that may arise from the construction of the Facilities have been released and/or satisfied.
- (3) The Charter School shall provide to the State and the School District for its review and acceptance a title report and a copy of each instrument listed in said title report. The title report shall be issued no more than 30 days prior to the date of submittal.
- (4) The Charter School shall provide to the State and the School District for its review and acceptance an ALTA survey, which together with (3) above, shall be sufficient for the Charter School, at its sole cost and expense, to provide the School District with a ALTA owner's policy for the benefit of the School District and the State.
- (5) The Charter School shall provide to the School District for its review and files the original Final California Department of Education ("CDE") approval or Final CDE approval subject to waivers and/or exemptions to the use of real property as a school facility; provided, that if CDE has provided the Charter School any waivers and/or exemptions the Charter School shall obtain from CDE and provide to the School District a valid assignment of such waivers and/or exemptions. The purpose of the assignment is to insure that the conveyance of fee title from the Charter School to the School District will not result in a situation whereby the Facilities then become non-compliant because of the transfer of fee simple title to the School District due to those requirements and standards that are typically imposed upon the School District.
- (6) The Charter School shall provide to the School District for its review and files the original "No Further Action" or "Further Action Letter" from the California Department of Toxic Substance Control ("DTSC"); provided, that if DTSC has issued a Further Action Letter, the Charter School shall provide to the School District proof satisfactory to the School District that all requirements of the Further Action Letter have been satisfied. Simultaneously with the delivery of the foregoing, the Charter School shall deliver to the State a copy of the documents delivered to the School District.
- (7) The Charter School shall provide to the School District for its review and files the final approval issued by DTSC for the final Preliminary Environmental Assessment ("PEA") for the real property, if applicable.

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

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

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

- B. Any person or entity providing a substantial contribution that is applied to the costs of the Project in excess of the state share and the local matching share may be granted a security interest, as approved and memorialized in a written instrument executed by the State, to be satisfied from the proceeds, if any, realized when the property is ultimately disposed of. If the contribution was made for the explicit purpose of purchasing any asset with a normal life expectancy of less than twenty years, the security interest will be adjusted to reflect the depreciation of the assets. Contributions used solely to assist the applicant in meeting its local matching share shall not be entitled to a security interest. Where a contribution results in total project funding beyond the state and local matching shares, the contributor's security interest shall be limited to the amount in excess of the state share and local matching share.
- C. If a default occurs and all payments and penalties have not been made, the security interest of any person or entity providing a substantial contribution to the costs of the Project shall be satisfied only after the account is reimbursed for any remaining unpaid local matching share and the School District has been reimbursed for any costs and expenses incurred, if any, as the result of such default.
- D. This section intentionally left blank.
- E. Simultaneously with the execution of the Grant Deed, the Charter School and the School District shall enter into a Use Agreement, which shall be in a form substantially similar to that attached in Exhibit "B". The Use Agreement shall contain as standardized provisions the following, which must be addressed to the satisfaction of the State:

- (1) The acquisition and maintenance of all required licenses or permits. Any costs associated with licenses or permits shall not become an obligation of the State.
- (2) The payment of all fees, and public charges of whatever nature accessed against the Facilities, including the payment of all taxes, and costs associated with telephone, water, sewer, gas, heat, electricity, garbage disposal, trash disposal, and all other services and utilities. Such fees and charges shall not become an obligation of the State.
- (3) Prohibited uses of the Facilities, and provisions for the maintenance and repair of the Facilities. The State shall not under any circumstance be required to make any improvements or install any equipment on the Facilities, make any repairs, alterations or replacements of any nature to the Facilities, make any expenditures whatsoever in connection with this Agreement or maintain the Facilities in any manner. The State shall not be required to maintain, repair or rebuild all or any part of the Facilities, and the Charter School waives the provisions of Civil Code Sections 1941 and 1942 and any other law that would require the maintenance of the Facilities in a leasable condition or would provide the Charter School with the right to make repairs and deduct the cost of those repairs from its payments.
- (4) The handling of hazardous materials.
- (5) Insurance requirements, in addition to those specified in this Agreement, for all risk (special-causes-of-loss) property and fire insurance; commercial general liability insurance; rental value insurance; worker's compensation insurance; flood and earthquake insurance as necessary; and such other types of insurance or endorsements to existing insurance as may be required by the School District.

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

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

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

- (1) Failure by the Charter School to transfer title of the real property to the School District within 30 days of receipt of CSFP funds for site acquisition or final apportionment.

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

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

#### **4.2 Remedies on Default**

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

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

accordance with Section 17078.62(b)(1) of the Education Code, the Charter School shall:

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

- E. In the event a successor charter school cannot be identified as provided in Subsection D of this Section 4.2, the School District may:
- (1) in accordance with Section 17078.62(b)(3) of the Education Code, take possession of and use the Facility as a public school facility; provided, that the School District shall be required to make payment to the State in accordance with Section 17078.62(b)(4) or the payments shall be reduced or eliminated if the School District satisfies the conditions set forth in Section 17078.62(b)(4)(A) and (B). In the event the payments do not qualify for reduction or elimination in accordance with Section 17078.62(b)(4)(A) and (B), the State and the School District shall enter into an agreement for the School District's assumption of the payment obligation under the Funding Agreement. Assumption of the payment obligation shall in no way release the Charter School from its payment obligations that accrued prior to the termination of the Funding Agreement or from the Charter School's obligations for any holdover; or
  - (2) in accordance with Section 17078.62(b)(5) of the Education Code, decline to take possession of the Facilities or if the Facility is no longer needed for public school purposes, the School District shall dispose of the Facilities in accordance with requirements for the disposal of surplus public school sites. The monetary proceeds from the disposal of the Facilities shall be applied in the following priority: (i) reimburse the School District for reasonable costs and expenses incurred by the School District in disposing of the Facilities; (ii) reimburse the State for reasonable costs and expenses incurred by the State in pursuing the collection of the balance of any unpaid Local Matching Share due and owing under the Funding Agreement; (iii) repay any unpaid Local Matching Share in favor of the State; (iv) repay any security interest granted pursuant to Section 17078.57(a)(3)(B); and (v) in the event any proceeds remain, equally prorated between the State and the School District.
- F. The State may proceed by appropriate court action to enforce specific performance by the Charter School of its covenants under the Funding Agreement and this Memorandum of Understanding and under the terms of accepting funding under the CSFP, or to recover damages for the breach thereof, including without limitation for the recovery of all past due payments together with interest, penalties and late charges, and all other sums due the State. The Charter School shall pay or repay to the State all costs of such

action or court action, including, without limitation, reasonable attorneys' fees and costs. The School District may proceed by appropriate court action to enforce the Memorandum of Understanding and the Use Agreement against the Charter School.

- G. In the event of the Charter School's default and the recovery of the Facilities by the School District, the State shall have the right to recover from the Charter School (i) the amount of all outstanding payments or other obligations (whether direct or indirect owed by the Charter School to the State), if any, which are then due and owing, together with interest and late charges, and (ii) any other amounts due from the Charter School to the State, including indemnity payments, taxes, charges, reimbursement of any advances and other amounts payable by the Charter School to the State.
- H. Notwithstanding anything to the contrary, the State, the Charter School and/or the School District may take whatever action at law or in equity that may appear necessary or desirable to enforce its respective rights with respect to this Memorandum of Understanding, the Funding Agreement, or the Use Agreement or the Facilities, and the party or parties prevailing in the action shall have all of their respective costs of such action or court action, including, without limitation, reasonable attorneys' fees and costs as provided in this Memorandum of Understanding, the Funding Agreement, and/or the Use Agreement or as otherwise permitted by law, paid by the parties against whom the action was brought.
- I. No remedy herein conferred upon or reserved to the parties is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Memorandum of Understanding, the Funding Agreement and the Use Agreement or existing at law or in equity. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle either party to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice other than such notice as may be required under the Agreements. All remedies herein conferred upon or reserved to the parties shall survive the termination of this Memorandum of Understanding, the Funding Agreement and/or the Use Agreement.



## **ARTICLE V – MISCELLANEOUS**

### **5.1 Release of Liability**

The State and the School District are hereby released from any and all claims, demands, debts, liabilities, and causes of action of whatever kind or nature, whether known or unknown or suspected or unsuspected which the Charter School or any of the Charter School's employees or agents may have, claim to have, or which may hereafter accrue against the released parties or any of them, arising out of or relating to the Facilities or the Charter School's project, including those in any way connected with any materials or substances defined as hazardous under any applicable statute, ordinance, rule or regulation, presently in, on or under, or now or hereafter emanating from or migrating onto or under the Facilities.

In connection with this release, the Charter School hereby waives any and all rights conferred upon it by the provisions of Section 1542 of the California Civil Code, which reads as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

### **5.2 Non-waiver**

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

### **5.3 Indemnity**

- A. Memorandum of Understanding. To the fullest extent permitted by law the Charter School shall at the Charter School's sole cost and expense with counsel acceptable to the School District and/or the State as applicable, indemnify, defend and hold the School District and the State harmless from and against any and all losses, costs, liabilities, claims, judgments, liens, damages (including consequential damages), actions, causes of action (whether in tort or contract law or equity or otherwise), charges, assessments, fines, penalties and expenses, including, without limitation, reasonable attorneys' fees and costs, and reasonable investigation

costs (collectively "Claims"), incurred in connection with or arising from: (a) any breach or default by the Charter School in the observance or performance of any of the terms, covenants or conditions of this Memorandum of Understanding on the Charter School's part to be observed or performed; (b) the construction, operation, maintenance, alteration, use or occupancy of the Facilities by the Charter School; (c) the condition of the Facilities, and any occurrence on the Facilities, from any cause whatsoever, and (d) any acts omissions or negligence of the Charter School or the Charter School's employees, agents or contractors in, on or about the Facilities.

- B. Use Agreement. The State is not a party to the Use Agreement and, as a result, to the fullest extent permitted by law the Charter School shall at the Charter School's sole cost and expense with counsel acceptable to the State as applicable, indemnify, defend and hold the State harmless from and against any and all losses, costs, liabilities, claims, judgments, liens, damages (including consequential damages), actions, causes of action (whether in tort or contract law or equity or otherwise), charges, assessments, fines, penalties and expenses, including, without limitation, reasonable attorneys' fees and costs, and reasonable investigation costs (collectively "Claims"), incurred in connection with or arising from any breach or default by the Charter School in the observance or performance of any of the terms, covenants or conditions of the Use Agreement on the Charter School's part to be observed or performed.
- C. Funding Agreement. The School District is not a party to the Funding Agreement and, as a result, to the fullest extent permitted by law the Charter School shall at the Charter School's sole cost and expense with counsel acceptable to the School District as applicable, indemnify, defend and hold the School District harmless from and against any and all losses, costs, liabilities, claims, judgments, liens, damages (including consequential damages), actions, causes of action (whether in tort or contract law or equity or otherwise), charges, assessments, fines, penalties and expenses, including, without limitation, reasonable attorneys' fees and costs, and reasonable investigation costs (collectively "Claims"), incurred in connection with or arising from any breach or default by the Charter School in the observance or performance of any of the terms, covenants or conditions of the Funding Agreement on the Charter School's part to be observed or performed.
- D. The Charter School will at all times protect and defend, at its own cost and expense, the title to the Facilities from and against all claims, liens and legal processes of creditors and keep all the

Facilities and the title free and clear of all such claims, liens, and processes except for the liens created or expressly permitted under the Agreements and the CSFP.

**5.4 Notice.**

Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served and received if given in writing and personally delivered or either deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service or facsimile transmission, addressed as follows:

If to the State:

**California School Finance Authority  
Attn: Katrina Johantgen  
304 South Broadway, Suite 550  
Los Angeles, CA 90013**

If to the District:

\_\_\_\_\_ **School District**  
**Attn:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to the Charter School:

\_\_\_\_\_  
**Attn: Director/Principal**  
\_\_\_\_\_  
\_\_\_\_\_

Any notice personally given or sent by facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the next business day following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

**5.5 Applicable Law/Integration**

This Memorandum of Understanding shall be governed by and construed as a whole in accordance with its fair meaning according to the laws of the State of California. The venue and forum for any action to enforce this Memorandum of Understanding shall be the Superior Court of the State of California in and for the

County of \_\_\_\_\_. This Memorandum of Understanding represents the sole and entire agreement between the parties and supersedes any and all prior agreements, negotiations, and discussions by and between the parties hereto with respect to the subject matter covered hereby.

#### **5.6 Amendments**

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

#### **5.7 Force Majeure**

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

#### **5.8 Severability**

Should any provision of this Memorandum of Understanding be determined to be invalid, illegal or unenforceable in any respect, such provision shall be severed and the remaining provisions shall continue as valid, legal and enforceable.

#### **5.9 Counterparts**

This Memorandum of Understanding may be executed in two or more counterparts, which shall, in the aggregate, be signed by all parties and constitute an Agreement. Each counterpart shall be deemed an original instrument as against any party who has signed it.

THE STATE:

STATE ALLOCATION BOARD:

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

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

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

CALIFORNIA SCHOOL FINANCE AUTHORITY:

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

Name: Katrina Johantgen

Title: Executive Director

THE SCHOOL DISTRICT: \_\_\_\_\_ School District

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

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

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

THE CHARTER SCHOOL: \_\_\_\_\_

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

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

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

## FUNDING AGREEMENT

Between the State of California,

and

\_\_\_\_\_, a California Charter School

### ARTICLE I – PURPOSE

- A. This Funding Agreement (“Agreement”) is made and entered into as of \_\_\_\_\_ (“Effective Date”) by and between the State Allocation Board and the California School Finance Authority (individually or collectively referred to as the “State”) and \_\_\_\_\_, a California Charter School operating as a non-profit public benefit corporation in accordance with Education Code Section 47604 (“Charter School”). The provisions of this Agreement shall be effective from and after the Effective Date until the termination of the Agreement as provided herein.
- B. The Charter School has applied to the State for financing of its charter school facilities project (“Project”) under the Charter School Facilities Program (“CSFP”) established pursuant to Article 12 of Chapter 12.5 of Part 10 of the California Education Code and the regulations for its implementation provided in Title 4, Cal. Code Regs., Section 10151, et seq., and Title 2 Cal. Code Regs., Section 1859.160, et seq.
- C. The Charter School’s Project may involve the purchase of real property or the purchase of real property and construction of all improvements, repairs, replacements, substitutions, and modifications located or to be constructed on the property, or the construction of all improvements, repairs, replacements, substitutions, and modifications located or to be constructed on real property that the Charter School has acquired previously (“Facilities”).
- D. This Agreement is being entered into in accordance with the requirements of the CSFP. To the extent the Agreement is inconsistent with or in conflict to the provisions of the CSFP and the implementing regulations, the CSFP and implementing regulations shall prevail.
- E. The terms of this Agreement may not be waived, altered, modified, supplemented or amended in any manner except in writing, upon the agreement of the parties, or except as otherwise permitted by law. This Agreement may be amended, or a new Agreement executed, as necessary,

upon the application of the Charter School and the approval by the State of a final apportionment.

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

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

#### **A. Payments**

1. The Charter School's Application for final apportionment for the Project has been approved by the State. The Charter School's Apportionment ("Apportionment") is contingent upon the Charter School paying its 50% Local Matching Share obligation by making payments to the State pursuant to this Agreement.
2. The Charter School will repay the State \_\_\_\_\_ (\$\_\_\_\_\_.00) by making annual or semi-annual payment installments, in arrears, as provided for in the Payment Schedule, developed in compliance with section 2.1(D). The amount shall include interest on the unpaid principal balance at the rate paid on monies in the Pooled Money Investment Account described in California Government Code Section 16480 et seq. The interest rate will be set on the date that the funding agreement is executed.
3. Payments will be applied first to accrued but unpaid interest, then to the unpaid principal balance. The early or late date of making a payment will be disregarded for purposes of allocating the payment between interest and the principal balance. For this purpose, the payment will be treated as though made on the due date.
4. Payments may be prepaid in whole or in part at any time before the end of the payment term without penalty.
5. Payments shall be made directly to the State Allocation Board for deposit into the respective 2002, 2004 or 2006 Charter School Facilities Account, or as otherwise directed by the State in writing.
6. The Charter School may elect to repay the State using the payment process set forth in Education Code section 17199.4.

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

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

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

C. Payment Period

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

D. Payment Schedule

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

E. Payments To Be Unconditional

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

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



- accident or unforeseen circumstances, or any damage to or destruction of the Facilities, or any part thereof;
2. any taking of the Facilities, or any part thereof, or interest therein by condemnation or otherwise;
  3. any prohibition, limitation, restriction or prevention of the Charter School's use, occupancy or enjoyment of the Facilities, or any part thereof, or any interference with such use, occupancy or enjoyment by any person for any reason;
  4. any title defect, lien or any other matter affecting title to the Facilities;
  5. any eviction by paramount title or otherwise;
  6. any default by the Charter School;
  7. any action for bankruptcy, insolvency, reorganization, liquidation, dissolution or other proceeding relating to or affecting this Agreement or the Charter School;
  8. the impossibility or illegality of performance by the Charter School;
  9. any action of any governmental authority or any other person;
  10. the Charter School's acquisition of ownership of all or part of the Facilities;
  11. breach of any warranty or representation with respect to the Facilities;
  12. any defect in the condition, quality, or fitness for use of the Facilities; or
  13. any other cause or circumstance similar or dissimilar to the foregoing, and whether or not the Charter School has notice or knowledge of any of the foregoing.
  14. Notwithstanding the above, nothing in this section shall affect a Charter School's rights and obligations pursuant to Education Code Section 17078.62 if the Charter School ceases to use the facility after a revocation and/or non-renewal.
- F. Acceptance and Application of Payment; Not Accord and Satisfaction
1. No receipt by the State of a lesser payment than the payment required under this Agreement shall be considered to be other than on account of the earliest amount due, and no endorsement or statement on any check or letter accompanying a payment or check shall be considered an accord and satisfaction. The State may accept checks or payments without prejudice to its right to recover all amounts due and pursue all other remedies provided for in this Agreement.

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

## 2.2 Conditions for Release of Funding

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

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

5. If the Charter School is required to have a Guarantor for its project, it shall have entered into a guaranty with an acceptable Guarantor and the State shall have received an executed original of the agreement.
6. The State shall have received a certificate of the secretary of the Charter School as to (i) the resolution of the [board of directors, and if required, the shareholders] [managing body and if required the members] [partners] of the Charter School, or authorizing the execution, delivery and performance of this Agreement, (ii) the [bylaws] [operating agreement] [partnership agreement] of the Charter School, (iii) signatures of the officers or agents of the Charter School authorized to execute and deliver this Agreement on behalf of the Charter School and, if applicable, attaching thereto a copy of the Charter School's certificate or articles of incorporation or partnership or limited liability company formation document certified by the Office of the Secretary of State for the State of California.
7. Certificate of good standing issued to the Charter School by the California Secretary of State not more than 10 days prior to the Effective Date of this Agreement, if applicable.
8. Upon acquisition of real property for the Project by the Charter School and prior to conveyance of title to the School District, the Charter School will contemporaneously with said acquisition record a lien or covenant against the title of the real property acceptable to and in favor of the State such that fee title cannot be conveyed free and clear unless the State is paid in full for all money due and owing by the Charter School under the CSFP. The Charter School shall deliver to the State a standard preliminary title report issued by a title company with respect to the Facilities, and legible copies of all documents referred to in the title report. (Exhibit "B"). The Charter School shall comply with the title requirements of section 3.4 of this Agreement, and shall provide to the State, upon request, all documents and materials relating to the Facilities and the title to the Facilities.

9. The Charter School represents that it has a minimum debt service coverage ratio determined by the State to be sufficient, but in no event to be less than 1.0x.
10. The Charter School represents that it is financially sound, and will demonstrate to the satisfaction of the State, its continued financial soundness. If the Chartering Authority revokes or declines to renew the Charter School's charter, this Agreement will be in default and the provisions of Education Code section 17078.62 shall be invoked. Nothing in this section shall affect a Charter School's rights and obligations pursuant to Education Code Section 17078.62 if the Charter School ceases to use the facility after a revocation and/or non-renewal.

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

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

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

### **2.5 Force Majeure**

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

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

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

- C. The parties intend that the obligations of the Charter School shall be covenants, agreements and obligations that are separate and independent from any obligations of the State, and shall continue unaffected unless modified or terminated in accordance with an express provision of this Agreement.

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

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

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

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

- A. The Charter School may use and occupy the Facilities during the term of the Agreement solely for the operation of a charter school, as authorized under the California Education Code and subject to the terms of the Use Agreement. The foregoing statement shall not constitute a representation or guaranty that the operation of a charter school may be conducted in the Facilities or is lawful or permissible under any certificates of occupancy issued for the Facilities, or is otherwise permitted by law. Use of the Facilities shall in all respects comply with all applicable legal requirements.
- B. The general terms of the Charter School's use of the Facilities shall be governed by the Use Agreement between the Charter School and the School District.
- C. Prior to commencing operations in the school, the Charter School shall provide the State and the School District with a copy of a valid certificate of occupancy issued by the appropriate governmental agency for the Facilities, if applicable, or the equivalent issued by the California Division of the State Architect.
- D. In the event the Charter School no longer is using the Facilities, the usage and priority provisions of Education Code section 17078.62 shall

apply. The Charter School shall reasonably cooperate and assist with any transition that may take place pursuant to the priority provisions.

- E. The State shall not have any obligation for construction work or improvements on or to the Facilities. The Charter School has made a thorough and independent examination of the Facilities and all matters related to its decision to enter into this Agreement. The Charter School is thoroughly familiar with all aspects of the Facilities and is satisfied that they are in an acceptable condition and meet its needs.
- F. The Charter School, its officers, members, partners, agents, employees and contractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religion, creed, national origin, culture, physical disability (including HIV and AIDS), mental disability, medical condition (cancer or genetic characteristics), sexual orientation, political affiliation, position in a labor dispute, age, marital status, and denial of statutorily-required employment-related leave. The Charter School, its officers, members, partners, agents, employees and contractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, title 2, section 7285 et seq.).

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

- A. The Charter School's Facilities are located at \_\_\_\_\_ County, California, and is more particularly described on Exhibit "C" attached hereto and incorporated by this reference into this Agreement.
- B. The property is physically located within the geographical jurisdiction of the School District and the high school attendance area generating eligibility for funding, if applicable.
- C. The Charter School has satisfied itself as to the suitability of the Facilities by its own inquiries and tests. The Charter School shall, by entering into and occupying the Facilities, be deemed to have accepted the Facilities and to have acknowledged that they are in good order, condition and repair.

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

- A. The Charter School has obtained or will obtain upon release of funds from the State, good, absolute and marketable title to the Facilities in fee simple, free and clear of any mortgage, deeds of trust, liens (monetary or otherwise), claims, charges or other encumbrances or matters of any

nature what so ever other than those included in the title report on the terms and conditions of this Agreement. The Charter School agrees to obtain and transfer title in accordance with the requirements of Article III Section A of the Memorandum of Understanding.

- B. Title to the Facilities shall be conveyed to, and vested in the School District in trust for the benefit of the California State public school system.
- C. The Charter School will at all times protect and defend, at its own cost and expense, the title from and against all claims, liens and legal processes of creditors, and keep all the Facilities and the title free and clear of all such claims, liens and processes except for the liens created or expressly permitted by the Security Provisions of this Agreement and the CSFP.
- D. Any sale, contract to sell, option to purchase, conveyance or other transference of the Facilities must first be approved by the State in writing.
- E. The Charter School will execute, acknowledge and record all documents, certificates and agreements, including without limitation any grant deed, bill of sale or assignment as necessary to effectuate a transfer to the School District title to the Facilities, as provided herein, and provide copies of all documents, certificates and agreements to the State as required by this Agreement or as otherwise requested by the State.

### **3.5 Insurance Requirements**

#### **A. Types of Insurance**

- 1. The Charter School shall, at its sole cost and expense, obtain and maintain at all times during the construction and occupancy of the Facilities, the following types of insurance on the Facilities, naming the State and School District loss payee and additionally insured:
  - (a) All Risk (special-causes-of-loss) property and fire insurance (with extended coverage endorsement including malicious mischief and vandalism and sprinkler);
  - (b) All Risk (special-causes-of-loss) property and fire insurance (with extended coverage endorsement including sprinkler leakage, malicious mischief, vandalism and plate glass);

- (c) Commercial general liability insurance (broad form) covering claims for bodily injury, personal injury, death and property damage based on or arising out of the ownership, use, occupancy or maintenance of the Facilities and all areas appurtenant thereto;
  - (d) Rental value insurance;
  - (e) Worker's compensation insurance; and
  - (f) Other types of insurance or endorsements to existing insurance as may be reasonably required from time to time by the School District or the State.
- B. The Charter School shall not do anything, or permit anything to be done, in or about the Facilities that would: (i) invalidate or be in conflict with the provisions of or cause any increase in the applicable rates for any fire or other insurance policies covering the Facilities (unless it pays for such increased costs); (ii) result in a refusal by insurance companies of good standing to insure the Facilities in amounts reasonably satisfactory to the School District; (iii) result in injury to any person or property by reason of the Charter School's operations being conducted in the Facilities; or (iv) result in the cancellation of or assertion of any defense by the insurer to any claim under any policy of insurance maintained by or for the benefit of the School District.
- C. The Charter School, at its own expense, shall comply with all rules, orders, regulations or requirements of the American Insurance Association (formerly the National Board of Fire Underwriters) and with any similar body that shall hereafter perform the function of such Association.
- D. All of the insurance policies required shall be issued by corporate insurers licensed or qualified to do business in the State of California and rated A or better by A.M. Best Company, and shall be in form acceptable to the School District and the State.
- E. All certificates of insurance shall be delivered to the School District and the State, along with evidence of payment in full of all premiums required. All such certificates shall be in form acceptable to the State and shall require the insurance company to endeavor to give to the State at least thirty (30) days' prior written notice before canceling the policy for any reason. Certificates evidencing all renewal and substitute policies of insurance shall be delivered to the State, along with evidence of the payment in full of all premiums, at least thirty (30) days before termination of the policies being renewed or substituted.



- F. The State and School District shall be entitled to assignment and payment of all claims, causes of action, awards, payments, proceeds and rights to payment arising under or derived in connection with any insurance policy required to be maintained by the Charter School and any other insurance policies payable because of loss sustained to all or part of the Facilities, together with all interest which may accrue on any of the foregoing.
- G. The State and the School District shall immediately be notified in writing if any damage occurs or any injury or loss is sustained to all or part of the Facilities, or any action or proceeding relating to any such damage, injury or loss is commenced. The State and the School District may, but shall not be obligated to, in its own name appear in or prosecute any action or proceeding to enforce any cause of action based on warranty, or for damage, injury or loss to all or part of the Facilities, and may make any compromise or settlement of the action or proceeding, provided that no compromise or settlement of any action or proceeding that materially affects the Charter School shall be entered into or agreed to without the Charter School's prior written consent, which may not unreasonably be withheld.
- H. Waiver of Subrogation
1. Notwithstanding anything to the contrary in this Agreement, the Charter School releases the School District and the State and their respective agents, employees, successor, assignees and subtenants from all liability for injury to any person or damage to any property that is caused by or results from a risk (i) which is actually insured against, to the extent of receipt of payment under such policy (unless the failure to receive payment under any such policy results from a failure of the Charter School to comply with or observe the terms and conditions of the insurance policy covering such liability, in which event, such release shall not be so limited), (ii) which is required to be insured against under this Agreement, or (iii) which would normally be covered by the standard form of "all risk-extended coverage" casualty insurance, without regard to the negligence or willful misconduct of the entity so released.
  2. The Charter School shall obtain from its insurers under all policies of fire, theft, and other property insurance maintained by it at any time during the term insuring or covering the Facilities, a waiver of all rights of subrogation which the Charter School's insurers might otherwise, if at all, have against the State, and the Charter School shall indemnify the State against any loss or expense, including

- I. No approval by the School District or the State of any insurer, or the terms or conditions of any policy, or any coverage or amount of insurance, or any deductible amount shall be construed as a representation by the State of the solvency of the insurer or the sufficiency of any policy or any coverage or amount of insurance or deductible and the Charter School assumes full risk and responsibility for any inadequacy of insurance coverage or any failure of insurers.
- J. The Charter School is liable for all duties and obligations with respect to its purchase and development of the Facilities, and it shall bear the risk of any loss or claim relating to the Facilities. The State and the School District shall assume no liability or risk of loss.

### **3.6 Consent for Assignment**

- A. The State's and the School District's (in accordance with the California Education Code) written consent shall be required before the Charter School may directly or indirectly, voluntarily or by operation of law, sell, assign, encumber, pledge or otherwise transfer or hypothecate all or any part of its interest in or rights with respect to the Facilities or permit all or any portion of the Facilities to be occupied by anyone other than itself or sublet all or any portion of the Facilities. Such consent shall not be unreasonably withheld. No sublease or assignment nor any consent by the State and the School District shall relieve the Charter School of any obligation to be performed under this Agreement or under the CSFP.
- B. The Charter School shall not be permitted to assign any of its rights or liabilities under this Agreement without the written consent of the State. A transfer of control shall be deemed to have occurred if there shall be any of the following: (i) a transfer of the ultimate beneficial ownership of fifty percent (50%) or more of the equity or other ownership interests in the Charter School or of any class of equity interests in the Charter School, including, without limitation, by the issuance of additional shares or other equity interests or other ownership interests in the Charter School, (ii) a transfer of the right to receive fifty percent (50%) or more of any category of distributions made by the Charter School, or (iii) a transfer of the right to direct the management, policies or operations of the Charter School, by contract or otherwise.
- C. Except as provided in Education Code Section 17078.62, in no event shall this Agreement be assigned or assignable by operation of law or by voluntary or involuntary bankruptcy proceedings or otherwise and in no event shall this Agreement or any rights or privileges hereunder be an

asset of the Charter School under any bankruptcy, insolvency, reorganization or other debtor relief proceedings.

#### **ARTICLE IV – REPORTING**

A. The Charter School shall:

1. Provide to the State semi-annual unaudited financial statements;
2. Report to the State any material adverse change in its financial and/or operational condition that could adversely affect its ability to make its payments under this Agreement and the CSFP;
3. Report to the State if the Charter School's charter has been revoked or has not been renewed within 30 days of notification of such action, including providing a copy of the document provided by the chartering authority notifying the Charter School of such action;
4. Provide audited financial statements within 120 days of the end of each fiscal year; and
5. Obtain from the State prior written consent before incurring any additional indebtedness in excess of Fifty Thousand Dollars (\$50,000.00), which consent may only be given if the State has determined that the Charter School will remain financially sound with the additional indebtedness. Such consent will not be unreasonably withheld.
6. Comply with the State's requirements for reporting any civil or criminal matters.

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

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

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

1. Failure by the Charter School to transfer title of the real property to the School District within 30 days of receipt of CSFP funds for site acquisition or final apportionment;
2. Failure by the Charter School to commence to use and occupy the Facilities for the operation of a charter school within one (1) year of receipt of the certificate of occupancy;
3. Failure by the Charter School to make any payment when due, and such failure continues for a period of thirty (30) calendar days after receiving written notice by the State;

4. Failure by the Charter School to maintain insurance on the Facilities or to provide reasonable evidence of insurance as required, and where such failure continues for a period of thirty (30) calendar days after receiving written notice by the State;
5. Failure by the Charter School to provide reasonable evidence of compliance with all legal requirements whether expressly stated under this Agreement or otherwise imposed by the State under the CSFP or other applicable law, or failure to observe or perform any other applicable covenant, condition or agreement, where such failure continues for thirty (30) calendar days after receiving written notice by the State. If thirty (30) calendar days is insufficient, and the Charter School has instituted corrective action, the State, in its discretion, may extend this period up to one hundred and eighty (180) calendar days;
6. The Charter School shall be or become insolvent, or admit in writing its inability to pay its debts as they mature, or make an assignment for the benefit of creditors; or the Charter School shall apply for or consent to the appointment of any receiver, trustee or similar officer for it or for all or any substantial part of its property; or such receiver, trustee or similar officer shall be appointed without the application or consent of the Charter School, as the case may be, where possession is not restored in sixty (60) calendar days; or the Charter School shall institute (by petition, application, answer, consent or otherwise) any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, liquidation or similar proceeding relating to it under the laws of any jurisdiction; or any such proceeding shall be instituted (by petition, application or otherwise) against the Charter School (unless, in the case of a petition filed against the Charter School, the same is dismissed in sixty (60) days) or any judgment, writ, warrant of attachment or execution or similar process shall be issued or levied against a substantial part of the Charter School's Facilities; provided, however, in the event that any provision of this paragraph is contrary to any applicable law, it shall be of no force and effect, and not affect the validity of the remaining provisions;
7. The determination by the State that any material representation or warranty made by the Charter School was untrue in any material respect when made;
8. The Charter School's charter is not renewed or is revoked, or the Charter School ceases to use the Facilities for a charter school purpose. Nothing in this section shall affect a Charter School's rights and obligations pursuant to Education Code Section 17078.62 if the Charter School ceases to use the facility after a revocation and/or non-renewal;
9. The Charter School shall abandon the Facilities; and/or

10. If the performance of the payment obligations of the Charter School is guaranteed, the actual or anticipatory failure or inability, for any reason, of the Guarantor to honor the guarantee as required, and the Charter School's failure to provide written alternative assurance or security, which when coupled with the Charter School's then-existing resources, equals or exceeds the combined financial resources that existed at the time this Agreement is executed. The Charter School shall have sixty (60) calendar days following written notice by the State, to provide the written alternative assurance or security.

## 5.2 Remedies on Default

- A. The parties acknowledge and agree that this Agreement represents a unique situation that is not limited by the landlord's remedies provided by Sections 1951.2 and 1951.4 of the California Civil Code. Whenever any Event of Default shall have occurred, any one or more of the following respective remedies, which are not exclusive but cumulative, may be pursued:
1. If the Event of Default is solely because the School District has revoked or declined to renew the Charter School's charter, the Charter School shall remain liable for the performance of all of the obligations of the Charter School including, without limitation, the obligation to make payments to the State when due, so long as the Charter School continues to use and occupy the Facilities.
  2. On the termination of this Agreement for any reason, any steps the School District takes to comply with Education Code section 17078.62 shall in no way release the Charter School from its payment obligations that accrued prior to the last date upon which the Charter School had beneficial ownership and use of the facility ("Termination Date") or from the Charter School's obligation for any holdover. Assumption of the Agreement shall in no way release the Charter School from its payment obligations that accrued prior to the Termination Date or from the Charter School's obligations for any holdover.
  3. The State may proceed by appropriate court action to enforce specific performance by the Charter School of its covenants under this Agreement and under the terms of accepting funding under the CSFP, or to recover damages for the breach thereof, including without limitation for the recovery of all past due payments together with interest and late charges, and all other sums due the State. The Charter School shall pay or repay to the State all costs of such action or court action, including, without limitation, reasonable attorneys' fees and costs.

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

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

### **6.1 No Liability**

- A. To the fullest extent permitted by law, the Charter School, on its behalf and on behalf of its officers, members, partners, agents, employees, and contractors, waives all claims it may have now or in the future (in law, equity, or otherwise) against the State, officials, directors, officers, attorneys, accountants, financial advisors, staff and employees arising

out of, knowingly and voluntarily assumes the risk of, and agrees that the State shall not be liable for any of the following:

1. Injury to or death of any person; or
  2. Loss of, injury or damage to, or destruction of any tangible or intangible property, including the resulting loss of use, economic losses, and consequential, incidental, punitive or penal or resulting damage of any kind from any cause.
- B. The State shall not be liable under this clause regardless of whether the liability results from any active or passive act, error, omission, or negligence of any of party; or is based on claims in which liability without fault or strict liability is imposed or sought to be imposed.
- C. The State shall not be liable for any latent, hidden, or patent defect of the Facilities, or any part thereof, or any failure of the Facilities or any part thereof to comply with any legal requirement.

## **6.2 No Representations/Warranties**

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

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

The Charter School releases the State from any and all claims, demands, debts, liabilities, and causes of action of whatever kind or nature, whether known or unknown or suspected or unsuspected which the Charter School or any of its employees or agents may have, claim to have, or which may hereafter accrue against the released parties or any of them, arising out of or relating to or in any way connected with Hazardous Materials presently in, on or under, or now or hereafter emanating from or migrating onto or under the Facilities. In connection with such release, the Charter School hereby waives any and all rights conferred upon it by the provisions of Section 1542 of the California Civil Code, which reads as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

#### 6.4 Indemnification

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



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

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

THE STATE:

STATE ALLOCATION BOARD:

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

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

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

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

CALIFORNIA SCHOOL FINANCE AUTHORITY:

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

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

Name: Katrina Johantgen

Title: Executive Director

THE CHARTER SCHOOL:

\_\_\_\_\_  
(Name of Charter School)

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

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

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

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