

**FACILITIES USE AGREEMENT BETWEEN WEST CONTRA
COSTA UNIFIED SCHOOL DISTRICT AND
RICHMOND COLLEGE PREP SCHOOLS
(Prop 39 In lieu Facilities Use)**

THIS FACILITIES USE AGREEMENT is made this ____ day of April, 2016, (“Agreement”), by and between the West Contra Costa Unified School District, a California public school district of California (“District”) and Richmond College Prep Schools, a non-profit public benefit corporation (“Charter School”). The District and Charter School may be referred to herein individually as a “Party” or collectively as the “Parties.”

RECITALS

WHEREAS, Charter School requires classrooms and facilities for its in-district students for the sole purposes of operating the educational program in accordance with the Charter School’s charter (“Program” or “Activities”), as further defined herein; and

WHEREAS, District has available classrooms and facilities as more fully described and depicted in Exhibits “A” and “B” (“Dedicated Space”) at the Nystrom Elementary School Site, located at 230 Harbour Way South, Richmond, CA 94804 (“School Site”); and

WHEREAS, Charter School shall have exclusive use of the Dedicated Space on the School Site for its own educational purposes; and

WHEREAS, this Agreement is entered into by the Parties as an “in-lieu” facilities use agreement pursuant to the requirements of California Education Code section 47614 and its implementing regulations (“Proposition 39”) for the Charter School to occupy and use the Dedicated Space commencing with the 2016-2017 school year;

NOW THEREFORE, in consideration of the covenants and agreements hereinafter set forth, District and Charter School agree as follows:

AGREEMENT

1. Use of Dedicated Space and School Site.

- 1.1. District agrees to allow use of the Dedicated Space at the School Site by Charter School for the sole purpose of operating Charter School’s educational program in accordance with all applicable federal, state and local regulations relating to the Dedicated Space, and to the operation of Charter School’s educational program, including summer school and programs procured by Charter School through third party entities, e.g. after-school program providers. Charter School shall not use the Dedicated Space for any use other than that specified in this Agreement without the prior written consent of District.

- 1.2. Charter must provide appropriate site supervision, including, but not limited to, campus supervisors, administrators and police, at a level no less than what the District provides. Charter School's obligation to ensure safe use of the Dedicated Space includes all facilities located on the School Site, including, but not limited to, shared spaces as may be provided under the terms of this Agreement.
- 1.3. Charter School shall not commit, or suffer to be committed, any waste upon the Dedicated Space, or allow any sale by auction upon the Dedicated Space, or allow the Dedicated Space to be used for any unlawful purpose, or place any loads upon the floor, walls or ceiling which endanger the structure, or place any harmful liquids in the plumbing, sewer or storm water drainage system of the Dedicated Space. No waste materials or refuse shall be dumped upon or permitted to remain upon any part of the Dedicated Space except in trash containers designated for that purpose.
- 1.4. Any uses which involve the serving and/or sale of alcoholic beverages and the conducting of games of chance are prohibited on the Dedicated Space. Charter School shall comply with District-wide policy prohibiting the use of products containing tobacco or nicotine, including but not limited to smokeless tobacco, snuff, chew, and clove cigarettes, on the Dedicated Space at all times. The District's prohibition against the use of products containing tobacco or nicotine also applies to electronic nicotine delivery systems such as electronic cigarettes, electronic hookahs, and other vapor emitting devices, with or without nicotine content, that mimic use the use of tobacco products, but does not apply to the use or possession of prescription products or other FDA-approved cessations aids.
- 1.5. Charter School shall not use or permit the use of the Dedicated Space or any part thereof for any purpose which is inimical to public morals and welfare or morally objectionable as unsuitable for a public educational facility.
- 1.6. If required, Charter School must obtain a use permit from the City in which the School Site is located for Charter School's use throughout the Term. Charter School shall require all invitees and guests to use the Dedicated Space only in conformance with the permitted use and with applicable governmental laws, regulations, rules and ordinances.
- 1.7. During the Term, Charter School shall comply with all applicable District policies and procedures regarding the use and occupation of District facilities.
- 1.8. Charter School shall not do or permit anything to be done in or about the Dedicated Space nor bring or keep anything therein which will in any way increase the District's existing insurance rate or affect any fire or other insurance upon the Dedicated Space, or cause a cancellation of any insurance policy covering the Dedicated Space or any part thereof or any of the contents of the Dedicated Space, nor shall the Charter School sell or permit to be kept, used or sold in or about the Dedicated Space any articles which may be prohibited by a standard form policy of fire insurance.

- 1.9. Charter School agrees to comply with the provisions of the Civic Center Act (Education Code §§ 38130, *et seq.*) to make the Dedicated Space accessible to members of the community. The Parties understand that the Dedicated Space is to be used primarily for educational programs and activities and as such, any use of the Dedicated Space by the Community shall not interfere with Charter School's educational program. Any request received by Charter School for use of the Dedicated Space pursuant to the Civic Center Act shall be promptly forwarded to the District. District shall be responsible for coordinating access to the Dedicated Space under the Civic Center Act, and any fee paid for use of the Dedicated Space under the Civic Center Act shall be paid to the District.
- 1.10. Charter School shall ensure that it and its staff are qualified to administer and operate Charter School's Program. Charter School shall be solely responsible for the administration and operation of the Program, including the hiring of all employees. Charter School shall be responsible for verifying the qualifications, credentials, certificates, and licenses of its staff, agents, consultants and/or subcontractors who may provide services in conjunction with Charter School's activities on the Dedicated Space.
- 1.11. Charter School shall at Charter School's expense comply with the requirements of governmental authorities having jurisdiction over the Dedicated Space, or Charter School's Program, in force either now or in the future, and shall faithfully observe in Charter School's use of the Dedicated Space all laws, regulations and ordinances of these authorities, in force either now or in the future including, without limitation, all applicable federal, state and local laws, regulations, and ordinances pertaining to air and water quality, hazardous material, waste disposal, air emission and other environmental matters (including the California Environmental Quality Act ("CEQA") and its implementing regulations in its use of the Dedicated Space).
 - 1.11.1. A judgment of a court of competent jurisdiction, or Charter School's admission in an action or a proceeding against Charter School, whether District be a party to it or not, that Charter School has violated any law or regulation or ordinance in Charter School's use of the Dedicated Space shall be considered conclusive evidence of that fact as between District and Charter School. If Charter School fails to comply with any such law, regulation or ordinance, District reserves the right to take necessary remedial measures at Charter School's expense, for which Charter School agrees to reimburse District on demand.
2. **Relocation of Charter School's Program.** The Parties acknowledge and agree that the Dedicated Space is located on a School Site that is currently undergoing a modernization project. As part of the modernization project, the District will be required to remove and/or relocate space which is occupied by Charter School prior to the Term of this Agreement ("Relocation"). The Parties intend to cooperate with each other to mutually agree upon the schedule for the Relocation so that the Relocation occurs during a time that is least

disruptive to the Charter School's Program. If Charter School is unable to use any portion of the Dedicated Space during the Relocation, the District shall reduce the Rent by an amount equal to the square foot rate for any Dedicated Space that is unusable for Charter School's Program, multiplied by the number of days the Dedicated Space is unusable.

3. **Parking.** Charter School's use of parking located on the School Site shall be on a first-come, first-serve basis but shall not unreasonably impact other occupants with similar access rights to the parking. Charter School shall not abandon any inoperative vehicles or equipment on any portion of the School Site. District shall not be liable for any personal injury suffered by Charter School or Charter School's visitors, invitees and guests or for any damage to or destruction or loss of any of Charter School's personal property located or stored in any parking located on the School Site, or the personal property of Charter School's visitors, invitees and guests, except where such damage is caused by the District's negligence or misconduct. Any parking is accepted by Charter School in its "as is" condition and Charter School acknowledges that District has not made and is not making any warranties whatsoever with respect to the availability, use or condition of parking.
4. **Furnishings and Equipment for In-District Students.** The District may provide furnishings and equipment at the Dedicated Space for Charter School's In-District Enrollment ADA as agreed by the Parties during the Term. These furnishings and equipment shall remain the property of the District. The District and the Charter School shall develop a mutually agreeable inventory of furnishings and equipment that will be located at the Dedicated Space, if any.
5. **Emergency Procedures.**
 - 5.1. Charter School shall immediately inform the District of any health and/or safety emergency incident occurring on the Dedicated Space and School Site. This includes reports of any serious incident that takes place on the School Site where the police, fire department, or paramedics are involved, including, but not limited to, incidents of physical or sexual abuse, bomb threats, weapons on the School Site, and the sale of narcotics on the School Site.
 - 5.2. The Charter School will be notified two (2) operating days in advance of scheduled fire drills and emergency drills on the School Site which may disrupt the Charter School and its operations. Charter School will provide notification two (2) operating days in advance to the District and the principal of the local District School located on the School Site of scheduled fire drills and emergency drills on the School Site which may disrupt the School and its operations or cause the District's security staff to be alerted.
6. **Safety of School Site and Dedicated Space.**
 - 6.1. The School Site, including the Designated Space, may be monitored by a safety system or protocol implemented, maintained and operated by District ("District's Safety Measures"). However, Charter School specifically acknowledges,

understands, and agrees that District is neither responsible for nor has the obligation to supply, provide, establish, maintain, or operate District's Safety Measures for either Charter School or the Designated Space. Charter School further expressly acknowledges and agrees that District shall not be liable for and is hereby released from any and all responsibility for any damage, loss, or injury to Charter School or its personal property resulting or arising out of any criminal activity (including, but not limited to, any damage, loss, or injury resulting from intrusions, petty theft, vandalism, or other similar acts) that may occur on or near the Designated Space, regardless of whether District was able to, actually did, or failed to provide notice to Charter School of a safety incident or situation occurring on the Designated Space which led to the damage, loss, or injury. District makes no warranties or representations as to the safety or security of Charter School, the Designated Space, the School Site, or District's Safety Measures. Unless expressly agreed to by District and Charter School, Charter School shall be responsible, at its sole cost, for supplying, providing, establishing, maintaining, and operating its own safety measures, protocols, personnel, or systems to encourage and ensure the security of Charter School, its agents, officers, employees, licensees and invitees, and the Designated Space ("Charter School's Safety Measures"); provided, however, that Charter School must obtain prior written approval from District before employing Charter School's Safety Measures and provided that all of Charter School's Safety Measures are compatible with District's safety system or protocol.

7. Condition of Dedicated Space and School Site.

- 7.1. District shall not be required to make or construct any alterations including structural changes, additions or improvements to the Dedicated Space and School Site except as set forth in this Agreement. District shall, however, remain responsible for compliance with ADA, FEHA and other applicable building code standards but only to the extent that would be required of District without regard to Charter School's use of the Dedicated Space and School Site. By entry and taking possession of the Dedicated Space and School Site pursuant to this Agreement, Charter School acknowledges and agrees the Dedicated Space and School Site are "reasonably equivalent."
- 7.2. Charter School acknowledges that neither District nor District's agents have made any representation or warranty as to the suitability of the Dedicated Space for Charter School or Charter School's Program. Any agreements, warranties or representations not expressly contained in this Agreement shall in no way bind the 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.
- 7.3. The Parties agree that if the structural elements of the Dedicated Space become damaged to a lesser condition than currently exists, and if the structural damage is due to no fault or negligence of Charter School, then District will repair the damage in order to bring it back to a condition which is similar to the condition which exists

at the time Charter School takes possession of the Dedicated Space. District may, however, terminate this Agreement if the cost to repair the Premises exceeds One Hundred Fifty Thousand dollars (\$150,000) per incident. District may, in its reasonable discretion, pro-rate the Rent during the "repair" period, if the resulting structural damage prohibits Charter School from carrying out its normal daily activities relating to Charter School's educational program. If District elects not to perform a repair estimated to cost in excess of One Hundred Fifty Thousand dollars (\$150,000) per incident, Charter School may elect to remain in possession of the Dedicated Space and pay the Rent, unless revised through mutual agreement of the Parties, or Charter School may elect to terminate this Agreement. If necessary and to the extent practicable, at the District's reasonable discretion, the District may provide the Charter School temporary housing on the School Site, or another school site in reasonably close proximity to the Dedicated Space for any part of the Charter School program that is displaced by the partial damage and/or the repair work of the same.

- 7.4. As used in the Agreement, the term "structural elements of the building" are defined as and shall be limited to, the foundation, footings, floor slab (excluding flooring materials), structural walls (excluding glass and doors), and the roof (excluding skylights). Plumbing, electrical and heating systems may be considered "structural elements of the building" excluding, however, those repairs and maintenance items which can be completed without wall or floor removal.
8. **Title to School Site/Dedicated Space.** The Parties acknowledge that title to the School Site/ Dedicated Space is held by District.
9. **Term.**
 - 9.1. The term of this Agreement shall be for five (5) years. The commencement date shall be April __, 2016, ("Commencement Date") and unless sooner terminated under any provision hereof, this Agreement will end on April __, 2021 ("Term").
 - 9.2. If the Parties intend to renew this Agreement after the Term, the Parties shall execute a separate writing signed by both Parties that complies with all of the following provisions:
 - 9.2.1. Specifically authorizes further tenancy by Charter School and specifies the term of that tenancy, and
 - 9.2.2. Is approved by each Party's governing body prior to the end of the Term.
 - 9.3. Rent for any extended term shall be increased to the per square foot rate then being charged by the District for use of its facilities.
 - 9.4. On the last day of the Term hereof Charter School shall surrender to District the Dedicated Space and improvements in good order, condition and repair, reasonable

wear and tear excepted, free and clear of all liens, claims and encumbrances. If the Dedicated Space is not so surrendered, Charter School shall indemnify District against loss or liability resulting from delay by Charter School in surrendering the Dedicated Space including, without limitation, any claims made by any succeeding tenant or loss to District due to lost opportunities.

10. Rent.

- 10.1. For and in consideration of the use of the Dedicated Space for the Term of this Agreement, Charter School agrees to pay District the sum of Four Dollars and Eighty- Eight Cents (\$4.88) per square foot of Dedicated Space. The Dedicated Space is approximately Seventeen Thousand Seven Hundred and Sixty (17,760) square feet. Accordingly, the monthly pro rata share for the Dedicated Space is Seven Thousand Two Hundred Twenty-two Dollars and Forty Cents (\$7,222.40) ("Rent").
- 10.2. Rent for the first month shall be due on or before the Commencement Date. Thereafter, Rent shall be due on the first of each month during the Term, without deduction, setoff, prior notice or demand.
- 10.3. Charter School acknowledges that late payment by Charter School to District of the Rent and other sums due hereunder will cause District to incur costs not contemplated by this Agreement, the exact amount of which will be extremely difficult to ascertain. These costs include, but are not limited to, processing and accounting charges. Accordingly, if District does not receive any installment of Rent or any other sum due from Charter School by 4:00 p.m. within ten (10) days after the amount is due, Charter School shall pay to District, as additional rent, a late charge equal to five percent (5%) of such overdue amount or the maximum amount allowed by law, whichever is less. The Parties hereby agree that the late charges represent a fair and reasonable estimate of the costs District will incur by reason of late payment by Charter School. Acceptance of any late charge by District shall in no event constitute a waiver of Charter School's default with respect to the overdue amount, nor prevent District from exercising any of its other rights and remedies granted hereunder.
- 10.4. Taxes, costs, expenses, assessments, levies, possessory interest taxes, late charges, and other charges and governmental fees, general and special, ordinary and extraordinary, unforeseen, as well as foreseen, of any kind or nature whatsoever, which prior to or during the Term of this Agreement, assessed, levied, or imposed upon or become due and payable which Charter School is required to pay hereunder, together with all interest and penalties that may accrue thereon in the event of Charter School's failure to pay such amounts, and all reasonable damages, costs, and attorneys' fees and expenses which District may incur by reason of any default of Charter School or failure on Charter School's part to comply with the terms of this Agreement, shall be deemed to be additional rent ("Additional Rent") and, in the event of nonpayment by Charter School, District shall have all of the

rights and remedies with respect thereto as District has for the nonpayment of the Rent. The provisions of this Section shall survive the expiration or earlier termination of this Agreement.

- 10.5. Any amount due to District not paid when due shall bear interest at one and one-half percent (1.5%) per month commencing thirty (30) days after the due date, but not to exceed the maximum rate permitted by law. Payment of interest shall be in addition to any late charges owing pursuant to this Agreement and shall not excuse or cure any default by Charter School under this Agreement.

11. Utilities.

- 11.1. District shall furnish or cause to be furnished to the Dedicated Space the utilities necessary for Charter School's Activities. For purposes of this Agreement, utilities include electrical, natural gas, sewer, waste disposal/recycling and water services ("Utilities"). Charter School shall comply with all District energy conservation policies relating to use of the Dedicated Space.
- 11.2. The Charter School shall obtain its own internet service and telephone provider and shall assume sole responsibility for upkeep and maintenance of all telephone systems, data lines, and related equipment, software and hardware. Charter School may use any pre-existing T-1 Line located in the Dedicated Space, if any. In the event Charter School uses a pre-existing T-1 Line, Charter School shall transfer billing of the line to Charter School upon approval from the District's Technology Services Department.

12. Taxes and Assessments.

- 12.1. With the exception of assessments related to any improvements completed by District prior to the Commencement Date, Charter School shall pay a proportional share of any assessment on the Dedicated Space, including any Improvements which Charter School constructs or causes to be constructed on the Dedicated Space, whether real estate, general, special, ordinary or extraordinary, or rental levy or tax, improvement bond, and/or fee imposed upon or levied against the Dedicated Space or Charter School's legal or equitable interest created by this Agreement, and the taxes assessed against and levied upon Charter School's alterations and utility installations that may be imposed by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Dedicated Space's address and where the proceeds so generated are applied by the city, county or other local taxing authority having jurisdiction. The provisions of this Section shall survive the expiration or earlier termination of this Agreement. Nothing in this provision shall be construed to override the requirement in this Agreement that Charter School obtain the express written consent of the District to perform any improvements on the Designated Space or School Site, unless expressly permitted by this Agreement.

13. **Maintenance, Custodial, Inspection and Routine Repairs.**

- 13.1. Charter School shall maintain the Dedicated Space in a good condition consistent with the condition of the Dedicated Space existing on the Commencement Date, including all custodial, pest abatement, regular maintenance and routine repairs (collectively "Maintenance"). Routine repairs shall include those normal and typical repairs that are preventive or cyclical maintenance necessary for the ongoing care and upkeep of any building. Maintenance shall be provided at levels that are reasonably sufficient to prevent unusual deterioration of the Dedicated Space.
- 13.2. District shall keep and maintain the structural elements of the Dedicated Space, as defined herein, in the condition existing at the time Charter School takes possession of the Dedicated Space excepting normal wear, tear and damage by casualty.
- 13.3. For each of the Term, the District shall perform the following inspection services:
 - 13.3.1. Annual inspection and testing of the fire alarm system;
 - 13.3.2. Annual inspection and certification of fire extinguishers located in the Dedicated Space; and
 - 13.3.3. Ongoing monitoring of the fire alarm system.
- 13.4. District shall have no maintenance, custodial, inspection or repair obligations with respect to the Dedicated Space except as expressly provided herein. Charter School hereby expressly waives the provisions of California Civil Code sections 1932(1), 1941 and 1942, and all rights to make repairs at the expense of District as provided in Civil Code section 1942.
- 13.5. **After-hours Emergencies.** For after-hours emergencies contact Buildings & Grounds at (510) 584-0501. For all non-emergency matters, contact the Work Control Desk at (510) 620-2159.
- 13.6. **Environmental Concerns.** To report an environmental concern, please contact the Facilities Planning and Construction Department at (510) 307- 4540.

14. **Title to and Removal of Charter School's Improvements / Facilities.**

- 14.1. Charter School shall not construct or cause to be constructed on the Dedicated Space any improvements ("Charter School's Improvements") without express prior written consent from District. Charter School's Improvements must be deemed by Charter School as necessary to the operation of its educational program.
- 14.2. Charter School shall at its own expense obtain all necessary environmental and governmental approvals and permits, including, without limitation, the California Environmental Quality Act ("CEQA"), any necessary approvals from any local authority including any Site(s), grading, zoning, design review and other required

permits or approvals, if applicable, prior to commencing construction and shall provide District with evidence of approval by all applicable governmental agencies.

- 14.3. Any modifications to Dedicated Space or School Site must be approved in writing in advance by District. Charter School's Contractor must also be approved in advance by District. Any contractor and/or subcontractor used by Charter School, shall be duly licensed in the State of California. Charter School shall be solely responsible for maintaining the Dedicated Space and Charter School's Improvements installed thereon during the Term of this Agreement, including any renewals or extensions, and for compliance with all applicable laws or ordinances, rules and regulations.
- 14.4. Under all circumstances, Charter School must seek and receive approval from the Division of the State Architect for all of Charter School's Improvements.
- 14.5. Title to removable furniture, equipment and/or other personal property placed by Charter School onto the Dedicated Space, but not affixed thereto, shall be held solely by Charter School. These items shall remain the personal property of Charter School and shall not be treated as real property or become a part of the School Site(s) unless District accepts or Charter School abandons any of this personal property at the end of the Term.
- 14.6. Unless otherwise agreed to by the Parties, on or before the expiration of this Agreement, or within thirty (30) days after any earlier termination of this Agreement, Charter School shall remove Charter School's Improvements, at its sole expense. Charter School shall repair any damage to the School Site and/or the Dedicated Space, caused by removal of Charter School's Improvements and restore the School Site and the Dedicated Space to good condition, less ordinary wear and tear. In the event that Charter School fails to timely remove Charter School's Improvements, District, upon fifteen (15) days written notice, may either (1) accept ownership of Charter School's Improvements with no cost to District, or (2) remove Charter School's Improvements at Charter School's sole cost. In the event that District chooses to accept ownership of Charter School's Improvements, Charter School shall execute any necessary documents to effectuate the change in ownership of Charter School's Improvements. In the event that District removes Charter School's Improvements, Charter School shall pay all invoices for the removal of Charter School's Improvements within thirty (30) days of receipt of such invoices.
15. **Signage.** Charter School may install signage at the School Site including one sign at the Charter School's main entrance stating the Charter School name and other pertinent information, a sign indicating the main office of the Charter School, and other directional signs as appropriate. The signage shall not require any Improvement to the School Site in order to erect such signage. Any signage shall be in compliance with any District standards previously made available to Charter School and Charter School's receipt of any applicable permits and approvals required under any municipal or other governmental laws,

ordinances, rules or regulations; provided, that in the event of any conflict between the District's standards and any applicable municipal or governmental permit and/or approval, the terms and conditions of the municipal or governmental permit and/or approval shall prevail. At the termination of this Agreement, Charter School shall remove any signs which it has placed on the School Site and shall repair any damage caused by the installation or removal of those signs.

16. **Fingerprinting and Criminal Background Verification.** The Charter School shall be responsible for ensuring compliance with all applicable fingerprinting and criminal background investigation requirements described in Education Code section 45125.1. Verification of compliance with the fingerprinting and criminal background investigation requirements shall be provided in writing to the District prior to each individual's commencement of employment or participation in any activity of the Charter School on the Dedicated Space and prior to permitting contact with District pupils.
17. **Drug-Free Workplace.** Charter School's employees shall comply with the District's policy of maintaining a drug free workplace. Neither Charter School nor Charter School's employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code § 812, including, but not limited to, marijuana, heroin, cocaine, and amphetamines, at the Dedicated Space and/or School Site. If Charter School or any employee of Charter School is convicted or pleads nolo contendere to a criminal drug statute violation occurring at the School Site, Charter School within five (5) days thereafter shall notify the District. Violation of this provision shall constitute a material breach of this Agreement.
18. **Inspection of Dedicated Space.** District agrees to provide Charter School with a set of keys for the Dedicated Space. The District and its authorized representatives shall have the right, after forty-eight (48) hours prior written notice to the Charter School, to enter the Dedicated Space during normal business hours for the purpose of inspection and audit of the Dedicated Space. Nothing in this section shall prevent the District from entering the Dedicated Space to address an emergency nor shall this provision restrict the District's authority to enter the Dedicated Space without advanced notice to perform its general oversight responsibilities pursuant to applicable law. An "emergency" shall be defined to include circumstances that risk the health and safety of students, personnel or other persons on the Dedicated Space and/or Site, or circumstances that risk further imminent damage or destruction to the Dedicated Space and/or Site, or otherwise jeopardizes the operation of the Site including, but not limited to, the safety and sanitary condition of the Dedicated Space.
19. **Hazardous Materials/Environmental Laws.**
 - 19.1. As used herein, the term "Hazardous Materials" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California or the United States Government. The term "Hazardous Materials" includes, without limitation, petroleum products, asbestos, PCB's, and any material or substance which is (i) defined as hazardous or

extremely hazardous pursuant to Title 22 of the California Code of Regulations, Division 4.5, Chapter 11, Article 4, section 66261.30 et seq. (ii) defined as a "hazardous waste" pursuant to section (14) of the federal Resource Conservation and Recovery Act, 42 U.S.C. 6901 et. seq. (42 U.S.C. 6903), or (iii) defined as a "hazardous substance" pursuant to section 10 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et. seq. (42 U.S.C. 9601).

- 19.2. As used herein, the term "Environmental Laws" shall mean any statute, law, ordinance, or regulation of any governmental body or agency (including the U.S. Environmental Protection Agency, the California Regional Water Quality Control Board, and the California Department of Health Services) which regulates the use, storage, release or disposal of any Hazardous Material.
- 19.3. Charter School shall comply with all applicable Environmental Laws in the use of the Dedicated Space and School Site. Charter School shall not cause or permit any Hazardous Material to be generated, brought onto, used, stored, or disposed of in or about the Dedicated Space and any improvements by Charter School or its agents, employees, contractors, subtenant, or invitees, except for limited quantities of standard office, classroom and janitorial supplies (which shall be used and stored in strict compliance with Environmental Laws).
- 19.4. **Notice.** Charter School will promptly notify District in writing if Charter School has or acquires notice or knowledge that any Hazardous Substance has been or is threatened to be, released, discharged, disposed of, transported, or stored on, in, or under or from the Dedicated Space or School Site in violation of Environmental Laws. Charter School shall promptly provide copies to District of all written assessments, complaints, claims, citations, demands, fines, inquiries, reports, violations or notices relating to the conditions of the Dedicated Space or compliance with Environmental Laws. Charter School shall promptly supply District with copies of all notices, reports, correspondence, and submissions made by Charter School to the United States Environmental Protection Agency, the United States Occupational Safety and Health Administration, and any other local, state, or federal authority that requires submission of any information concerning environmental matters or Hazardous Substances pursuant to Environmental Laws. Charter School shall promptly notify District of any liens threatened or attached against the Dedicated Space pursuant to any Environmental Laws.
- 19.5. **Inspection.** District and District's agents, servants, and employees including, without limitation, legal counsel and environmental consultants and engineers retained by District, may (but without the obligation or duty to do so), at any time and from time to time, on not less than ten (10) business days' notice to Charter School (except in the event of an emergency, in which case, no notice will be required), inspect the Dedicated Space to determine whether Charter School is complying with Charter School's obligations set forth in this Section, and to perform environmental inspections and samplings, during regular business hours

23. **Insurance.**

23.1. Insurance is to be placed with insurers with a current A.M. Best Insurance rating of no less than A-minus: VII and subject to the approval of District. Charter School shall furnish District with the original certificates and amendatory endorsements effecting coverage required.

23.2. Charter School acknowledges that the insurance to be maintained by District on the Dedicated Space will not insure any of Charter School's property or improvements made by Charter School.

23.3. Charter School shall, at Charter School's expense, obtain and keep in force during the term of this Agreement a policy of commercial general liability insurance and a comprehensive auto liability policy insuring District and Charter School against claims and liabilities arising out of the operation, condition, use, or occupancy of the Dedicated Space and all areas appurtenant thereto, including parking areas. Charter School's comprehensive auto liability policy shall insure all vehicle(s), whether hired, owned or non-owned. Charter School's commercial general insurance shall be at least as broad as the Insurance Service Office (ISO) CG 00-01 form and in an amount of not less than One Million dollars (\$1,000,000) for bodily injury or death and property damage as a result of any one occurrence and a Two Million dollar (\$2,000,000) general aggregate policy limit. The insurance carrier, deductibles and/or self-insured retentions shall be approved by District, which approval shall not be unreasonably withheld. Prior to the Commencement Date Charter School shall deliver to District a certificate of insurance evidencing the existence of the policies required hereunder and copies of endorsements stating that such policies shall:

23.3.1. Not be canceled or altered without thirty (30) days prior written notice to District;

23.3.2. State the coverage is primary and any coverage by District is in excess thereto;

23.3.3. Contain a cross liability endorsement; and

23.3.4. Include a separate endorsement naming District as an additional insured.

At least thirty (30) days prior to the expiration of each certificate, and every subsequent certificate, Charter School shall deliver to District a new certificate of insurance consistent with all of the terms and conditions required in connection with the original certificate of insurance as described above.

23.4. During the Term of this Agreement, District will maintain at its cost a policy of standard fire and casualty insurance limited to the value of the buildings and

improvements located on the School Site as of the Commencement Date. In the event of loss or damage to the Dedicated Space or any contents, the Parties hereto, and all persons claiming under each of the Parties, shall look first to any insurance in its favor before making any claim against the other Party, and to the extent possible without adding additional costs, each Party shall obtain for each policy of insurance provisions permitting waiver of any claim against the other Party for loss or damage within the scope of the insurance and each Party, to the extent permitted, for itself and its insurers, waives all such insurance claims against the other Party.

- 23.5. During the Term of this Agreement, Charter School shall comply with all provisions of law applicable to Charter School with respect to obtaining and maintaining workers' compensation insurance. Prior to the Commencement Date and any renewal of this Agreement and Charter School's occupancy of the Dedicated Space, Charter School shall provide District, as evidence of this required coverage, a certificate in a form satisfactory to District on or before the Commencement Date or any renewal or extension thereof, providing that insurance coverage shall not be canceled or reduced without thirty (30) days prior written notice to District
24. **Surrender of Agreement Not Merger.** The voluntary or other surrender of this Agreement by Charter School, or a mutual cancellation thereof, shall not work a merger and shall, at the option of District, terminate all or any existing subleases or subtenancies, or operate as an assignment to District of any or all subleases or subtenancies.
25. **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:

District:

Associate Superintendent
WCCUSD Facilities Planning & Construction
1400 Marina Way South
Richmond, CA 94804-3747

Charter School:

Peppina Liano
1014 Florida Avenue
Richmond, Ca 94804

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 business day next following delivery thereof to the overnight delivery service. Any notice given by certified or registered mail shall be effective three (3) days after deposit in the United States mail.

26. **Subcontract, Assignment and Sublease.** Neither Party shall assign its rights, duties or privileges under this Agreement, nor shall either Party attempt to confer any of its rights, duties or privileges under this Agreement on any third party, without the written consent of the other Party. Charter School shall not sublease any portion of the Dedicated Space without the prior written consent of the District.
27. **Joint and Several Liability.** If Charter School is more than one person or entity, each such person or entity shall be jointly and severally liable for the obligations of Charter School hereunder.
28. **Independent Contractor Status.** This Agreement is by and between two independent entities and is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, or association.
29. **Entire Agreement of Parties.** This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.
30. **California Law.** This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in county in which the District's administrative offices are located.
31. **Attorneys' Fees.** If either Party files any action or brings any proceedings against the other arising out of this Agreement, the prevailing party shall be entitled to recover, in addition to its costs of suit and damages, reasonable attorneys' fees to be fixed by the court. The "prevailing party" shall be the Party who is entitled to recover its costs of suit, whether or not suit proceeds to final judgment. No sum for attorneys' fees shall be counted in calculating the amount of a judgment for purposes of determining whether a Party is entitled to its costs or attorneys' fees.
32. **Waiver.** The waiver by either Party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.
33. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors, and assigns.
34. **Counterparts.** This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.

- 35. **Captions.** The captions contained in this Agreement are for convenience only and shall not in any way affect the meaning or interpretation hereof nor serve as evidence of the interpretation hereof, or of the intention of the Parties hereto.
- 36. **Severability.** Should any provision of this Agreement 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.
- 37. **Incorporation of Recitals and Exhibits.** The Recitals and each Exhibit attached hereto are hereby incorporated herein by reference.

ACCEPTED AND AGREED on the date indicated below:

WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT

By: _____ Date _____

Its: _____ Date _____

CHARTER SCHOOL

By: *P. Lewis* Date 04/01/16

Its: CEO Date _____

Exhibit "A"
Description of Dedicated Space

The Dedicated Space that are being provided to Charter School are the following rooms and areas as described below and as indicated on the attached Site maps:

Site: **Nystrom Elementary School Site**

Dedicated Space includes approximately 17,760 square feet of space consisting generally of the following:

10 classrooms:

- 2nd grade – 2 classrooms
- 3rd grade – 2 classrooms
- 4th grade – 2 classrooms
- 5th grade – 2 classrooms
- 6 grade – 2 classrooms

Other Facilities:

- 1 computer lab
- 1 admin space
- 1 teacher's lounge
- 1 jujitsu room
- 1 RSP, speech, occupational therapy room
- 1 multi-purpose (3-wide)
- 1 staff restroom

