

**PROPOSITION 39 CHARTER FACILITIES USE AGREEMENT  
BY AND BETWEEN  
MOUNT DIABLO UNIFIED SCHOOL DISTRICT AND  
CLAYTON VALLEY CHARTER SCHOOL**

**DRAFT**

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THIS AGREEMENT ("Agreement") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by and between the Mount Diablo Unified School District, a public school district organized and existing under the laws of the State of California ("District") and The Clayton Valley Charter High School, a California public charter school ("Charter School"). The District and the Charter School are collectively referred to herein as "the parties."

**RECITALS**

**WHEREAS**, the Charter School is a non-profit public benefit corporation that is operating a charter authorized by the District;

**WHEREAS**, pursuant to the requirements of California Education Code section 47614 and its implementing regulations (also known as "Proposition 39"), the Charter School has made a written request for facilities for the 2012-2013 school year, a true and correct copy of which is attached as Exhibit A and hereby incorporated by reference; and

**WHEREAS**, pursuant to the requirements of Proposition 39 and its implementing regulations the District Board of Education has made a written offer to provide the Charter School with facilities for its in-district students, a true and correct copy of which is attached as Exhibit B and hereby incorporated by reference, and the Charter School has accepted the terms of that offer; and

**WHEREAS**, the parties desire to set forth the terms and conditions pursuant to which the Charter School will occupy and use facilities (the "Dedicated Space") at Clayton Valley High School located at 1101 Alberta Way, Concord, CA, ("Site") commencing with the 2012-2013 school year. See Exhibit C for a detailed description of the Dedicated Space.

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

**Section 1. Use of Dedicated Space.** The District agrees to allow the Charter School exclusive use of entire premises as the Dedicated Space for the sole purpose of operating the Charter School educational program in accordance with the Charter School's charter. The Charter School's right to exclusive use of the Dedicated Space shall be coterminous with the term of this Agreement and shall be for the 2012-2013 school year only. Upon the

termination of this Agreement, the right to exclusive use and occupation of the Dedicated Space and the facilities and equipment thereon shall revert to the District subject, to the parties' negotiation of a successor Agreement, if necessary, containing the terms of the District's provision of facilities to the Charter School in accordance with the provisions of Proposition 39. As titleholder to the Dedicated Space and the facilities and equipment located thereon, the District reserves the right at the termination of this Agreement to recoup the full rights and benefits of such ownership, including, but not limited to, use of such Dedicated Space, facilities and equipment for District services.

The Charter School shall otherwise have full and exclusive use of the Dedicated Space. The Charter School shall comply with District policies and/or practices regarding the operations and maintenance of the facilities, ~~and the furnishings, and equipment provided by the District, except~~ However, the Charter School need not comply with policies in cases where actual District practice substantially differs from official policies.

Although the Charter School shall have the exclusive use of the Dedicated Space, Charter School agrees to comply with the provisions of the Civic Center Act (Education Code section 38131 et seq.) and District Board Policies and Administrative Regulations in making use of the facilities accessible to members of the community. ~~For purposes of compliance with the Civic Center Act, 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. All proceeds derived from the use of the Dedicated Space pursuant to the Civic Center Act shall be the property of the Charter School and may be used by the Charter School to offset utility expenses, custodial expenses etc. Charter School will provide the District copies of all requests, invoices and other correspondence between the Charter School and any third parties requesting use of the Dedicated Space. Charter School may not charge third-party users fees in excess of those allowed under the Civic Center Act.~~

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The Charter School ~~agrees to comply with the provisions of the Civic Center Act (Education Code section 38121) in making use of the facilities accessible to members of the community. Charter School shall adhere to District procedures in making the facilities available to community members, including but not limited to, procedures relating to contacting District administration regarding such use of the facilities by community members. The Charter School shall provide the District with copies of all requests, invoices and other correspondence between the Charter School and third-parties requesting use of the Dedicated Space.~~

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### **Section 3. Full and Complete Satisfaction.**

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The parties agree that the provision of facilities pursuant to this Agreement constitutes full and complete satisfaction of the District's obligation to provide facilities to Charter School under Education Code section 47614 and the Proposition 39 regulations for the 2010-2011 school year.

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### **Section 23. Facility & Amenities - Occupancy & Use.**

FURNISHINGS AND EQUIPMENT: The District shall provide, in accordance with the Proposition 39 regulations, furnishings, and equipment at the Site. These furnishings and equipment shall remain the property of the District. ~~The furnishings and equipment provided shall be equivalent to those furnishings and equipment provided in the comparison group of schools in accordance with 5 C.C.R. Section 11969.3. (Sarah, this provision is not necessary as there was no comparison group due to conversion.)~~ The District and the Charter School shall develop a mutually agreeable inventory of the furnishings and equipment that will be located at the Site. No later than October 1, 2012, the Charter School shall provide the District with a complete inventory of all Charter School owned furnishings and equipment at the Site. The Charter School inventory shall be updated as the Charter School purchases new furnishings and equipment and/or surpluses and sells furnishings and equipment. The allocation of furnishings and equipment shall include the textbooks and kitchen equipment located on the Dedicated Space during the 2011-2012 school year. Furnishing and equipment shall not include the radio transmission tower and equipment consequent thereto or radio licenses. ~~(Sarah, although the radio license is in the school's name, it is not a legal entity and thus, cannot hold title to property. The license is the property of the District and as such, the district will determine its use.)~~

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SECURITY: The Dedicated Space shall be wired to the Clayton Valley High School alarm system. The Charter School shall be responsible for costs incurred due to false alarms and security breaches that are related to the Dedicated Space and are caused by the Charter School, or its students, employees, agents or invitees. The Charter School shall cooperate with the District on security issues. The Charter School may have a unique security code. If there is a fire at the property, the Charter School shall immediately notify the District but no later than within one business day. As the owner of the property and thus, the entity ultimately liable for its condition, the District retains the right to enter upon the facility for the purpose of inspecting the same, or to make capital improvements and repairs. The District shall attempt to provide reasonable notice where practicable but shall not be obligated to do so in the event of an emergency or imminent threat to the health or safety of occupants.

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EMERGENCY: In an emergency, including if the Space is destroyed or damaged in any material way, the District reserves the right to temporarily interrupt the Charter School's use of the Space, or any Charter School Campus facilities or systems.

**Section 34. Modernization.** In the event that the District designates matching facilities funds for the facility and begins modernizing the facility, the District and the Charter School will meet to discuss the issue of modernization for the Site. The District will continue to move forward with the Measure C improvements currently planned for the Dedicated Space in the 2012-2013 school year.

**Section 45. Term.** The term of this Agreement shall begin on its date of execution and shall end on June 30, 2013.

Notwithstanding the term of this Agreement, the Charter School's right to renew this Agreement shall be subject to compliance with the annual notification-facilities request

requirements of Education Code section 47614 and 5 C.C.R. sections 11969 ~~et seq.~~ and compliance with the terms of this Agreement. Upon timely notification of the Charter School's facilities needs in accordance with 5 C.C.R. sections 11969 ~~et seq.~~, the parties shall amend the terms of this Agreement, if necessary, and the parties shall execute a new Agreement. The District reserves the right to provide alternative facilities at the end of the term of this Agreement that meet the requirements of Prop. 39, and makes no guarantee that the Dedicated Space will be available for any additional term beyond the current term.

**Section 56. Termination.** This Agreement will automatically terminate upon the termination or revocation of Charter School's charter or the cessation of Charter School's operations for any reason, except that in the case of a revocation or non-renewal of the Charter School's charter, this Agreement shall not terminate until the Charter School has exhausted all of its statutory rights to appeal said revocation or non-renewal.

**Section 67. Fees and Payment.** A. The District shall charge the pro rata share amount referred to in Education Code section 47614(b)(1). The Charter School and the District agree that the total pro rata share amount payment shall be ~~\$580,139.70~~ for the 2012-2013 school year for indoor space. The District reserves the right to calculate and charge the Charter School a pro rata share of all outdoor space at the site, but only at such time as the District recalculates its pro rata share to include the total amount of outdoor space at all of its facilities pursuant to 5 CCR Section 11969.7.

Comment [JR1]: To be determined

B. The District will invoice the Charter School and the Charter School will make installment payments on this invoiced amount payable to "Mount Diablo Unified School District" and delivered to the District's Office of Charter Schools according to the following schedule:

**Section 87: Payment Schedule.**

- 25% by September 1, 2012~~1~~;
- 25% by December 31, 2012~~1~~;
- 25% by March 31, 2013~~2~~;
- 25% by June 30, 2013~~2~~

C. The Charter School may choose to prepay any of the installment payments without incurring a prepayment penalty from the District.

D. Charter School payments of undisputed amounts that are more than 30 calendar days late arriving at the District will incur a one (1%) percent per month interest charge on the balance.

E. The District will deduct from subsequent transfer payments payable to the Charter School any undisputed scheduled payment amount due from this Agreement, plus interest charges, that is more than 60 calendar days past due.

F. The Fees are detailed in Exhibit D, Table I attached to this agreement.

GH. The Fee does not include Site-specific costs which the school must include in its own budget. The Fee does not include, among other items, the cost of ~~computers, computer lab, laptop carts, server equipment,~~ internet service, phone service, ~~audio-visual equipment,~~ custodial, or campus security.

I.

HJ. Either the Charter School or the District may call, at any time, for a meeting to discuss adjustments or reconciliation of these figures whenever there is reason to believe that these estimates do not reflect actual amounts owing.

~~K. If the Charter School disputes any fee or charge, it shall send written notification to the District. The Charter School has the right to submit the issue for resolution to the MDUSD Board of Education. Pending resolution of any dispute resolution procedures relating to the fee or charge, the Charter School shall only be required to continue paying any undisputed amount. Upon resolution of the dispute relating to the fee or charge, and based upon the ultimate resolution thereof, the Parties shall reconcile the amounts owed.~~

**Section 89. Utilities.** The Charter School shall be solely responsible for the cost of all utilities used or consumed by the Charter School on the Site. With respect to internet connectivity, the Charter School shall assume use of the pre-existing T-1 line and shall transfer billing for the use of such line over to the Charter School. The Charter School shall obtain its own internet service provider and shall assume sole responsibility for upkeep and maintenance of all telephone systems, data lines, and related equipment, software and hardware.

The District shall be excused from performance and shall not be liable if: (a) there is an interruption in utilities services caused by circumstances beyond the District's control; or (b) there occurs any failure or defect in the District's physical plant or utility lines, whether or not attributable to the District. In the event of such interruption, failure or defect, the District shall make reasonable attempt(s), ~~unless economically impracticable in the District's reasonable judgment,~~ to restore such utility service(s). The reasonable cost of repair or maintenance of a physical plant or utility lines attributable to the Charter School shall be considered to be a reasonable maintenance cost for which the District shall bear liability.

**Section 910. Maintenance.** Facilities, furnishings, and equipment provided to the Charter School shall remain the property of the District. The ongoing operations and maintenance of the facilities and furnishings and equipment is the responsibility of the Charter School. Projects eligible to be included in the District deferred maintenance plan established pursuant to Education Code section 17582 and the replacement of furnishings and equipment supplied by the District in accordance with District schedules and practices shall remain the responsibility of the District. The Charter School shall comply with District policies regarding the operations and maintenance of the facilities and furnishings and equipment, except to the extent variation is approved by the District.

The District shall be responsible for the major maintenance of the facilities used by the Charter School. For purposes of this section, "major maintenance" includes the major repair or replacement of plumbing, heating, ventilation, air conditioning, electrical, roofing, and floor systems, exterior and interior painting, and any other items considered deferred maintenance under Education Code section 17582. All other kinds of maintenance shall be considered routine maintenance.

**Section 4011. Installation of Improvements.** The Charter School shall not construct or install any improvements on the Dedicated Space ~~or otherwise alter the Dedicated Space~~ without the prior written consent of the District, and if required, the Division of the State Architect. Improvements shall be defined as changes to the structure of the Dedicated Space with a cost of more than \$20,000, and shall not include painting of the Dedicated Space or changing internal locks. If the Charter School intends to rekey the Dedicated Space, it agrees to provide the District with advance notice and shall provide copies of keys. The District's approval of any improvements, including the construction schedule, work hours, and modifications, shall be at District's sole and absolute reasonable discretion, however, the District shall not refuse permission for improvements or alterations requested by the Charter School that are necessary for the continued operation or use of some portion of the Dedicated Space, and District may disapprove of such improvements without reason. Contractors retained by the Charter School with respect to the construction or installation of improvements shall be fully licensed and bonded as required by law and must maintain levels of casualty, liability and workers' compensation insurance and performance and payment bonds consistent with District construction requirements. The construction or installation of improvements shall be performed in a sound and workmanlike manner, in compliance with all laws applicable to charter schools, including buildings codes and potentially prevailing wage laws. The District or the District's agent shall have a continuing right at all times during the period that improvements are being constructed or installed to enter the premises and to inspect the work, provided that such entries and inspections do not unreasonably interfere with the progress of the construction or interrupt instruction to students.

The Charter School shall be entitled to install signage customarily used by other schools in the District at the Dedicated Space. The Charter School shall seek advanced approval from the District of all signage, including location and size, but the District shall not unreasonably deny approval of signage that complies with District custom and practice,

**Section 4112. Condition of Property.** The District is not aware of any defect in or condition of the District Subject Property that would prevent their use for the Charter School's purposes. The District has not received any notice of violation of statute, ordinance, regulation, order or holding from any state or federal agency with jurisdiction over the District Subject Property that calls into question the appropriateness or sufficiency of the District Subject Property for their intended purpose.

The Charter School, at its expense, shall comply with all applicable laws, regulations, rules and orders with respect to its use and occupancy of the Dedicated Space, including, without limitation, those relating to health, safety, noise, environmental protection, waste disposal,

and water and air quality. The Charter School shall not be responsible for any and all environmental conditions that existed prior to the Charter School's occupancy of the Dedicated Space. The District shall remain responsible for compliance with the ADA, FEHA, and other applicable building code standards regarding access for any existing compliance issue prior to the date of execution of this Agreement. The Charter School shall only assume responsibility for compliance with ADA and FEHA access rights to the extent of any modifications or improvement made by the Charter School.

Should any discharge, leakage, spillage, emission, or pollution of any type occur upon or from the Dedicated Space due to the Charter School's use and occupancy thereof, the Charter School, at its expense, shall be obligated to clean all the property affected, to the satisfaction of the District and any governmental agencies having jurisdiction over the Dedicated Space.

**Section 1213. Title to Property.** The parties acknowledge that title to the Dedicated Space is held by the District and shall remain in the District at all times.

**Section 1314. Fingerprinting.** 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 aforementioned fingerprinting and criminal background investigation requirements shall be maintained as required by law at the Dedicated Space, and 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 on a quarterly basis upon request. For those employees who were District employees prior to conversion and have previously undergone a background check, the Charter School shall not be obligated to perform another check on these employees pursuant to this section. The District will also be responsible for ensuring compliance with all applicable fingerprinting and criminal background investigation requirements described in Education Code section 45125.1 for any individuals it sends to the Dedicated Space prior to permitting contact with Charter School students.

**Section 1415. Insurance.** The District will continue to maintain its current levels of insurance on the structures on the Dedicated Space. The Charter School shall, during the term of this Agreement, maintain in force the required levels of insurance in the amounts specified by the District. Specifically, the coverage and limits as designated in the 2011/12 California Charter School Association Joint Powers Agreement which is attached as Exhibit E and incorporated herein by reference.

The Charter School shall secure and maintain property insurance that addresses business interruption and casualty needs, including flood, fire, earthquake, and other hazards with replacement costs coverage for all assets listed in the Charter School's property inventory and consumables. The Charter School shall secure property coverage with a minimum policy limit of 80 percent of the fair market value of the Charter School's contents.

**Section 1516. Indemnification**

**1516.1** The Charter School shall, to the fullest extent permitted by law, indemnify, defend, and hold harmless the District, its officers, directors, and employees, attorneys, agents, representatives, volunteers, successors and assigns (collectively hereinafter District and District Personnel) from and against any and all actions, suits, claims, demands, losses, costs, penalties, obligations, errors, omissions, or liabilities, including legal costs, attorney's fees, and expert witness fees, whether or not suit is actually filed, and/or any judgment rendered against District and/or District Personnel, that may be asserted or claimed by any person, firm or entity arising out of the Charter School' use of the Site or from the conduct of its business or from any activity, work, or other things done, permitted or suffered by the Charter School in or about the Site after the District delivers possession of the Site to the Charter School. This indemnity and hold harmless provision shall exclude actions brought by third persons against the District arising out of the negligence or intentional acts, errors or omissions of the District and/or District Personnel.

**1516.2** The District shall, to the fullest extent permitted by law, indemnify, defend, and hold harmless the Charter School, its officers, directors, and employees, attorneys, agents, representatives, volunteers, successors and assigns (collectively hereinafter Charter School and Charter School' Personnel) from and against any and all actions, suits, claims, demands, losses, costs, penalties, obligations, errors, omissions, or liabilities, including legal costs, attorney's fees, and expert witness fees, whether or not suit is actually filed, and/or any judgment rendered against the Charter School and/or Charter School' Personnel, that may be asserted or claimed by any person, firm or entity arising out of the District's prior or current use or maintenance of the Site or from the prior use or current conduct of its business or from any activity, work, or other things done, permitted or suffered by the District in or about the Site after District delivers possession of the Site to the Charter School. This indemnity and hold harmless provision shall exclude actions brought by third persons against the Charter School arising out of the negligence or intentional acts, errors or omissions of the Charter School and/or Charter School' Personnel.

**Section 16. Access.** The Charter School shall permit the District, its agents, representatives, or employees, to enter upon the Dedicated Space for the purpose of inspecting same or to make repairs, alterations, or additions to any portion of the Dedicated Space. The 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.

**Section 1718. Surrender of Dedicated Space.** Upon the Termination Date or other termination of this Agreement, the Charter School shall peaceably quit and surrender to the District the Dedicated Space together with the Charter School improvements and all alterations approved by the District in good order and condition, except for normal wear and tear after the Charter School's having made the last necessary repair required on its part under this Agreement, and further except for any portion of the Dedicated Space



condemned and any damage and destruction for which the Charter School is not responsible hereunder.

**Section 18.9.1 Dispute Resolution.** Notwithstanding anything in this Agreement to the contrary, disputes between the Parties regarding this Agreement, including, the alleged violation, misinterpretation, or misapplication of this Agreement, or Proposition 39, shall be resolved using the dispute resolution process identified in the Charter Petition submitted to the District in June 2011, below in this section.

**Section 18.2 Notice of Dispute.** 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 (the designated representatives must be an employee(s) of Charter School or the District); (2) a statement of the facts of the dispute, including information regarding the Parties' attempts to resolve the dispute; (3) the specific sections of this Agreement that are in dispute; and (4) the specific resolution sought by the Party.

**Section 18.3 Informal Meeting.** Within five (5) business days from receipt of the notice of dispute set forth in Section 18.2, the representatives from Charter School shall meet with representatives from the District in an informal setting to try to resolve the dispute.

**Section 18.4 Mediation.**

(A) If the informal meeting set forth in Section 18.3 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 request the selection by the Parties of a mediator who is available to meet as soon as possible but not later than 30 calendar days after receipt of the notice for mediation. If the Parties are unable to mutually select a mediator within 30 days of the notice for mediation, the Parties shall request the State Mediation and Conciliation Service to appoint a mediator within seven (7) business days of the request to assist the Parties in resolving the dispute. If the State Mediation and Conciliation Service ("SMCS") is unable or refuses to provide a mediator within that time, the Parties shall each appoint a mediator, who in turn will appoint a third mediator. The Parties shall each pay an equal share of the fees and costs for the mediator or mediators, if a panel of three mediators is selected. Each Party shall be solely responsible for its attorney's fees and costs associated with the mediation.

(B) The Party initiating the dispute shall forward a copy of the notice of the dispute to the selected mediator(s). The responding Party shall file a written response with the mediator(s) and may serve a copy on the initiating Party within seven business days of the scheduled mediation. The mediation procedure shall be entirely informal in nature; however, copies of exhibits upon which either Party bases its case may 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 Charter School but shall not be effective until approved by each Party's respective governing bodies.

**Section 18.5 Equitable and Injunctive Relief.** Either Party may seek equitable or injunctive relief prior to initiation of the dispute resolution process set forth in this section to preserve the status quo or prevent irreparable injury pending the completion of the process. Except for such an action to obtain equitable 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 45 calendar 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.

**Section 1920. Damage and Destruction of Dedicated Space:**

**Partial Damage.** If the Dedicated Space 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 Dedicated Space 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, except that Charter School shall be entitled to proportionate reduction of all fees and payments while such restoration takes place, such proportionate reduction to be based upon the extent to which the restoration efforts interfere with Charter School's business on the Dedicated Space. The District shall provide the Charter School temporary housing on the Dedicated Space, or another school site that is near 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.

**Total Destruction.** If the Dedicated Space is totally destroyed (defined as the destruction of more than forty percent (40%) of the usable classroom space), or the Dedicated Space 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.

**Section 201821. Capacity to Sign.** All parties represent and warrant that they possess all necessary capacity and authority to sign and enter into this Agreement. Each individual signing this Agreement for a party which is a public agency, a corporation, a partnership, a limited liability company, or other legal entity, or signing under a power of attorney or as a trustee, guardian, conservator, or in any other legal capacity, represents and warrants that he or she has the necessary capacity and authority to act for, sign, and bind the respective entity or principal on whose behalf he or she is signing.

**Section ~~2119~~22. 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 District: Office of General Counsel  
1936 Carlotta Drive  
Concord, CA 94519  
Attention: Deborah A. Cooksey

If to the School: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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 mail shall be effective three (3) days after deposit in the United States mail.

**Section ~~2223~~0. Subcontract and Assignment.** Neither party shall assign its rights, duties or privileges under this Agreement, nor shall a party attempt to confer any of its rights, duties or privileges under this Agreement (including that of sublease) on any third party, without the written consent of the other party.

**Section ~~2312~~4. Independent 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.

**Section ~~2422~~5. 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 the parties.

**Section ~~2532~~6. 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 Contra Costa County, California.

**Section ~~2427~~.** Attorneys' Fees. Except as otherwise specified herein if either party files any action or brings any proceeding against the other party arising out of this Agreement, the parties shall bear their own attorneys' fees and costs.~~If either party files~~

any action or brings any proceedings against the other arising out of this Agreement, the parties shall bear their own attorneys' fees and costs.

**Section 26527. Waiver.** The waiver by any 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.

**Section 27629. 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.

**Section 28730. Modifications.** Written modifications of this Agreement may be made by mutual written agreement at any time and must express intent to modify this Agreement. Any modification of this agreement must be in writing and executed by duly authorized representatives of both parties.

**Section 29831. 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.

**Section 302932. 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.

~~Section 310. Construction Nothing in this Agreement shall affect the number of positions held by or reduce the amount of work performed by District employees covered by a collective bargaining agreement with the District.~~

**Section 32133. 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.

**Section 3342. Incorporation of Recitals and Exhibits.** The Recitals and each exhibit attached hereto are incorporated herein by reference.

**Section 3453. Time is of the essence.** Time is of the essence in this Agreement.

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

**MOUNT DIABLO UNIFIED SCHOOL DISTRICT**

\_\_\_\_\_  
**Sherry Whitmarsh, President, Board of Education**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Steven Lawrence, Ph.D Secretary, Board of Education**

\_\_\_\_\_  
**Date**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**Deborah A. Cooksey, Associate General Counsel**

\_\_\_\_\_  
**Date**

| **CLAYTON VALLEY COMMUNITY CHARTER HIGH SCHOOL**

**By:** \_\_\_\_\_ **Date:** \_\_\_\_\_

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