

**FACILITY USE AGREEMENT BETWEEN  
ROCKETSHIP EDUCATION  
AND THE MT. DIABLO UNIFIED SCHOOL DISTRICT  
FOR THE USE AND OCCUPATION OF  
Glenbrook Middle School  
2351 Olivera Rd, Concord, CA 94520**

This Facility Use Agreement (“Agreement”) is made by and between MT. DIABLO UNIFIED SCHOOL DISTRICT, a school district formed and existing under the laws of the State of California (“District”), and ROCKETSHIP EDUCATION, a California nonprofit public benefit corporation (“Charter School”), which operates the Rocketship Futuro Academy charter school (“RFA”). This Agreement includes the terms and conditions of Charter School’s use and occupation of the Glenbrook Middle School site, located at 2351 Olivera Rd, Concord, CA 94520.

**RECITALS**

**WHEREAS**, the District is the owner of certain real property, known as Glenbrook Middle School campus located at 2351 Olivera Rd, Concord, CA 94520 (referred to herein in its entirety as the “Site”);

**WHEREAS**, RFA was established in 2016 and currently provides educational and recreational activities for students in grades TK-5 on the Site;

**WHEREAS**, RFA has a charter authorized by the State Board of Education authorizing RFA to serve Grades TK-5 through June 2021 (the “RFA Charter”);

**WHEREAS**, RFA requires classrooms and facilities for its in-district students for the purposes of operating its educational program in accordance with the RFA Charter;

**WHEREAS**, the District has agreed to grant RFA that certain allocation of exclusive use classrooms and administrative spaces at the Site, as well as certain shared uses spaces which will be shared with the District as set forth in the District’s April 1, 2020 Final Offer of Facilities to the Charter School, as modified by the District’s September 4, 2020 letter, and on Exhibit “A” hereto (the “Premises”);

**WHEREAS**, this Agreement is entered into by the Parties in lieu of the provision of facilities by the District under Education Code section 47614 (“Proposition 39”);

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

**AGREEMENT**

**1. USE OF PREMISES**

1.1. District hereby leases to Charter School, and Charter School hereby leases from

District, the Premises upon the covenants and conditions set forth in this Agreement. District agrees to allow use of the Premises by RFA for purposes of operating a public charter school providing educational instruction to public school students and all associated uses (the "Program" or "Activities"), consistent with RFA's Charter Petition.

- 1.2. Use of the Premises shall be for the sole purpose of operating a charter educational program in accordance with all applicable federal, state and local regulations relating to the Premises, and to the operation of the educational program, including associated uses such as summer school and programs procured through third Party entities, e.g. childcare and after-school program providers. RFA shall not use the Premises for any use other than that specified in this Agreement without the prior written consent of District, which consent shall not be unreasonably withheld, conditioned or delayed.
- 1.3. Charter School shall not commit, or suffer to be committed, any waste upon the Premises, or allow the Premises to be used for any unlawful purpose, or place any loads upon the floor, walls or ceiling which endanger the structure, or knowingly place any harmful liquids in the plumbing, sewer or storm water drainage system of the Premises . No waste materials or refuse shall be dumped upon or permitted to remain upon any part of the Premises except in trash containers designated for that purpose.
- 1.4. Charter School shall prohibit the use of tobacco products, e-cigarettes, alcohol, and unlawful controlled substances on the Premises at all times unless permitted by law.
- 1.5. Charter School shall not intentionally do or permit anything to be done in or about the Premises nor bring or keep anything therein which will in any way increase the District's existing insurance rate or effect any fire or other insurance upon the Premises, or cause a cancellation of any insurance policy covering the Premises or any part thereof or any of the contents of the Premises.
- 1.6. Charter School agrees to comply with the provisions of the Civic Center Act (Education Code §§ 38130, *et seq.*) to make the Premises accessible to members of the community, in accordance with applicable law, District procedures, and District Board Policy and Administrative Regulation. The Parties understand that the Premises are to be used primarily for educational programs and activities and as such, any use of the Premises by the Community shall not interfere with RFA's educational program.

## 2. **CONDITION OF PREMISES; IMPROVEMENTS**

- 2.1 **Due Diligence Period.** The Premises are leased to Charter School on an "AS IS" basis. Notwithstanding the foregoing, the parties shall have a period of thirty (30)

days following the execution of this Agreement by both parties (the “Due Diligence Period”) to examine District Documents (defined below) and conduct tests and inspections of the Site in order to approve, in their sole discretion, the condition of the Site for its proposed use. The Charter School may elect to terminate the Agreement before the expiration of the Due Diligence Period. Upon execution of this Agreement, District shall make available to Charter School copies of any and all soils tests, environmental assessments, portable building plans and approvals from the DSA, surveys, engineering studies, structural integrity studies, or any and all other documents pertaining to the physical condition of the Site in District’s possession (the “District Documents”). If necessary to conclude their negotiations regarding the District’s space allocation and/or the determination of fitness by Charter School, the Parties may mutually agree in writing to extend the Due Diligence Period.

2.2 **Security Deposit.** Upon execution of this Agreement, Charter School shall deposit with District the sum of TWENTY-FIVE THOUSAND DOLLARS (\$25,000) as security for Charter School’s full and faithful performance of all terms and conditions of this Agreement (the “Security Deposit”). Charter School’s acceptance of the Premises shall be subject to Charter School’s approval of the condition of the Site, on or before the end of the Due Diligence Period. In the event that Charter School does not approve of the condition of the Site on or before the end of the Due Diligence Period, District shall refund the Security Deposit to Charter School and the Parties shall have no further obligations under this Agreement. No later than thirty (30) days after the Expiration Date or earlier termination of this Agreement, District shall return the Security Deposit to Charter School after deducting therefrom such amounts are reasonably necessary to return the Premises to their condition on the Commencement Date, reasonable wear and tear excepted. Any such deductions shall be documented in writing with the return of the Security Deposit.

2.3 **Improvements by District.** In order to preserve a harmonious relationship with the City of Concord and the surrounding neighborhood, District agrees to complete the following “District Improvements” by no later than January 1, 2021.

- (a) Security fencing that will secure and surround the Charter School Exclusive Use Areas;
- (b) Conversion of the space formerly housing the Community Gardens at the site into exclusive-use parking for the Charter School. The existing front parking lot will continue to be jointly used with other Site tenants.

In addition, the District will install two sets of modular student restrooms, one designated as “female” and one designated as “male,” next to Room 903, for the Charter School’s exclusive use. Until such time that these restrooms are made available to the Charter School, the Charter School shall have exclusive access to the restrooms in the 200 wing. Upon having access to the restrooms next to Room

903, the Charter School shall relinquish the right to use the restrooms in the 200 wing. There shall be no deadline for the installation of the restrooms next to Room 903.

2.4 **Improvements by Charter School.** Charter School may, but is not required, to complete the following “RFA Improvements” at the Site. Charter School agrees that any RFA Improvements shall be installed by licensed contractors, inspected by the Division of State Architect (“DSA”), if necessary, and completed in accordance with all Applicable Laws.

- (a) Renovate or replace the playground with new or additional equipment;
- (b) Paint the exterior and/or interior of the Exclusive Use spaces;
- (c) Install security cameras and other equipment/features, including a security entrance gate; and
- (d) Install monument signage at Olivera Road.

2.5 Charter School acknowledges that neither District nor District's agents have made any representation or warranty as to the suitability of the Premises for RFA’s Activities, except as set forth herein. 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.

2.6 The Parties acknowledge that title to the Premises is held by District. Any Improvements constructed in the Premises by Charter School shall become District’s property at the expiration of the Term of this Agreement, or any options or mutually agreed to extensions. Except as expressly provided herein, District shall not be required to make or construct any alterations including structural changes, additions or improvements to the Premises.

### 3. **SPACE ALLOCATION; MAINTENANCE**

**3.1 Space Allocation.** District agrees that Charter School shall have the exclusive use of that portion of the Site described on Exhibit “A” hereto, and described more specifically as follows: 1) The District shall provide space to the Charter School to accommodate 675 students. Charter School agrees that, in each year during which the initial and subsequent terms are in effect, its total enrollment does not exceed 675. 2) The District shall provide to the Charter School the facilities identified the Final Offer for the 2020-2021 school year, as subsequently modified as described in the District’s September 4, 2020 letter *and* Exhibit A to this Agreement. 3) The blacktop and field space will continue to be made available to the Charter School under the terms set forth in the Final Offer of Facilities for the 2020-2021 school year. 4) The existing parking spaces will be allocated among the District-and the Charter School in the manner set forth in the Final Offer of Facilities for the 2020-2021 school year, and the District shall take possession of those parking spaces previously

allocated to Seneca. In the event that the Space Allocation or Shared Use arrangement changes after the Initial Term, the Parties agree to amend this Agreement, which Amendment shall be limited to the insertion of a revised Exhibit A.

**3.2 Janitorial Services, Security Services, and Routine Maintenance.** Charter School will be responsible for providing its own janitorial services, and interior and exterior security services for its Exclusive Use Areas. Charter School will be responsible for all routine maintenance of the Exclusive Use Areas throughout the Term. Routine maintenance of the Shared Use Areas will be shared by District and Charter School on a pro-rata basis according to the percentage of shared use as set forth on Exhibit “A” hereto. The District will be solely responsible for all routine maintenance needed outside of the Exclusive Use Areas and Shared Use Areas, as well as the repair and replacement of building systems and exterior building envelope surfaces (roof, exterior walls, foundations, etc.) and landscaping throughout the Term.

**3.3 District Deferred Maintenance.** The District shall be responsible for the Deferred Maintenance of the Site. The Parties agree that the Charter School’s payment of Rent includes the Charter School’s contribution of its proportionate share towards the Deferred Maintenance of the Site. Charter School may request the District perform Deferred Maintenance work by submitting a written request to the District’s Facilities Division, and District shall, to the extent feasible and without prejudice to the priority maintenance services to other sites, perform the Deferred Maintenance of the Site for Charter School. District agrees to carry out its responsibilities under this Paragraph in a good and workmanlike manner by properly qualified and licensed personnel and in accordance with all Applicable Laws and District policies. Any work of Deferred Maintenance performed by District shall be timely commenced and diligently prosecuted through completion.

#### 4. **TERM.**

4.1 The term (“Initial Term”) of this Agreement shall commence on July 1, 2020 (the “Commencement Date”) and shall end on June 30, 2021 (the “Expiration Date”), except that the Charter School’s use and occupation of the Site for the 2020-2021 School Year shall be under the terms of Education Code section 47614 (“Proposition 39”), including the payment of the Charter School’s pro-rata share under Cal. Admin. Code tit. 5, § 11969.7. The Charter School will also have three (3) Options to extend the Expiration Date for an additional five (5) years each, based on successful renewals of the RFA Charter (each an “Extension Term”), except that the Option to extend for the third term shall be by mutual agreement. The “Initial Term” and “Extension Terms” are referred to herein collectively as the “Term” of this Agreement. Each Option by the Charter School to exercise an Extension Term shall be subject only to the continuing performance of the Charter School under the RFA Charter, as the same may be renewed and revised from time to time, and payment of the Extension Fee in Section 5.1.

## 5. RENT

- 5.1. Base Rent.** Except for the 2020-2021 school year, as set forth in Section 4.1 above, the Charter School shall pay monthly rent to the District in the amount of \$31,666.67 (“Rent”). In addition to the foregoing payment of Rent, Charter School agrees to make a one-time payment of ONE HUNDRED THOUSAND DOLLARS (\$100,000) to District upon the District’s completion of the District Improvements in Section 2.3(a) and (b). Charter School shall pay District an “Extension Fee” of FIFTY THOUSAND DOLLARS (\$50,000) upon each renewal of the RFA Charter by the District and exercise of its option to renew this Agreement for the next five (5) year term. District agrees that the Extension Fee shall be applied to offset costs incurred by District in performing maintenance of the Site pursuant to Sections 3.2 and 3.3 of this Agreement.
- 5.2. Rent Increases.** Commencing on the first anniversary of the Commencement Date (no earlier than July 1, 2022), and every 12 months thereafter, the amount of Rent shall be increased by three percent (3%). District agrees to provide notice to Charter School of the amount of the increase in Rent by no later than June 1.
- 5.3. Utility Charges.** The monthly payment of Rent does not include the utility charges for the Premises or the facilities contained therein. Charter School shall pay for all utilities charges for the Premises in accordance with its pro rata share of use; utilities costs related to shared portions of the Premises, as well as related to community uses of the Premises under the Civic Center Act shall be shared proportionally between the District and Charter School. For purposes of this Agreement, utilities include water, irrigation, gas, electricity, telephone, security and fire alarm monitoring, data and communication lines and service, trash pick-up, and sewage fees. District shall be responsible for the furnishing of all services and utilities to the Premises, including, but not limited to heating, ventilation and air-conditioning, gas, electricity, water, trash collection, and sewage disposal. Charter School shall pay the cost of all utilities and other services directly to the applicable utility or service provider. The District shall include the Premises on the District’s bulk energy contracts upon request by Charter School so long as permissible by the bulk energy contractor. If Charter School is included in the District’s billing from contractor, Charter School shall reimburse the District for all direct costs.
- 5.4.** Except to the extent the discontinuance, failure or interruption is caused or permitted by the District’s negligence or willful misconduct, Charter School agrees that the District shall not be liable for damages, by abatement of rent or otherwise, for the discontinuance, failure or interruption of any utility or other service (including telephone and telecommunication services), or for any diminution in the quality or quantity thereof; and such discontinuance, failure or interruption shall never be deemed to constitute an eviction or disturbance of Charter School's use and

possession of the Premises or relieve RFA from paying rent or other fees, costs or other amounts due and owing under this Agreement. Notwithstanding anything herein to the contrary, the District shall use its good faith efforts to assist Charter School in restoring such services so long as the District is not required to incur any costs or expenses.

- 5.5. Late Charge.** 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. Such 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 such amount is due, RFA shall pay to District, as additional rent, a "late charge" equal to ten percent (10%), due no later than thirty (30) days of accrual. The Parties hereby agree that such late charge represents a fair and reasonable estimate of the costs District will incur by reason of late payment by Charter School.
- 5.6. Taxes; Assessments.** Charter School shall pay its proportional share of any assessment on the Premises, including on any improvements which Charter School constructs or causes to be constructed on the Premises, whether real estate, general, special, ordinary or extraordinary, or rental levy or tax, improvement bond, and/or fee imposed upon or levied against the Premises 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 Premises 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 unless Charter School voluntarily no longer occupies the Premises and the District has taken occupancy of the Premises or is intending to sell the Premises as surplus. However, Charter School shall not be responsible for payments under this section if it no longer occupies the Premises by virtue of revocation or non-renewal of its Charter.
- 5.7. Repayment of Past Pro-Rata Share.** This Agreement is conditioned upon the District's receipt of Charter School's payment as a compromise of the remaining (as of July 17, 2020) \$123,041.70 payment on its pro-rata share for 2017-2018, 2018-2019 and 2019-2020 upon execution of this Agreement by the parties. In consideration of receiving the full amount of the Pro-rata Share, the District waives and releases to the maximum extent permitted by applicable law any and all claims or causes of action, whether or not now known, against Rocketship Education and its administrators, representatives; former and/or current managers, officers, directors, employees, agents, consultants, attorneys, predecessors, successors, assigns, related trade names, affiliated entities or branches of any kind with respect to, any pro-rata facility fees related to, or arising out of Rocketship Education's use of District facility space provided under the Proposition 39 process up for the 2017-

2018, 2018-2019 and 2019-2020 school years.

- 5.8.** Nothing contained in this Agreement shall constitute or be treated as an admission by Rocketship Education of liability, of any wrongdoing, or of any violation of law, or violation of any agreement with the District with respect to the payment of the pro-rata share for the 2017-2018, 2018-2019 and 2019-2020 school years.

## **6. ALTERATIONS**

- 6.1.** In addition to the RFA Improvements identified in Section 2.4 hereof, Charter School may at its sole cost and expense, make or perform improvements, alterations, or additions to the Premises, provided that any Improvements requiring approval of the Division of the State Architect, exceeding \$100,000 in cost, or affecting access to the Site by any tenant or rightful use by the community, shall require prior written notice and approval of the District, which shall not be unreasonably conditioned, delayed or withheld. Notwithstanding the foregoing, the Charter School must provide the District written notice of intent to make any improvements at the Site. If the District fails to respond within thirty (30) days after Charter School's written request for approval of any Improvements, District shall be deemed to have given its approval to such Improvements. Improvements shall comply with District specifications and all legal requirements relating to construction of the Improvements, including, without limitation, Title 24 of the California Code of Regulations, the Education Code (including the Field Act, Education Code §17280, et seq.), the Americans with Disabilities Act, the California Environmental Quality Act and regulations promulgated thereunder.
- 6.2.** All contractors and subcontractors of Charter School, if any, shall be duly licensed in the State of California, and must maintain levels of casualty, liability and workers' compensation insurance and provide performance and payment bonds consistent with District construction requirements. The District shall be named as an additional insured on any applicable insurance policies and bonds. Charter School shall bear full responsibility for ensuring that the construction or installation of improvements shall be performed in a sound and workmanlike manner, in compliance with all laws applicable to public schools including building codes and prevailing wage laws. Under all circumstances, Charter School must seek and receive approval from the Division of the State Architect for all of Charter School's Improvements to the extent such approval is required by law.
- 6.3.** 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, 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. However, the District agrees to act as the Lead Agency for any required CEQA approvals or proceedings, provided, that Charter School shall reimburse District for any reasonable costs associated with serving as Lead Agency. The provisions of



Article 8 (“Indemnification and Waiver”) shall apply without exception in favor of the District to any claims made under CEQA.

## 7. HAZARDOUS SUBSTANCES

- 7.1. Compliance. Charter School shall comply with all applicable Environmental Laws relating to industrial hygiene and environmental conditions on, under or about the Premises, including but not limited to, air, soil and ground water conditions. Charter School shall not use Hazardous Substances on, under or about the Premises; provided, however, that Charter School may use normal and customary cleaning solutions and office supplies so long as the use of those solutions and supplies are in quantities and in a manner wholly consistent with all applicable Environmental Laws; and further provided that Charter School may use normal and customary chemicals for classroom use so long as the use of those chemicals are in quantities and in a manner wholly consistent with all applicable school and building standards, laws and regulations. Charter School shall not, nor shall Charter School allow any party to, transport, use, store, maintain, generate, manufacture, handle, dispose, release or discharge any Hazardous Substance upon or about the Premises in violation of Environmental Laws, nor permit any subtenant, employee, agent, invitees or contractor to engage in such activities in violation of Environmental Laws upon or about the Premises, during the Term of the Agreement. District represents that it is not currently aware of any Hazardous Substances on the Premises. In no event shall the District bear any financial responsibility for the remediation of any Hazardous Substances present at the Premises.
- 7.2. Notice. Charter School will promptly notify District in writing if Charter School has or acquires notice or knowledge that any Hazardous Substance exists prior to construction or has been or is threatened to be, released, discharged, disposed of, transported, or stored on, in, or under or from the Premises in violation of Environmental Laws. District has disclosed in writing, prior to execution of this Lease, the District's knowledge, if any, of any Hazardous Substance that has been released, discharged, disposed of, transported, or stored on, in, or under or from the Premises or otherwise exists on the Premises as of the date of delivery of possession to Charter School. District will promptly notify Charter School in writing if District acquires new notice or knowledge during the term of this Lease that any Hazardous Substance that has been released, discharged, disposed of, transported, or stored on, in, or under or from the Premises or otherwise exists on the Premises. 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 Premises 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 Occupation 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 Premises pursuant to any Environmental Laws.

- 7.3. 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 three (3) business days' notice to Charter School (except in the event of an emergency, in which case, only such notice as shall be reasonable under the circumstances will be required) inspect the Premises 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 (except in the event of an emergency) or during such other hours as District and Charter School may agree.
- 7.4. Mutual Indemnification. Charter School shall indemnify, defend, protect, release, save and hold harmless District from and against any and all Claims arising from any breach of Charter School's covenants under this Section only, except to the extent caused by the negligence or misconduct of District. District shall indemnify, defend (by counsel reasonably approved in writing by Charter School), protect, release, save and hold harmless Charter School from and against any and all Claims arising from any breach of District's covenants under this Section only, except to the extent caused by the negligence or misconduct of Charter School. All other claims for indemnification not arising from the alleged breach of any covenant under this Section shall be addressed by Section 8 of this Agreement.

## **8. INDEMNIFICATION AND WAIVER**

- 8.1. Charter School agrees that the District, its Board of Education, officers, employees, agents, consultants and independent contractors (collectively, "District Parties") shall not be liable for, and are hereby released from any responsibility for, any death or injury to person or damage to or destruction of property or resulting from the loss of use thereof, which damage is sustained by Charter School or by other persons claiming through the Charter School; provided, that the foregoing release shall not apply to the negligence or misconduct of the District Parties or the District's breach of any obligation or warranty under this Agreement.
- 8.2. Charter School shall indemnify, defend, protect, and hold harmless the District Parties from any and all loss, cost, damage, expense and liability (including without limitation court costs and reasonable attorneys' fees) incurred in connection with or arising from any cause in, on or about the Improvements, any violation of any of the requirements, ordinances, statutes, regulations or other laws, including, without limitation, any environmental laws, by Charter School, or any breach of the terms of this Agreement by Charter School either prior to, during, or after the expiration of the Agreement Term; provided that the terms of the foregoing indemnity shall not apply to the negligence or misconduct of the District Parties or the District's breach of any obligation or warranty under this Agreement.

- 8.3.** Should the District be named as a defendant in any suit brought against Charter School in connection with or arising out of Charter School's construction of Improvements, or its occupancy or use of the Premises, Charter School shall pay to the District its costs and expenses incurred in such suit, including without limitation, its actual reasonable professional fees such as appraisers', accountants' and attorneys' fees; provided, however, that Charter School shall not be liable for any costs or expenses arising from the District negligence or misconduct or misconduct of the District Parties or the District breach of any obligation or warranty under this Agreement.
- 8.4.** Further, Charter School's agreement to indemnify the District is not intended and shall not relieve any insurance carrier of its obligations under policies required to be carried by Charter School pursuant to the provisions of this Agreement, to the extent such policies cover the matters subject to Charter School's indemnification obligations.
- 8.5.** The provisions of this Article 8 shall survive the expiration or sooner termination of this Agreement for that period of time equivalent to the statute of limitations applicable to any dispute arising under this Agreement.

## **9. INSURANCE**

- 9.1.** Charter School, at its sole cost and expense, shall observe and comply with the insurance requirements set forth in Exhibit B, attached hereto and incorporated herein by reference.

## **10. DAMAGE AND DESTRUCTION**

- 10.1.** Repair of Premises. Charter School shall promptly notify the District of any damage to the Premises resulting from fire, earthquake or any other casualty. In the case of damage or destruction, regardless of the nature of the casualty, Charter School, at its sole cost and expense (even if repair costs exceed insurance proceeds) shall restore, repair, replace, rebuild or alter all aspects of the Premises and improvements located thereon to as nearly as possible to their value, condition and character immediately prior to such damage or destruction. Charter School shall commence such restoration, repairs, replacements, rebuilding or alterations within 90 days following the occurrence of such damage or destruction and prosecute to completion with due diligence and in good faith. The District and the Charter School shall work together as quickly as possible provide the Charter School with temporary facilities to accommodate the portion of its program displaced by the damage or destruction during the repair.
- 10.2.** The District shall not be liable for any inconvenience or annoyance to Charter School or its visitors, or injury to Charter School's business resulting in any way from such damage or the repair thereof; provided, that the foregoing sentence shall

not apply to the extent the District's negligence or misconduct is the cause of such damage or destruction. Charter School shall not be entitled to any compensation or damages from the District for loss of use of the whole or any part of the Premises, or Charter School's personal property used or located at the Premises, or for any inconvenience or annoyance occasioned by such damage or destruction; provided, that the foregoing sentence shall not apply to any damage or destruction caused by the negligence or willful misconduct of the District.

- 10.3.** Disbursement of Insurance Proceeds. All insurance proceeds, from policies obtained and maintained by Charter School, recovered on account of damage or destruction to the Premises (the "Proceeds") shall be applied to the payment of the cost of repairing, restoring, and replacing the improvements so damaged or destroyed and for replacing Charter School's personal property damaged or destroyed (the "Reconstruction"). All Proceeds shall be deposited with a depository selected by Charter School and reasonably acceptable to the District and under the exclusive control of Charter School (the "Depository"). The District will provide Charter School with any insurance proceeds from policies maintained by the District recovered on account of damage or destruction to the Premises. If the Proceeds are insufficient to cover the anticipated cost of Reconstruction, then prior to the commencement of any Reconstruction work Charter School may deposit with the Depository funds in the amount of such deficiency ("RFA's Funds"), or re-scope the repairs so that they can be covered by Proceeds. The Depository shall disburse the Proceeds and RFA's Funds, if applicable, during the course of Reconstruction in accordance with customary construction disbursements, including a percentage retention that Charter School and the District shall mutually agree. If there are funds remaining after the completion of the Reconstruction in accordance with the terms of this Agreement, then such funds (after first deducting from such funds the fees and expenses of the Depository) shall be delivered in proportion to each party's individual initial contribution to the Depository.
- 10.4.** Destruction As a Release Event. If there is destruction of or damage to the Premises or any part thereof by earthquake, fire or any other cause, and if the reasonably estimated cost to restore and repair the damage is more than 50% of the replacement cost of the entire Premises, or if insurance proceeds are insufficient to pay at least 60% of the reasonably estimated cost of repair and restoration, then by notice in writing to District, Charter School may terminate this Agreement and such termination shall relieve Charter School from its obligation to pay all fees, premiums, if applicable, charges, Hold Over Rent, if applicable, or other amounts due and owing under this Agreement or from any of its other lease obligations under this Agreement. If Charter School so terminates, the District shall provide the Charter School with temporary facilities until such time as Charter School submits a successor Prop. 39 Request for the upcoming school year and receives an allocation of reasonably equivalent facilities from the District. The Charter School shall upon termination shall also pay over to District all Proceeds received as a result of the damage or destruction, and assign to District all Proceeds to be so received.

## 11. CONDEMNATION

- 11.1. Charter School hereby waives any and all rights it might otherwise have pursuant to Section 1265.130 of the Code of Civil Procedure.
- 11.2. Condemnation of Entire Premises. In the event the Premises is taken by power of eminent domain or condemned by any competent authority for any public or quasi-public purpose, or if the District shall grant a deed or other instrument in lieu of any such taking by eminent domain or condemnation for the Premises (any such events to be referred to herein as a "Full Taking"), this Agreement shall automatically terminate on that date, the Charter School shall be released from any and all payment obligations under Section 5.2 of this Agreement, and the District will assume complete financial responsibility for the Premises, whichever shall first occur, when: (i) Charter School completely vacates the Premises and such vacation has been mutually agreed upon by Charter School, the District and the condemning authority; or (ii) a court of competent jurisdiction over the condemnation proceeding issues an Order for Prejudgment Possession ("OPP") or similar order granting possession of the Premises to the condemning entity and the condemning entity exercises its right to possession of the Premises; or (iii) If an OPP is not obtained, the condemnation proceeding is concluded.
- 11.3. Condemnation of a Portion of the Premises. In the event any portion of the Premises is taken by power of eminent domain or condemned by any competent authority for any public or quasi-public purpose, or if any adjacent property or street shall be so taken or condemned, or reconfigured or vacated by such authority in such manner so as to require the use, reconstruction, or remodeling of the Premises, or any portion thereof, or if the District shall grant a deed or other instrument in lieu of any such taking by eminent domain or condemnation for said portion of the Premises (any such events to be referred to herein as a "Partial Taking") the following shall apply:
- 11.3.1. Abatement. Any fees and other amounts due and owing to the District under this Agreement shall be abated or reduced as a result of any Partial Taking in direct proportion to the square footage taken by the condemning entity. The abatement or reduction shall not apply to any insurance premiums or other fees, charges or amounts due and owing that do not correspondingly decrease with the reduction in the size of the Premises.
- 11.3.2. Right to Terminate. If the remaining portion of the Premises is such that Charter School cannot reasonably operate its educational programs, Charter School may terminate this Agreement by providing written notice to the District of its intention to do so. Charter School may exercise this right of termination at any time after the condemning entity has commenced action to acquire a portion of the Premises and up to six (6) months after the occurrence of Section 11.3 above. The District discloses that it is allowing Charter School the ability to terminate this Agreement for a period

of six (6) months after the occurrence of Section 11.3 to allow Charter School to make a good faith effort to adapt its educational programs to the remaining portion of the Premises. Charter School's written notice of termination shall set forth the date when Charter School shall vacate the remaining portion of the Premises. Charter School's notice of termination shall effectuate a termination of any right to redeem provided in this Agreement.

#### **11.4. Award and Payments.**

- 11.4.1. Real Property. Regardless of whether it is a Full Taking or Partial Taking, the District shall be entitled to receive the entire award or payment in connection with the real property underlying the Premises.
- 11.4.2. Premises /Improvements. The District shall receive the entire award or payment in connection with the Premises (excluding the underlying real property) and shall have no obligation to tender to Charter School the award or payment less any actual costs or expenses incurred by the District arising from the Full Taking or Partial Taking.
- 11.4.3. Personal Property. Charter School shall be entitled to any separate award or payment designated by the condemning entity, including, without limitation, for the Full Taking or Partial Taking of Charter School's personal property, interruption to Charter School's business, and relocating expenses, as allowed by law.

## **12. ASSIGNMENT AND SUBLETTING**

- 12.1. Transfers. Charter School shall not have the right to assign, mortgage, pledge, hypothecate, encumber, or permit any lien to attach to, or otherwise transfer, this Agreement or any Interest hereunder, permit any assignment, or other transfer of this Agreement or any interest hereunder by operation of law, sublet the Premises or Improvements or any part thereof, or otherwise permit the occupancy or use of the Premises or Improvements or any part thereof by any persons other than Charter School and its employees and contractors (all of the foregoing are hereinafter sometimes referred to collectively as "Transfers" and any person to whom any Transfer is made or sought to be made is hereinafter sometimes referred to as a "Transferee"), without first procuring the express written consent of the District.
- 12.2. Any Transfer made without the prior written consent of the District shall be null, void and of no effect, and shall constitute a default by Charter School under this Agreement. Any Transferee approved by the District, shall agree at all times to comply with the terms of this Agreement, including, without limitation, the continuous use of the Premises for the purposes set forth in this Agreement. Whether or not the District consents to any proposed Transfer, Charter School shall pay, if applicable, the District's reasonable review and processing fees, as well as any reasonable professional fees (including, without limitation, attorneys', accountants',

architects', engineers' and consultants' fees) actually incurred by the party (which shall include the costs or expenses of the Party's employees performing the review and processing if said party does not retain a third party to do so) within 10 business days of Charter School's receipt of the invoice setting forth the expenses.

**12.3.** Charter School shall have the right, with express written consent from District, to Transfer to an Affiliate. As used herein, an "Affiliate" is an "entity managing a charter school" under Education Code section 47604.1(a), and a non-profit entity, or limited liability company, that is not regarded as separate entity from Charter School for federal and state income tax purposes, or an organization described in Section 509(a)(3) of the Internal Revenue Code that supports Charter School, or an entity which controls, or is controlled by, or is under common control with Charter School. Charter School shall notify the District of any such transfer in writing, and the parties shall execute an Addendum to this Agreement memorializing such transfer.

**12.4.** The District shall not unreasonably withhold, condition, or delay its consent to any Transfer upon receipt of request from Charter School.

### **13. NONWAIVER**

**13.1.** No provision of this Agreement shall be deemed waived by either party hereto unless expressly waived in a written instrument signed by a person on behalf of the party waiving the provision. The waiver by either party hereto of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of same or any other term, covenant or condition herein contained.

### **14. NON-TERMINABILITY**

**14.1.** Except as otherwise expressly set forth in this Agreement to the contrary, this Agreement and the rights and obligations of the District or Charter School hereunder shall not be affected by any event or for any reason, including the following: (i) the bankruptcy, insolvency, reorganization, composition, readjustment, liquidation, dissolution or winding-up of, or other proceeding affecting the District, (ii) the exercise of any remedy, including foreclosure, under any mortgage or assignment, (iii) any action with respect to this Agreement (including the disaffirmance hereof) which may be taken by the District, any trustee, receiver or liquidator of the District or any court under the Federal Bankruptcy Code or otherwise, (iv) any interference with Charter School's use of the Premises, provided such interference is not caused or permitted by the District, or (v) market or economic changes.

### **15. NO MERGER; OWNERSHIP AND REMOVAL OF PERSONAL PROPERTY**

**15.1.** No Merger. The voluntary or other surrender of this Agreement by Charter School, whether accepted by the District or not, or the mutual termination hereof, shall not

work as a merger, and at the option of the District shall operate as an assignment to the District of all sub-Agreements or sub-tenancies affecting the Premises or terminate any or all such sublessees or subtenancies.

- 15.2.** Removal of Personal Property by Charter School. Upon the expiration of the Term, or upon any earlier termination of this Agreement, Charter School shall, subject to the provisions of this Article, quit and surrender possession of the Premises to the District in as good order and condition as when Charter School completed its initial construction, rehabilitation or modernization, ordinary wear and tear excepted. Upon such expiration or termination, Charter School shall, without expense to the District, remove or cause to be removed from the Premises all debris and rubbish, and such items of furniture, equipment, business and trade fixtures, free-standing cabinet work, movable partitions and other articles of personal property (including those items attached to the Premises but can easily be removed and the area of attachment repaired) owned by Charter School. Any fixtures or securely attached items may remain.

## **16. HOLDING OVER**

- 16.1.** If Charter School holds over after the expiration of the Term or earlier termination thereof, without the express or implied consent of the District, such tenancy shall be from month-to-month only, terminable at will by the District without notice, and shall not constitute a renewal hereof or an extension for any further term, and in such case rent for such hold over period shall be 110%, of the then current rent for the Premises (the "Hold Over Rent"). Such month-to-month tenancy shall be subject to every other applicable term, covenant and agreement contained herein. Nothing contained in this Section shall be construed as consent by the District to any holding over by Charter School, and the District expressly reserves the right to require Charter School to surrender possession as provided in this Agreement upon the expiration or other termination of this Agreement. If Charter School fails to surrender the Premises upon the expiration or earlier termination of this Agreement, in addition to any other liabilities to the District accruing therefrom, Charter School shall protect, defend, indemnify and hold the District harmless from all losses, costs (including reasonable attorneys' fees) and liability resulting from such failure under Section 8 of this Agreement, including, without limiting the generality of the foregoing, any claims made by any succeeding Charter School founded upon such failure to surrender and any losses to the District resulting therefrom; provided, that the foregoing indemnification shall not apply to the negligence or willful misconduct of the District.

## **17. EVENTS OF DEFAULT**

The occurrence of any of the following shall constitute a default of this Agreement by Charter School:

- 17.1.** Any failure by Charter School to pay any fee, premium, if applicable, charge or



other amounts due and owing under this Agreement, or any part thereof, when due unless such failure is cured within 10 calendar days after Charter School's receipt of written notice of default from the District; or

- 17.2. Any failure by Charter School to observe or perform any provision, covenant or condition of this Agreement to be observed or performed by Charter School where such failure continues for 30 days after written notice of default from the District to Charter School; provided, that if the nature of such default is that the same cannot reasonably be cured within a 30 day period, Charter School shall not be deemed to be in default if within said 30 day commences such cure and diligently commences and prosecutes to completion such cure; or
- 17.3. To the extent permitted by law, (i) a general assignment by Charter School or any guarantor of this Agreement for the benefit of creditors, (ii) or the taking of any corporate action in furtherance of bankruptcy or dissolution whether or not there exists any proceeding under an insolvency or bankruptcy law, (iii) or the filing by or against Charter School or any guarantor of any proceeding under an insolvency or bankruptcy law, unless in the case of a proceeding filed against Charter School or any guarantor the same is dismissed within 60 days, (iv) or the appointment of a trustee or receiver to take possession of all or substantially all of the assets of Charter School or any guarantor, unless possession is restored to Charter School or such guarantor within 60 days, (v) or any execution or other judicially authorized seizure of all or substantially all of Charter School's assets located upon the Premises or of Charter School's interest in this Agreement, unless such seizure is discharged within 60 days; or
- 17.4. Abandonment of all or 80% of the indoor spaces other than the gymnasium on the Premises or Improvements occupied by Charter School during the school year; or
- 17.5. The failure by Charter School to maintain a current and active charter following written notice of default and the time provided in Section 17.2 to cure (after exhaustion of all appeals and remedies).

## **18. REMEDIES UPON DEFAULT**

Upon the occurrence of any event of default by Charter School and after the expiration of all notice and cure periods as provided in this Agreement, the District shall have, in addition to any other remedies available to the District at law or in equity, the option to pursue any one or more of the following remedies:

- 18.1.1. Terminate this Agreement, in which event Charter School shall immediately surrender the Premises to the District, and if Charter School fails to do so, the District may, without prejudice to any other remedy which it may have for possession or arrearages, enter upon and take possession of the Premises and expel or remove Charter School and any other person who may be occupying the Premises or any part thereof, without being liable for prosecution or any claim or damages

therefor.

**18.1.2.** The District shall have the remedy described in California Civil Code Section 1951.4 (lessor may continue Agreement in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has the right to sublet or assign, subject only to reasonable limitations). Accordingly, if the District does not elect to terminate this Agreement on account of any default by Charter School, the District may, from time to time, without terminating this Agreement, enforce all of its rights and remedies under this Agreement, including the right to recover all rent as it becomes due.

**18.1.3.** The District shall at all times have the rights and remedies (which shall be cumulative with each other and cumulative and in addition to those rights and remedies available hereinabove, or any law or other provision of this Agreement), without prior demand or notice except as required by applicable law, to seek any declaratory, injunctive or other equitable relief, and specifically enforce this Agreement, or restrain or enjoin a violation or breach of any provision hereof.

## **19. COVENANT OF QUIET ENJOYMENT**

**19.1.** The District covenants that Charter School shall, during the Term, exclusively, peaceably and quietly have, hold and enjoy the Premises subject to the terms, covenants, conditions, provisions and agreements hereof without interference by any persons lawfully claiming by or through the District.

## **20. COMPLIANCE WITH LAW**

**20.1.** Charter School shall not do anything or suffer anything to be done in or about the Premises which will in any way conflict with any applicable law, statute, ordinance or other governmental or quasi-governmental rule, regulation or requirement now in force or which may hereafter be enacted or promulgated, including, but not limited to, (i) any such measures promulgated by the Department of State Architecture, the Department of Toxic Substance Control, and/or the State Department of Education, (ii) any such measures promulgated under the California Environmental Quality Act ("CEQA") or arising from any CEQA proceedings, and (iii) any such measures which relate to Charter School's use of the Premises as a school or which are applicable to the Premises by reason of Charter School being an educational institution. At its sole cost and expense, Charter School shall promptly comply with all such governmental measures, regardless of whether such measures may require structural or non-structural alterations or Improvements to the Premises. Should any standard or regulation now or hereafter be imposed on the District or Charter School in connection with the Premises by a state, federal or local governmental body charged with the establishment, regulation and enforcement of occupational, health or safety standards for employers, employees, school districts or charter schools, then Charter School agrees, at its sole cost and expense, to

comply promptly with such standards or regulations. Charter School shall be responsible, at its sole cost and expense, for making all improvements and alterations to the Premises as are required to comply with any applicable law, statute, ordinance or other governmental or quasi-governmental rule, regulation or requirement now in force or which may hereafter be enacted or promulgated.

## **21. SIGNAGE**

**21.1.** Charter School may install signage at the Site including, but not limited to, one marquee sign at the Charter School's main entrance stating the Charter School name and other pertinent information which would be street-facing monument signage, a sign indicating the main office of the Charter School, and other directional signs as appropriate. 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.

## **22. MISCELLANEOUS PROVISIONS**

**22.1.** No Air Rights. No rights to any view or to light or air over any property, whether belonging to the District or any other person, are granted to Charter School by this Agreement.

**22.2.** Modification of Agreement. This Agreement may only be modified or amended by written instrument executed by Charter School and the District.

**22.3.** Time of Essence. Time is of the essence with respect to the performance of every provision of this Agreement in which time of performance is a factor.

**22.4.** No Warranty. In executing and delivering this Agreement, Charter School has not relied on any representations, warranties or statements of the District which is not set forth herein or in one or more of the exhibits attached hereto.

**22.5.** Entire Agreement. It is understood and acknowledged that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement constitutes the parties' entire agreement with respect to the use and occupancy of the Premises and supersedes and cancels any and all previous negotiations, arrangements, brochures, agreements and understandings, if any, between the parties hereto or displayed by the District to Charter School with respect to the subject matter thereof, and none thereof shall be used to interpret or construe this Agreement.

**22.6.** Force Majeure. Notwithstanding anything to the contrary contained in this Agreement, any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain services, labor, or materials or reasonable substitutes therefor, governmental actions, civil commotions, fire or other casualty,

and other causes beyond the reasonable control of the party obligated to perform (collectively, a "Force Majeure") shall excuse the performance of such party for a period equal to any such prevention, delay or stoppage and, therefore, if this Agreement specifies a time period for performance of an obligation of either party, that time period shall be extended by the period of any delay in such party's performance caused by a Force Majeure; provided, however, that this Force Majeure exception to timely performance shall not apply to any obligations imposed with regard to amounts due under this Agreement to be paid by Charter School. The delay due to Force Majeure will be calculated using historical data for the site location, general area or similar businesses.

- 22.7.** Authority. If Charter School is a corporation, trust or partnership, each individual executing this Agreement on behalf of Charter School hereby represents and warrants that Charter School is a duly formed and existing entity qualified to do business in California and that Charter School has full right and authority to execute and deliver this Agreement and that each person signing on behalf of Charter School is authorized to do so. In such event, Charter School shall, within 10 days after execution of this Agreement, deliver to the District satisfactory evidence of such authority and, if a corporation, upon demand by the District, also deliver to the District satisfactory evidence of (i) good standing in Charter School's state of incorporation and (ii) qualification to do business in California.
- 22.8.** Drug-Free Workplace. Charter School's employees shall comply with the District's policy of maintaining a drug free workplace by enacting its own policy to maintain 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.C. § 812, including, but not limited to, marijuana, heroin, cocaine, and amphetamines, at the 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 Site, Charter School within five (5) days thereafter shall notify the District. Violation of this provision shall constitute a material breach of this Agreement, but District's remedies for such a violation shall be limited to damages reasonably incurred and shall not result in dispossession of Charter School or termination of this Agreement.
- 22.9.** Inspection of Premises. District shall have the right to enter the Premises as set forth in Section 7.3 to conduct inspections of the Premises to insure that proper pest management control and maintenance is being conducted on the Premises. District will act reasonably during the course of any access of the Premises to not disrupt Charter School's classroom and instructional activities.
- 22.10.** 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, email or facsimile transmission, addressed as follows:

**District:**

Superintendent  
Mt Diablo Unified School District  
1936 Carlotta Drive  
Concord, CA 94519-1358

With copy to:

Business Services  
Mt Diablo Unified School District  
1936 Carlotta Drive  
Concord, CA 94519-1358

**CHARTER SCHOOL:**

Rocketship Education  
Attn: Bay Area Regional Director  
350 Twin Dolphin Drive, Suite 109  
Redwood City, CA 94065

With copy to:

Sarah Kollman  
Young Minney & Corr, LLP  
655 University Avenue, Suite 150  
Sacramento, CA 95825  
skollman@mycharterlaw.com

Any notice personally given or sent by facsimile transmission or email shall be effective upon confirmation of transmission. 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.

- 23.11** Proposition 39. It is the intent of the Parties that the Charter School will continue to occupy the Premises, for the Term of the Agreement. In consideration of the District entering into this multi-year agreement in full satisfaction of the provisions of Proposition 39, Charter School hereby agrees to waive any further right to petition the District for additional space under Proposition 39 for all school years during which the Charter School occupies the Premises. However, such waiver shall not apply to the Charter School's use and occupation of the site for the 2020-2021 school year, which the parties deem shall be governed by Proposition 39, and if

either party terminates this Agreement pursuant to Section 2.1, this waiver shall not apply and the Charter School shall be entitled to submit a request for Proposition 39 facilities for the 2021-22 school year no later than ten (10) days after termination of the Agreement, with each subsequent step of the Prop. 39 process set forth in 5 CCR Section 11969.9(d) through (i) to occur at twenty (20) day intervals. If this Agreement is terminated other than as a result of a default by the Charter School, the District and the Charter School shall work together to provide as quickly as possible the Charter School with alternative, reasonably equivalent facilities to accommodate the Charter School's entire in-District ADA until such time as the Charter School is able to submit a Prop. 39 request for the next cycle, and receive and occupy a District facility pursuant to Prop. 39.

**23.12** 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.

**23.13** Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion. The District certifies to the best of its knowledge and belief that it and its officials are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency according to Federal Acquisition Regulation Subpart 9.4, and Charter School, by signing this contract, certifies that Charter School does not appear on the Excluded Parties List. <https://www.sam.gov/portal/public/SAM>.

## ROCKETSHIP EDUCATION



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CFO, Keysha Bailey

## MOUNT DIABLO UNIFIED SCHOOL DISTRICT

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President, Board of Education  
Mt Diablo Unified School District

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Secretary, Board of Education  
Mt Diablo Unified School District

## EXHIBIT A

### EXCLUSIVE USE SPACE

The Charter School shall be allocated the space set forth in the District April 1, 2020 Final Offer of Facilities to the Charter School, as amended in its September 4, 2020 letter, both of which are attached hereto, with the following modifications:

- The five (5) classrooms that will be added, beginning with the 2020-2021 school year, are as follows: 207, 208, 209, 307 and 308. Rooms 205 and 206 will be added at the beginning of the 2021-2022 school year.
- The Charter School shall be allocated the restrooms in the 200 wing, until such time that the District installs modular restrooms next to Room 903, at which time the Charter School shall have exclusive use of the modular restrooms next to Room 903, and shall relinquish its rights to use the restrooms in the 200 wing. There shall be no deadline for the installation of the restrooms next to Room 903.
- The District shall install security fencing at the site, as needed.
- The District will retain the exclusive rights of access, use and occupation of any space not explicitly designated as the Charter School's exclusive use or shared space.
- The District will provide the Charter School access to two (2) additional classrooms, in addition to the current three (3), in addition to the MPR, for after-school use by the Charter School, up to 6:30 p.m., Monday through Friday.
- The District will provide the Charter School access to the storage spaces in Room 303 and the 700 wing.
- The Charter School will have shared use with the District of the Pick-Up/Drop-Off area starting in 2020-2021, under a schedule to be mutually agreed upon by the parties.
- The Charter School will be provided access to the parking spaces built at the location of the former Community Gardens at the Site. The allocation of the currently-existing parking spaces at the Site to the Charter School, as stated in the 2020-2021 Final Offer, shall remain the same, with spaces initially allocated to Seneca to be allocated to the District. The Charter School agrees to pay one-half the cost of installing the parking lot, or the sum of Ninety One Thousand, Seven Hundred Thirty Five Dollars and Forty Five Cents (\$91,735.45), payable within thirty (30) days of renewal of the Rocketship Futuro Charter.

## EXHIBIT B

### INSURANCE

- A. Throughout the Term of the Agreement, Charter School shall secure and maintain, as a minimum, all of the insurance as set forth below with a joint powers authority or insurance companies acceptable to the District.
1. Worker's Compensation Insurance in accordance with provisions of the California Labor Code, adequate to protect Charter School from claims under Workers' Compensation Acts which may arise from its operations, including Employers Liability limits of \$1,000,000/\$1,000,000/\$1,000,000.
  2. Commercial General Liability coverage of not less than \$5,000,000 for each occurrence. The policy shall be endorsed to name the District and the Board of Education of the Mount Diablo Unified School District as additional insureds and shall provide specifically that any insurance carried by the District which may be applicable to any claims or loss shall be deemed excess and Charter School's insurance primary despite any conflicting provisions in Charter School's policy. Coverage shall be maintained with no self-insured retention above \$25,000 without approval of the District.
  3. Commercial Auto Liability coverage with limits of \$1,000,000 combined single limit unless Charter School operates bus services for students; provided, that if Charter School is providing any bus services for students, Charter School shall maintain coverage limits not less than \$5,000,000 combined single limit.
  4. Professional Educators Errors and Omissions liability coverage including sexual molestation and abuse coverage (if that coverage is not afforded elsewhere in the CGL or by separate policy) with minimum limits of \$3,000,000 per occurrence.
  5. Insurance covering the loss, damage or destruction of the Premises for 100% of the full replacement cost of the Premises, which shall provide protection against all perils including, but not limited to, fire, extended coverage, vandalism, malicious mischief and causes of loss special form.
- B. Charter School agrees that the following terms and conditions shall also apply to its obligations to secure and maintain insurance coverage during the Term of the Agreement:
1. Charter School understands and agrees that the District may review the insurance coverage maintained by Charter School and/or the insurance requirements of this Exhibit B at any time during the Term of the Agreement, and may adjust the insurance requirements as the District, in its reasonable discretion, deems appropriate. Upon receipt of written notice of any adjustment in the insurance coverage required under this Agreement, Charter School shall deliver evidence of compliance with said insurance requirements within 10 days of Charter School's receipt of the written notice.



2. No coverage shall be provided to Charter School by the District under any of the District's self-insured programs or commercial insurance policies. The District shall not have any obligation to secure insurance coverage for Charter School.
3. Charter School's insurance coverage shall be primary and any insurance carried by the District that may be applicable to any claims or loss shall be deemed excess despite any conflicting provisions in the insurance coverages maintained by Charter School.
4. Coverages and limits of insurance may be accomplished through individual primary policies or through a combination of primary and excess policies.
5. Within 10 days of Charter School's execution of the Agreement, Charter School shall furnish to the District's Business Services evidence of insurance in compliance with this Exhibit B. If Charter School fails to submit evidence of insurance in compliance with this Exhibit B or the District determines the Charter School has not complied with the Insurance requirements set forth in this Exhibit B, the District and/or the State may deny the occupancy and use of the Premises until Charter School provides satisfactory evidence of compliance or the District and/or the State may declare Charter School in default of the Agreement.

Thereafter, Charter School shall furnish to the District Risk Management within 30 days of all new policies inception, renewals or changes, certificates of such insurance signed by an authorized representative of the insurance carrier.

6. Nothing in this Exhibit B shall prohibit Charter School, at its sole cost and expense, from purchasing and maintaining additional insurance coverage for damage or theft to the Premises, personal property, business interruption, employee or student property, for student accident or any other type of insurance coverage not listed above in 1 through 5, inclusive, of Section A.