

**CHARTER FACILITIES AGREEMENT
BY AND BETWEEN
MT. DIABLO UNIFIED SCHOOL DISTRICT AND
EAGLE PEAK MONTESSORI CHARTER SCHOOL**

THIS AGREEMENT is made this 11th day of December, 2014, by and between the Mt. Diablo Unified School District, a public school District organized and existing under the laws of the State of California ("District") and the Eagle Peak Montessori School, a California public charter school ("EPMS"). The District and EPMS are collectively referred to as "the Parties."

RECITALS

WHEREAS, the Parties have previously entered into that certain Financial and Operational Memorandum of Understanding, which was originally dated October 8, 2002 (the "Financial MOU"), as amended August 12, 2003, June 29, 2004, June 28, 2005, and March 24, 2009.

WHEREAS, the Financial MOU describes certain operational relationships between the Parties, and

WHEREAS, pursuant to the requirements of California Education Code section 47614 and its implementing regulations (also known as "Proposition 39"), the District Board of Trustees has offered to provide the EPMS with facilities for its in-District students; and

WHEREAS, the Parties desire to set forth the terms and conditions pursuant to which the EPMS will occupy classrooms and use facilities at the District's Castle Rock school site (the "Site"), located at 800 Hutchinson road, Walnut Creek, CA for the 2009-2014 school years, commencing on a date to be agreed upon by the Parties. The Parties acknowledge the Site does not include the land beyond the back fence commonly referred to as "The Back Forty."

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

Section 1. Use of Site. District agrees to allow EPMS to use certain facilities on the Site, for the purpose of operating the Eagle Peak Montessori Charter School educational program, as approved by the District as charter granting agency in 2000, and in accordance with the Financial MOU.

- A. EPMS shall have exclusive use of the six (6) furnished and equipped classrooms on the Site, as well as office space and restrooms. The description of the classrooms and other facilities is set forth in Exhibit A attached hereto.

EPMS shall comply with District policies regarding the operations and maintenance of the facilities, furnishings, and equipment.

- B. Although EPMS shall have the exclusive use of the entire Site, EPMS agrees to comply with the provisions of the Civic Center Act (Education Code section 38131) in making use of the facilities accessible to members of the Community. EPMS also shall adhere to District procedures in making use of 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.
- C. EPMS shall permit District, its agents, representatives or employees, to enter upon the Site for the purpose of inspecting same or to make repairs, alterations, or additions to any portion of the Site. District shall attempt to provide 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.
- D. This Agreement is made based upon the assumption that by the 2018-19 school year, EPMS' ADA is estimated to be 268. This Agreement is not intended to limit EPMS' ADA or its ability to receive all rights and the benefits of a charter school under Proposition 39. For the term of the Agreement, EPMS shall not be required to make annual Proposition 39 facilities requests. However, EPMS agrees to comply with the requirements of Section 11969.8 of the Proposition 39 regulations pertaining to Reimbursement Rates for Over-allocated space.
- E. EPMS shall provide shall provide the District with its actual ADA count and the number of students of the EPMS at the time of the filing of the P-1 state attendance report and at the time of the filing of the P-2 state attendance report. EPMS shall additionally provide to the District on the foregoing dates the names and addresses of students in a manner consistent with applicable law, including FERPA, no later than October 15 of each year of this Agreement. The District shall only use the names and addresses for the purpose of verifying residency.
- F. 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 EPMS under Education Code section 47614 and the proposition 39 regulations.
- G. Limitations on Use. EPMS' use of the site shall be limited to its operation as described in its charter and the related educational activities consistent with applicable law; provided, however, that:

- i. At no time shall the Site be used to house animals or livestock without the express written consent of the District; provided, however, that EPMS may have small animals contained in cages, for educational purposes and service animals;
- ii. EPMS shall be allowed to place signage on the Site that does not permanently damage District property, is consistent with signage (including size limitations) at District schools, which is approved by the District Board consistent with approvals with other District schools, and is consistent with any applicable zoning or city ordinances of the City of Walnut Creek.
- iii. EPMS shall not be allowed to place additional facilities on the Site without express written consent from the District and such consent shall not be unreasonably withheld. It can, however, modify or improve, at its own cost, existing buildings on the Site, subject to District approval. Any fixed modifications to District provided buildings or facilities shall become the property of the District.

Section 2. Term. The term of this Agreement shall begin on its date of execution and shall continue in effect until the expiration of EPMS' charter, by termination as specified in Section 4, below, or through mutual agreement of the Parties.

Section 3. Renewal. This Agreement will be reviewed and amended as necessary.

Section 4. Termination. This Agreement will automatically terminate upon the termination or revocation of the EPMS' charter or the cessation of the EPMS' operations for any reason.

Section 5. Rent. The facilities hereunder shall be provided to EPMS rent-free. Unless otherwise agreed by the Parties, the District shall charge the EPMS the indirect cost percentage set forth in Section 4.2 of the Financial MOU, in lieu of charging the pro rata share amount referred to in Education Code section 47614(b)(1).

Section 6. Utilities. EPMS shall be solely responsible for the monthly cost of utilities used or consumed by the EPMS on the Site. The term "utilities" shall include, but not be limited to, electrical, gas, water, sewer, trash collection, phone services, and internet connection. The EPMS' payment of such costs shall be in lieu of its payment of facilities costs under Education code section 47614.

Section 7. Maintenance. EPMS shall be responsible for the routine maintenance of the facilities used by EPMS, and shall maintain such facilities to District standards. EPMS shall provide its own maintenance services, including custodial services. Should the EPMS request services from the District's Maintenance Department; the District will bill EPMS for such services on a time and materials basis.

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

Section 8. Installation of Improvements. EPMS shall not construct or install any improvements on the Site or otherwise alter the Site without the prior written consent of District, and if required, the Division of the State Architect. District's approval of any improvements, including the construction schedule, work hours, and modifications, shall be at District's sole and absolute discretion. Contractors retained by EPMS 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 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 applicable laws and building codes, including prevailing wage. District or 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. Upon termination or cessation of this Agreement, EPMS shall bear all responsibility and cost for the removal and clean-up of all improvements, and for restoring the Site to its original condition, except for normal wear and tear of the facilities.

Section 9. Environmental Condition of Property. EPMS, at its expense, shall comply with all applicable laws, regulations, rules and orders with respect to its use and occupancy of the Site, including, without limitations, those relating to health, safety, noise, environmental protection, waste disposal, and water and air quality.

Should any discharge, leakage, spillage, emission, or pollution of any type occur upon or from the Site caused by EPMS' use and occupancy thereof, EPMS, at its expense, shall be obligated to clean all the property affected, to the satisfaction of District and any government agencies having jurisdiction over the Site. Responsibility will be apportioned according to the level of fault.

Section 10. Title to Property. The Parties acknowledge the title to the Site is held by the District and shall remain in the District at all times. The EPMS shall be allowed to place signage at the Site subject to District approval.

Section 11. Fingerprinting. EPMS 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 provided in writing to District prior to each individual's commencement of

employment or participation in any activity of EPMS on the Site and prior to permitting contact with District pupils.

Section 12. Insurance. EPMS shall, during the term of this Agreement, maintain in force, a policy of combined, single-limit bodily injury and property content insurance in the amount of not less than one million dollars (\$1,000,000) with District, its employees and agents, at EPMS' expense, named as additional insureds under such policy. Such policy shall provide for a thirty-(30) day notice to District of any cancellation or reduction of such insurance. EPMS agrees to provide District a certificate of insurance evidencing this coverage in a form satisfactory to District upon execution of this Agreement and upon request of the District during the term of this Agreement. A specified endorsement must be issued in favor of the District indicating insurance coverage for all claims regarding child molestation as well as for claims of a sexual nature involving minors.

Section 13. Indemnification. EPMS shall indemnify District in connection with EPMS' use and occupancy of the Site, as provided in Sections 6.9 and 8.3 of the Financial MOU.

Section 14. 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 District: Superintendent or Associate General Counsel
Mt. Diablo Unified School District
1936 Carlotta Drive
Concord, Ca 94519-9989

If to EPMS: Head of School
Eagle Peak Montessori School
800 Hutchinson Road
Walnut Creek, CA 94598

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 the deposit in the United States mail.

Section 15. 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 on any third party, without the written consent of the other party.

Section 16. 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 17. Entire Agreement of Parties. This Agreement and the Financial MOU constitute the entire agreement between the Parties and supersede all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument by the Parties.

Section 18. 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 19. Attorneys' Fees. If either party files any action or brings any proceedings against the other arising out of this Agreement, the prevailing party shall be entitled to recover, in addition to its costs of suit and damages, reasonable attorneys' fees to be fixed by the court. The "prevailing party" shall be the party who is entitled to recover its costs of suit, whether or not suit proceeds to final judgment. No sum for attorneys' fees shall be counted in calculating the amount of a judgment for purposes of determining whether a party is entitled to its costs or attorneys' fees.

Section 20. Waiver. The waiver by any party of any breach of 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 21. 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 22. 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 23. 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 24. 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 25. Incorporation of Recitals and Exhibits. The Recitals and Exhibit A attached hereto are incorporated herein by reference.

Section 26. Dispute Resolution. The Parties agree to follow the dispute resolution provisions of the charter in the event of a dispute regarding the provisions of the Agreement or the District's obligations under Proposition 39.

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

MT. DIABLO UNIFIED SCHOOL DISTRICT

By: _____

Date:

Title: _____

EAGLE PEAK MONTESSORI CHARTER SCHOOL

By: _____

Date:

Title: _____

