

COPY

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

THIS AGREEMENT is made this 29th day of June 2004, 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 ("School"). The District and the School are collectively referred to as "the parties."

RECITALS

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

WHEREAS, the 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 School with facilities for its in-district students; and

WHEREAS, the parties desire to set forth the terms and conditions pursuant to which the School 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.

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 School 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 MOU.

School shall have exclusive use of five (5) 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. School shall comply with District policies regarding the operations and maintenance of the facilities, furnishings, and equipment.

03/24/09

Although Charter School shall have the exclusive use of the premises, Charter School 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. Charter School shall follow 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.

Charter School shall permit District, its agents, representatives or employees, to enter upon the Facility for the purpose of inspecting same or to make repairs, alterations, or additions to any portion of the Facility. 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.

Pursuant to the requirements of Proposition 39, the allocation of space as set forth in this Section 1 is based upon an assumption of 165 ADA for 2004-2005 and a maximum of 180 ADA. Future requests for additional facilities based on enrollment increases may be made in the manner specified in Section 11969.9 of the Proposition 39 regulations (Cal. Code Regs., tit. 5, § 11969.9.) Charter School agrees to comply with the requirements of Section 11969.8 of the Proposition 39 Regulations pertaining to Reimbursement Rates for Over-allocated space.

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 School under Education Code section 47614 and the Proposition 39 regulations.

**Section 2. Term.** The term of this Agreement shall begin on its date of execution and shall continue in effect until such time that the parties modify or enter into a subsequent Agreement.

**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 School's charter or the cessation of School's operations for any reason.

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

**Section 6. Utilities.** School shall be solely responsible for the monthly cost of utilities used or consumed by the School 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 school's payment of such costs shall be in lieu of its payment of facilities costs under Education Code section 47614.

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

District shall be responsible for the major maintenance of the facilities used by 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 8. Installation of Improvements.** School 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, and District may disapprove of such improvements without reason. Contractors retained by 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 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.

**Section 9. Environmental Condition of Property.** School, 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 limitation, 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 School's use and occupancy thereof, School, at its expense, shall be obligated to clean all the property affected, to the satisfaction of District and any governmental agencies having jurisdiction over the Site. Responsibility will be apportioned according to the level of fault.

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

**Section 11. Fingerprinting.** 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 provided in writing to District prior to each individual's commencement of employment or participation in any activity of School on the Site and prior to permitting contact with District pupils.

**Section 12. Insurance.** School 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 School's 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. School 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.** School shall indemnify District in connection with School's use and occupancy of the Site, as provided in Sections 6.9 and 8.3 of the 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 the District:       Mt. Diablo Unified School District  
                                  1936 Carlotta Drive  
                                  Concord, CA 94519-9989  
                                  Attn: Assistant Superintendent, Administrative Services

If to the School:       Eagle Peak Montessori Charter School  
                                  800 Hutchinson Road  
                                  Walnut Creek, CA 94598  
                                  Attn: Administrative Director

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 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 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 executed 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 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 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 each exhibit 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 this Agreement or the District's obligations under Prop. 39.

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

**MT. DIABLO UNIFIED SCHOOL DISTRICT**

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

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

**EAGLE PEAK MONTESSORI CHARTER SCHOOL**

By: Michelle Hammons

Title: Principal / Administrative Director

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**EXHIBIT A**

**DESCRIPTION OF FACILITIES**

Exclusive Use Facilities

Five (5) classrooms (permanent) and one (1) portable classroom  
Office  
Restroom

Other Facilities

Turf Areas

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