

**FACILITIES USE AGREEMENT
BETWEEN THE SAN CARLOS SCHOOL DISTRICT AND
THE SAN CARLOS CHARTER LEARNING CENTER**

THIS FACILITIES USE AGREEMENT ("FUA") is entered by and between the Board of Trustees ("Board") of the San Carlos School District ("District") and the San Carlos Charter Learning Center ("SCCLC"), together the "Parties."

RECITALS

- A. The District is a school district existing under the laws of the State of California.
- B. SCCLC is a California Charter School operating under a charter (the "Charter") that was originally approved by the District in 1993 and was renewed in 1997, 2002 and 2007, materially revised in 2011, and renewed in 2012.
- C. The Parties seek to reaffirm a collaborative, mutually-supportive relationship for the benefit of all public school children served within the District. The Parties agree that maintaining SCCLC's involvement in the community-based fundraising overseen by the San Carlos Educational Foundation is in furtherance of our mutual interest.

NOW, THEREFORE, the parties agree as follows:

1. TERM

This Agreement shall become effective, after its approval and signing by both parties, on July 1, 2015. The Agreement shall be in effect until June 30, 2017.

2. AMENDMENT

This Agreement may be amended, in whole or in part, only by an agreement of the Parties in writing.

3. FACILITIES

The District grants SCCLC the right to use the following space located at the District's Tierra Linda School Campus ("Campus") as

shown on the map, which is attached to and incorporated by reference into this Agreement. The exclusive use facilities include:

- Eighteen (18) regular classrooms, as follows: room numbers 8, 9, 10, 11, 13, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, and 28;
- The office space currently used by SCCLC for administrative purposes (formerly room 12);
- The small room next to room 19 which SCCLC currently uses for testing and literacy support; and
- The small rooms adjacent to the Old Gym which SCCLC currently uses for break-out sessions and a community room.

The non-exclusive use facilities that are shared between SCCLC and Tierra Linda Middle School include:

- The two campus gyms, the “New Gym” and the “Old Gym” (the “Old Gym” will likely be demolished sometime between the start of summer 2016 and summer of 2017)
- The Library
- Locker rooms
- Outdoor field space, play grounds and hardscape.

Rooms M1, M2, M3, and S4, and the room SCCLC used during the 2011-12 school year for delivering RSP services (the old art room connected to the library) are all specifically **excluded** from the space being granted to SCCLC beginning with the 2012-13 school year.

The District will also provide one additional classroom, currently room number 7, to SCCLC for use by Educare under the existing terms and conditions, including an annual fee paid by SCCLC to the District of **\$15,000**. The parties agree that SCCLC retains the right to change its room usage plans within the complete set of space granted to SCCLC by the District under this Agreement, so long as such changes are consistent with the Charter and applicable law. For example, SCCLC may, at its discretion, move Educare to another of SCCLC's rooms.

In consideration of the additional space being granted to SCCLC under this Agreement, and in recognition of additional expenses the District will incur in creating additional classrooms for the District's use, SCCLC agrees to pay an annual fee to the District of **\$40,000**. It is the intent of the parties that this fee will be continued in subsequent facilities agreements for a total of five (5) school years beginning with 2012-2013, concluding at the end of the 2016-2017 school year. The parties further affirm that these payments are in addition to, and separate from, any oversight or other fees agreed to in a separate Memorandum of Understanding.

Additionally, and in consideration of the inclusion of room 13 to the space being granted to SCCLC under this agreement beginning with the 2015-2016 school year, and in recognition of additional expenses the District will incur in preparing alternative space for the District's use, SCCLC agrees to pay an additional annual fee to the District of **\$15,000**. It is the intent of the parties that this fee will be continued for a total of two (2) school years, concluding at the end of the 2016-2017 school year. The parties further affirm that these payments are also in addition to, and separate from, any oversight or other fees agreed to in a separate Memorandum of Understanding.

The ongoing operations and maintenance of facilities, including custodial services and replacement of fixtures, is the responsibility of SCCLC. With the exception of interior painting, major maintenance and projects eligible to be included in the District deferred maintenance plan established pursuant to Education Code section 17582 shall be the responsibility of the District. 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 painting, and any other items considered deferred maintenance under Education Code section 17582 with the sole exception of interior painting. SCCLC shall not make any structural modifications to any of the facilities without prior written consent of the District. SCCLC shall promptly notify the District of any facilities problems it becomes aware of that have the potential to require the District to perform major repairs or improvements. The Parties shall schedule an annual walk-through of the facilities.

SCCLC will have the right to use the classrooms it is assigned, the administrative space and the Educare space outside of the School Day, in a manner consistent with District policies regarding maintenance and appropriate use.

The District will be responsible for scheduling all shared non-classroom facilities that are not otherwise allocated to SCCLC's exclusive use (e.g., gyms, library) on the Campus and will use reasonable efforts to accommodate SCCLC usage requests.

SCCLC agrees that the provision of facilities pursuant to this Agreement constitutes full and complete satisfaction of the District's obligation to provide facilities to SCCLC under Education Code section 47614 and the Proposition 39 implementing regulations for the term of this Agreement.

SCCLC shall use the facilities, including Educare, for educational purposes only or for purposes consistent with the SCCLC charter. SCCLC shall not assign, convey, transfer or encumber any right or privilege in the facilities without the prior written consent of District. SCCLC shall comply with the provisions of the Civic Center Act (Ed. Code §§38130, et seq.) regarding the facilities and shall develop its own Policy and Administrative Regulations for making use of the facilities accessible to members of the community. SCCLC governance council shall be the "governing board" for purposes of complying with the responsibilities of the Civic Center Act. SCCLC shall enjoy access to and use of the facilities in the same manner as any other District facility, under all applicable laws. SCCLC will be permitted to utilize the facilities for any and all school related activities, not limited to, but including school festivals, dances, sports activities, and open house nights.

The District is not aware of any defect in or condition of the Campus that would prevent their use for SCCLC's purposes. The District has not received any notice of violation of statute, ordinance, regulation, order or holding from any state or federal agency with jurisdiction over the Campus that calls into question the appropriateness or sufficiency of the Campus for their intended purpose. The District, at its expense, shall remain responsible for compliance with all

applicable laws regarding the Campus during the Term of this Agreement. SCCLC, at its expense, shall comply with all applicable laws, regulations, rules and orders with respect to its use and occupancy of the Campus, including, without limitation, those relating to health, safety, noise, environmental protection, waste disposal, and water and air quality. SCCLC shall not be responsible for any and all environmental conditions that existed prior to SCCLC's occupancy of the Campus, so long as such environmental conditions are not exacerbated by the SCCLC's negligence or willful misconduct. The District shall remain responsible for compliance with the ADA, FEHA, and other applicable building code standards for any existing compliance issue prior to the date of execution of this Agreement or that are not triggered by any modifications or improvements made by SCCLC. SCCLC shall only assume responsibility for compliance with ADA and FEHA access rights to the extent of any modifications or improvement made by SCCLC. Should any modifications or improvements made by SCCLC change or affect the character of any existing improvements, SCCLC shall be responsible for bringing said existing improvements into compliance with ADA, FEHA, and other applicable building code standards.

Damage and Destruction of Facilities:

Partial Damage. If the Campus is damaged by any casualty which is covered by applicable insurance, and SCCLC still has access to at least sixty percent (60%) of the usable classroom space, then the Campus shall be restored provided insurance proceeds are available to pay for the cost of restoration, and provided such restoration can be completed within one hundred twenty (120) days after the commencement of the work in the opinion of a registered architect or engineer approved by District. In such event, this Agreement shall continue in full force and effect, except that SCCLC shall be entitled to proportionate reduction of all fees and payments while such restoration takes place, such proportionate reduction to be based upon the extent to which the restoration efforts interfere with SCCLC's business on the Campus. The District shall provide the SCCLC temporary housing on the Campus, or another school site that is near to the Campus for any part of SCCLC program that is displaced by the partial damage and/or the repair work of the same.

Total Destruction. If the Campus is totally destroyed (defined as the destruction of more than forty percent (40%) of the usable classroom space), or the Campus cannot be restored as required herein, notwithstanding the availability of insurance proceeds, then this Agreement shall be terminated effective the date of the damage. Immediately upon the effective date of the damage, the District will comply with Proposition 39 and provide a school facility to SCCLC as soon as possible so as to avoid any interruption in the educational program of SCCLC.

4. INDEMNIFICATION

With the exception of any liability, claims, or damages caused by the negligence or willful misconduct of the District, SCCLC shall indemnify, hold harmless, and defend the District, its trustees, officers, employees and agents against and from any and all claims, demands, actions, causes of action, suits, losses, liability, expenses, penalties, obligations, errors, omissions and costs, including legal costs, attorney's fees and expert witness fees, whether or not suit is actually filed, and/or any judgment rendered against the District, its trustees, officers, employees and agents, that may be asserted or claimed by any person, firm or entity for any injury, death or damage to any person or property occurring in, on or about the Campus after the Date of this Agreement, arising from, or in connection with, SCCLC's use of the Campus or from the conduct of its business, including conduct of its board of directors, administrators, employees, agents, representatives, volunteers, subcontractors, invitees, successors and/or assigns or from any activity, work, or other things done, permitted or suffered by SCCLC in or about the Campus. SCCLC's obligation to defend the District and the other indemnitees identified herein is not contingent upon there being an acknowledgement or determination of the merit of any claims, demands, actions, causes of action, suits, losses, liability, expenses, penalties, obligations, errors, omissions and/or costs.

With exception of any liability, claims or damages caused by the negligence or willful misconduct of SCCLC, the District shall indemnify, hold harmless, and defend SCCLC, its trustees, officers, employees and agents against and from any and all claims, demands, actions, causes of action, suits, losses, liability, expenses, penalties, obligations, errors, omissions, and costs, including legal

costs, attorney's fees and expert witness fees, whether or not suit is actually filed, and/or any judgment rendered against SCCLC, its trustees, officers, employees and agents, that may be asserted or claimed by any person, firm or entity for any injury, death or damage to any person or property occurring in, on or about the Campus after the Date of this Agreement, arising from, or in connection with, the District's use of the Campus or from the conduct of its business, including conduct of its board of directors, administrators, employees, agents, representatives, volunteers, subcontractors, invitees, successors and/or assigns or from any activity, work, or other things done, permitted or suffered by the District in or about the Campus; the District's obligation to defend SCCLC and the other indemnities identified herein is not contingent upon there being an acknowledgement or determination of the merit of any claims, demands, actions, causes of action, suits, losses, liability, expenses, penalties, obligations, errors, omissions and/or costs.

5. FUTURE FACILITIES AND CAPITAL IMPROVEMENTS

The Board affirms that, when contemplating future facilities expansions, new construction, and/or renovations, it shall consider the needs of SCCLC on a fair and consistent basis with the needs of the District Schools. The Parties agree to work in good faith to jointly develop future facilities plans for SCCLC as part of the District's long range facilities planning process.

SCCLC affirms its desire for a long-term stable facility within San Carlos that meets the needs of its educational program. While the current facility on the Tierra Linda campus meets the current needs of its educational program, SCCLC affirms its willingness to accept a new San Carlos location for its facilities from the District that equally meet the needs of its educational program .

6. SEVERABILITY

If any provision or any part of this Agreement is, for any reason, held to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall remain valid and fully enforceable.

IN WITNESS WHEREOF, the parties to this Agreement have duly executed it on the day and year set forth below:

Dated: _____

SAN CARLOS CHARTER LEARNING
CENTER

Dated: _____

SAN CARLOS SCHOOL DISTRICT