

**CHARTER SCHOOL FACILITIES PROGRAM
MEMORANDUM OF UNDERSTANDING**

By and Among:

**Tracy Learning Center,
on behalf of,
Primary Charter School,
(CDS Code # 39-75499-0102384)
a California Charter School**

and

**Tracy Unified School District,
a California Public School District;**

and

**The State of California,
State Allocation Board and California School Finance Authority**

ARTICLE I – PURPOSE AND LIMITATION

- A. This Memorandum of Understanding (“MOU”) is made and entered into as of _____, (“Effective Date”) by and among the State Allocation Board and the California School Finance Authority (individually or collectively referred to as the “State”); and the charter management organization identified above on behalf of the charter school identified above, a California Charter School operating as a non-profit public benefit corporation in accordance with Education Code Section 47604 (the charter management organization and charter school referenced above hereinafter individually and collectively referred to as “Charter School”) and the California Public School District identified above (“School District”). The provisions of this MOU shall be effective from and after the Effective Date until all duties and obligations of the parties are carried out.
- B. The School District has applied to the State for financing of its charter school facilities project (“Facilities”) under the Charter School Facilities Program (“CSFP”) established pursuant to Article 12 of Chapter 12.5 of Part 10 of the Education Code and the regulations for its implementation provided in California Code of Regulations, Title 4, Section 10151 et seq., and California Code of Regulations, Title 2, Section 1859.160 et seq., attached hereto and incorporated by reference.

A copy of the Authority's Staff Summary is attached as Exhibit "A" and incorporated herein by reference as a means of defining the Facilities.

- C. This MOU and the Facilities Use Agreement (collectively, the "Agreements") set forth the entire agreements between the parties regarding the use of the real property pursuant to the CSFP. There are no understandings, agreements, representations, or warranties, express or implied, not specified herein regarding this MOU and the Facilities Use Agreement; provided, that in the event any portion of this MOU and/or the Facilities Use Agreement is held unenforceable by a court of competent jurisdiction, the remainder of the applicable agreement shall remain in full force and effect and shall not nullify the intent of the CSFP. A copy of the Facilities Use Agreement, attached hereto as Exhibit "B", is attached hereto and incorporated into this MOU solely for the purpose of setting forth the separate instruments for this transaction and not for the purpose of making the State a party to the Facilities Use Agreement.
- D. This MOU is being entered into in accordance with the requirements of the CSFP. To the extent this MOU is inconsistent or in conflict with the provisions of the CSFP and the implementing regulations, the CSFP and implementing regulations the CSFP shall prevail.
- E. Notwithstanding any provision contained herein, the duties and obligations of the State and the School District shall be limited to the following :
1. The State. The State shall be responsible to administer the CSFP and determine eligibility of and compliance by the Charter School to the requirements of the CSFP.
 2. The School District. The School District shall:
 - a. Accept title to the Facilities, as defined below, as trustee for the State of California public school system; and
 - b. In the event the Charter School, or any subsequent charter school, ceases to use the Facility or an Event of Default occurs, the School District shall observe the requirements of Section 17078.62 of the California Education Code as set forth in Section 4.2 below.

Other than the duties set forth in this Article I, E(2), no duties or responsibilities shall be imposed upon the School District as the result of it holding title to the Facility in trust for the California public school system except for that which is expressly contained in this MOU.
 3. Securing Approvals, Permits and Other Entitlements. Notwithstanding State supplied bond funds, the State shall have no duty or obligation to secure, or expend funds or incur costs to secure, any approvals, permits and other entitlements for the Facilities and operation of the Charter School. This limitation on duty and obligation shall apply to any repair, maintenance, modification, renovation, addition, expansion, re-construction or re-habilitation occurring after the completion of initial construction of the Facilities ("Future Work").

4. Construction. The State shall have no duty or obligation to construct all or any portion of the Facilities or any Future Work. In the event of abandonment or any failure to complete the construction of the Facilities or any Future Work for any reason, the School District, as trustee for the state public school system, will secure the site while it observes the requirements of Section 4.2 below.
5. Additional Funds. Other than the grant and the loan approved and provided under the CSFP, the State shall not be obligated to provide additional funds or financing for the planning, design, construction (including change orders and completion of construction), operation or maintenance of the Facilities.
6. Cooperation. In the event School District fails to complete construction or rehabilitation of the Facilities for any reason or fails to operate a school at the Facilities for any reason, the School District agrees that as the owner in trust of the Facilities for the state public school system, the School District shall cooperate with the State in its efforts to complete the construction of the Facilities or its effort to have a charter school operate from the Facilities; provided, that nothing in this MOU and the Facilities Use Agreement shall require the School District to incur any costs or liabilities, or increase the School District's duties, obligations or exposure to liability, unless agreed to in writing by the School District.

ARTICLE II – FINANCING OF THE CHARTER SCHOOL'S PROJECT

2.1 Fifty Percent Local Matching Share Obligation

- A. The Application for preliminary apportionment for the Facilities has been approved by the State. The Apportionment ("Apportionment") is contingent upon the School District paying its 50% Local Matching Share obligation, which will be paid to the State by way of a lump sum payment.
- B. The Application for a preliminary, advance, or final apportionment for the Facilities has been approved by the State. The State will provide as a grant funding for fifty percent (50%) of the approved costs for the Facilities and the School District will be responsible for fifty percent (50%) of the approved costs for the Local Matching Share for the Facilities. The Final Apportionment Amount will be reduced by any amounts received by the School District through an Advance Apportionment(s).

2.2 Conditions for Release of Funding

The following conditions must be satisfied before the State will release funding:

- A. The School District agrees to utilize its Apportionment for purposes consistent with the CSFP, and consistent with the purposes for which it was approved. The Charter School and School District shall comply with any and all requirements and conditions imposed upon it for the development and operation of the Facilities by any applicable governmental agency.
- B. Each party is duly authorized to enter, deliver, and perform this MOU and the Facilities Use Agreement, as applicable to the appropriate parties.

- C. If independently operated, The Charter School has provided documentation of its status as a 501(c)(3) non-profit entity to the State. Such documentation shall include an opinion from its counsel that the Charter School is qualified as a non-profit pursuant to section 501(c)(3) of the Internal Revenue Code, as well as a copy of the determination letter from the Internal Revenue Service.

2.3 Charter School Facilities

- A. The Facilities includes the real property and all improvements, repairs, replacements, substitutions, and modifications located or to be constructed on the property as described in its application for funding under CSFP.
- B. The Facilities are located or will be located within the boundaries of the School District identified above in the city and county as in Exhibit "A".
- C. The Facilities are physically located within the geographical jurisdiction of the School District and the school attendance area generating eligibility for funding, if applicable.
- D. The Charter School has satisfied itself as to the suitability of the Facilities by its own inquiries and tests. The Charter School shall, by entering into and occupying the Facilities, be deemed to have accepted the Facilities and to have acknowledged that they are in good order, condition and repair.
- E. The Charter School and School District represents and warrants that it, by and through its officers, employees, agents and consultants, has made a thorough and independent examination of the Facilities and all matters related to its decision to enter into this MOU. The Charter School and School District is thoroughly familiar with all aspects of the Facilities and is satisfied that they are in an acceptable condition and meet its needs. The Charter School or School District are responsible for identifying the real property, evaluating the condition of the title and suitability of the land for the Charter School's intended purpose, and negotiating and closing the acquisition of the real property. In addition, the School District is solely responsible for the construction of all improvements, repairs, replacements, substitutions, and modifications located or to be constructed on the real property

The State shall not have any obligation for construction work or improvements on or to the Facilities, to insure completion of construction, or provide additional funding in the event the Charter School determines it has insufficient funds to complete construction or operate the charter school.

ARTICLE III – SECURITY PROVISIONS

- A. If title to the real property is already held by the Charter School:
 - 1. the Charter School, at its sole cost and expense, shall cause to prepare a conveyance instrument, acceptable to the School District and the State, which shall convey title to the real property from the Charter School to the School District as trustee on behalf of the state public school system. The Charter School will convey to and the School District will accept conveyance of the good, absolute and marketable title to the Facilities in fee simple, free and clear of any mortgage, deeds of trust, liens (monetary or otherwise),

claims, charges or other encumbrances or matters of any nature what so ever other than those included in any other provisions of this MOU. Prior to release of final apportionment, the Charter School must provide evidence to the State that title to the real property has been transferred to the School District. If Charter School fails to meet this requirement, Charter School will be in default of this MOU.

2. The Charter School shall provide proof satisfactory to the State and the School District that all liens and encumbrances that may arise from the construction of the Facilities have been released and/or satisfied.
 3. The Charter School shall submit to the State and the School District for its review and acceptance a title report and a copy of each instrument listed in said title report. The title report shall be issued no more than thirty (30) calendar days prior to the date of submittal.
 4. The Charter School shall provide to the State and the School District for its review and acceptance an American Land Title Association ("ALTA") survey which together with (3) above, shall be sufficient for the Charter School,, at its sole cost and expense, shall provide the School District with a ALTA owner's policy for the benefit of the School District and the State.
- B. If title to the real property is not held by the Charter School, the School District, at its sole cost and expense, shall cause to prepare a conveyance instrument, acceptable to the State, which shall convey title to the real property in trust on behalf of the state public school system. The School District will accept conveyance of the good, absolute and marketable title to the Facilities in fee simple, free and clear of any mortgage, deeds of trust, liens (monetary or otherwise), claims, charges or other encumbrances or matters of any nature what so ever other than those included in any other provisions of this MOU.
- C. The School District shall provide to the State for its review and files the original Final California Department of Education ("CDE") approval subject to waivers and/or exemptions to the use of real property as a school facility; provided, that if CDE has provided the Charter School any waivers and/or exemptions the Charter School shall obtain from CDE and provide to the School District a valid assignment of such waivers and/or exemptions. The purpose of the assignment is to ensure that the conveyance of fee title from the Charter School to the School District will not result in a situation whereby the Facilities then become non-compliant because of the transfer of fee simple title to the School District due to those requirements and standards that are typically imposed upon the School District.
- D. The School District shall provide to the State for its files the original "No Further Action" or "Further Action Letter" from the California Department of Toxic Substance Control ("DTSC"); provided, that if DTSC has issued a Further Action Letter, the Charter School shall provide to the School District proof satisfactory to the School District that all requirements of the Further Action Letter have been satisfied. Simultaneously with the delivery of the foregoing, the Charter School shall deliver to the State a copy of the documents delivered to the School District.

- E. The School District shall provide to the State for its review and files the final approval issued by DTSC for the final Preliminary Environmental Assessment (“PEA”) for the real property, if applicable.
- F. The School District shall provide to the State for its files the final approval of any applicable Federal, State, City or County agency necessary for the acquisition and construction of the Facilities, and the operation of the Facilities for an educational program conducted by the Charter School. As an example, and not as means of limitation, a charter school may require approval from the California Coastal Commission if a project will be located within its jurisdiction.
- G. Simultaneously with the delivery of the documents and instruments required in this Article III.A, the Charter School shall deliver to the State a copy of the same documents and instruments delivered to the School District.
- H. Title to the Facilities shall be conveyed to the School District by a grant deed or bill of sale, if applicable, agreed to and accepted by the School District. Title to the Facilities shall be held solely by the School District in whose boundaries the Facilities are to be located, in trust, for the benefit of the state public school system.
- I. Any person or entity providing a substantial contribution that is applied to the costs of the project in excess of the state share and the local matching share may be granted a security interest, as approved and memorialized in a written instrument executed by the State, to be satisfied from the proceeds, if any, realized when the property is ultimately disposed of. If the contribution was made for the explicit purpose of purchasing any asset with a normal life expectancy of less than twenty years, the security interest will be adjusted to reflect the depreciation of the assets. Contributions used solely to assist the applicant in meeting its local matching share shall not be entitled to a security interest. Where a contribution results in total project funding beyond the state and local matching shares, the contributor’s security interest shall be limited to the amount in excess of the state share and local matching share.
- J. If a default occurs and all payments have not been made, the security interest of any person or entity providing a substantial contribution to the costs of the project shall be satisfied only after the account is reimbursed for any remaining unpaid local matching share and the School District has been reimbursed for any costs and expenses incurred, if any, as the result of such default.
- K. Simultaneously with the execution of the Grant Deed, the Charter School and the School District shall enter into a Facilities Use Agreement, Exhibit “B”. This Facility Use Agreement shall contain as standardized provisions the following, which must be addressed to the satisfaction of the State:
 - 1. The acquisition and maintenance of all required licenses or permits. Any costs associated with licenses or permits shall not become an obligation of the State.
 - 2. The payment of all fees, and public charges of whatever nature accessed against the Facilities, including the payment of all taxes, and costs associated with telephone, water, sewer, gas, heat, electricity, garbage

disposal, trash disposal, and all other services and utilities. Such fees and charges shall not become an obligation of the State.

3. Prohibited uses of the Facilities, and provisions for the maintenance and repair of the Facilities. The State shall not under any circumstance be required to make any improvements or install any equipment on the Facilities, make any repairs, alterations or replacements of any nature to the Facilities, make any expenditures whatsoever in connection with this MOU or maintain the Facilities in any manner. The State shall not be required to maintain, repair or rebuild all or any part of the Facilities, and the Charter School or School District waive the provisions of Civil Code Sections 1941 and 1942 and any other law that would require the maintenance of the Facilities in a leasable condition or would provide the School District with the right to make repairs and deduct the cost of those repairs from its payments.
4. The handling of hazardous materials.
5. Insurance requirements, in addition to those specified in this MOU, for all risk (special-causes-of-loss) property and fire insurance; commercial general liability insurance; rental value insurance; worker's compensation insurance; flood and earthquake insurance as necessary; and such other types of insurance or endorsements to existing insurance as may be required by the School District.

ARTICLE IV – DEFAULT AND REMEDIES

4.1 Events of Default

The occurrence of any of the following shall constitute a “Default” or “Event of Default”:

- A. Failure by the Charter School to commence to use and occupy the Facilities for the operation of a charter school within one (1) year of receiving the certificate of occupancy issued by the Division of the State Architect.
- B. Failure by the Charter School or School District to maintain insurance on the Facilities or to provide reasonable evidence of insurance as required by the Facilities Use Agreement, and where such failure continues for a period of thirty (30) calendar days after receiving written notice by the State.
- C. Failure by the Charter School or School District to provide reasonable evidence of compliance with all requirements whether expressly stated in this MOU or the Facilities Use Agreement or otherwise imposed by the State under the CSFP or other applicable law, or failure to observe or perform any other applicable covenant, condition or agreement, where such failure continues for thirty (30) calendar days after receiving written notice of the failure. If thirty (30) calendar days is insufficient, and the Charter School or School District has instituted corrective action, the State, in its discretion, may extend this period up to one hundred and eighty (180) calendar days.
- D. The Charter School or School District shall be or become insolvent, or admit in writing its inability to pay its debts as they mature, or make an assignment for the

benefit of creditors; or the Charter School or School District shall apply for or consent to the appointment of any receiver, trustee or similar officer for it or for all or any substantial part of its property; or such receiver, trustee or similar officer shall be appointed without the application or consent of the Charter School or School District, as the case may be, where possession is not restored in sixty (60) calendar days; or the Charter School or School District shall institute (by petition, application, answer, consent or otherwise) any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, liquidation or similar proceeding relating to it under the laws of any jurisdiction; or any such proceeding shall be instituted (by petition, application or otherwise) against the Charter School or School District (unless, in the case of a petition filed against the Charter School or School District, the same is dismissed in sixty (60) days) or any judgment, writ, warrant of attachment or execution or similar process shall be issued or levied against a substantial part of the Facilities; provided, however, in the event that any provision of this paragraph is contrary to any applicable law, it shall be of no force and effect, and not affect the validity of the remaining provisions;

- E. A determination by the State that any representation or warranty made by the Charter School or School District was untrue in any material respect when made;
- F. The Charter School's charter is not renewed or is revoked, or the Charter School ceases to use the Facilities for a charter school purpose. Nothing in this section shall affect a Charter School's rights and obligations pursuant to Education Code Section 17078.62 if the Charter School ceases to use the facility after a revocation and/or non-renewal;
- G. The Charter School abandons the Facilities or is in breach of the Facilities Use Agreement; and/or,
- H. If an Event of Default occurs and the Charter School continues to occupy and/or possess the Facilities, the Charter School shall remain liable for the performance of all of the obligations of the Charter School under and subject to the Facilities Use Agreement.
- I. Failure by the School District to acquire title of the Facilities as required prior to release of certain funds under Education Code Section 17078.63 or within 30 days of receipt of CSFP funds for site acquisition or final apportionment.

4.2 Remedies on Default

The parties acknowledge and agree that this MOU and the Facilities Use Agreement represent a unique situation that is not limited by the standard landlord's remedies provided by Sections 1951.2 and 1951.4 of the California Civil Code. The parties agree that if any Event of Default shall have occurred, any one or more of the following respective remedies, which are not exclusive but cumulative, may be pursued:

- A. If the Event of Default is solely because the Charter School's chartering authority has revoked or declined to renew the Charter School's charter, in accordance with Section 17078.62(b)(1) of the Education Code, the Charter School shall:

1. have that time period specified in Section 17078.62 of the Education Code to complete the review process contemplated in Section 47607 or 47607.5 of the Education Code; and
 2. so long as the Charter School continues to use and occupy the Facilities, remain liable for the performance of all of the obligations of the Charter School under this MOU, the Funding Agreement, and the Use Agreement, if applicable.
- B. If the Event of Default is solely because the Charter School's chartering authority has revoked or declined to renew the Charter School's charter, the Charter School shall not be liable under the Facilities Use Agreement on the effective date of the last to occur of all of the following:
1. the Charter School completes the review process provided in Section 47607 or 47607.5 of the Education Code and the Charter School fails to obtain a renewal of its charter, or the Charter School relinquishes all rights to pursue or complete the review process provided in Section 47607 or 47607.5 of the Education Code and the Charter School notifies the State and the School District of its election; and
 2. the Charter School vacates the Facilities and relinquishes to the School District all right, title and interest in the occupancy and use of the Facilities.
- C. Upon the occurrence of Subsection B of this Section 4.2, the School District shall permit the Facilities to be used in its "as is" and "where is" condition by another charter school:
1. that the State deems as qualified,
 2. whose charter petition is approved and is in good standing with the School District; and
 3. that has agreed to a Facilities Use Agreement with the School District.
- D. In the event a successor charter school cannot be identified as provided in Subsection D of this Section 4.2, the School District may:
1. in accordance with Section 17078.62(b)(3) of the Education Code, take possession of and use the Facilities as a public school facility.; or
 2. In accordance with Section 17078.62(b)(5) of the Education Code, if the School District declines to take possession of the Facilities or if the Facilities are no longer needed for public school purposes, the School District shall dispose of the Facilities in accordance with requirements for the disposal of surplus public school sites. The monetary proceeds from the disposal of the Facilities shall be applied in the following priority: (i) repay any unpaid local matching share in favor of the State; (ii) repay any security interest granted pursuant to Section 17078.57(a)(3)(B); and (iii) to the School District to be used for capital improvements in the School District.
- E. The State may proceed by appropriate court action to enforce specific performance by the Charter School or School District of its covenants under this MOU and under

the terms of accepting funding under the CSFP, or to recover damages for the breach thereof, including without limitation for the recovery of all past due payments together with interest and late charges, and all other sums due the State. The Charter School or School District shall pay or repay to the State all costs of such action or court action, including, without limitation, reasonable attorneys' fees and costs. The School District may proceed by appropriate court action to enforce this MOU and the Facilities Use Agreement against the Charter School.

- F. In the event of a default and the recovery of the Facilities by the State, the State shall have the right to recover from the School District via the intercept mechanism described in Section 17199.4 of the Education Code (i) the amount of all outstanding payments or other obligations (whether directly or indirectly owed by the School District to the State), if any, which are then due and owing, together with interest and late charges, and (ii) any other amounts due from the School District to the State, including indemnity payments, taxes, charges, reimbursement of any advances and other amounts payable by the School District to the State.
- G. Notwithstanding anything to the contrary, the State, the Charter School and the School District may take whatever action at law or in equity that may appear necessary or desirable to enforce its respective rights with respect to this MOU or the Facilities Use Agreement, and the party or parties prevailing in the action shall have all of their respective costs of such action or court action, including, without limitation, reasonable attorneys' fees and costs as provided in this MOU and/or the Facilities Use Agreement or as otherwise permitted by law, paid by the parties against whom the action was brought.
- H. No remedy herein conferred upon or reserved to the parties is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this MOU and the Facilities Use Agreement or existing at law or in equity. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle either party to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice other than such notice as may be required under the MOU. All remedies herein conferred upon or reserved to the parties shall survive the termination of this MOU and/or the Facilities Use Agreement.
- I. The State, in its discretion, may provide the Charter School the opportunity to cure Default for up to a thirty (30) calendar day period. If thirty (30) calendar days is insufficient, and the Charter School has instituted corrective action, the State, in its discretion, may extend this period up to one hundred and eighty (180) calendar days.

ARTICLE V – MISCELLANEOUS

5.1 Release of Liability

The State are hereby released from any and all claims, demands, debts, liabilities, and causes of action of whatever kind or nature, whether known or unknown or suspected or

unsuspected which the Charter School, School District, or any of the employees or agents each may have, claim to have, or which may hereafter accrue against the released parties or any of them, arising out of or relating to the Facilities, including those in any way connected with any materials or substances defined as hazardous under any applicable statute, ordinance, rule or regulation, presently in, on or under, or now or hereafter emanating from or migrating onto or under the Facilities. In connection with this release, the Charter School or School District hereby waives any and all rights conferred upon it by the provisions of Section 1542 of the California Civil Code, which reads as follows:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

5.2 Non-waiver

No waiver of any provision of this MOU and/or the Facilities Use Agreement shall be implied by any failure to enforce any remedy for the violation of that provision, even if that violation continues or is repeated. Any waiver of any provision contained in this MOU and/or the Facilities Use Agreement, if applicable, must be in writing and executed by the applicable parties and will affect only the provision specified and only for the time and in the manner stated in the writing.

5.3 Indemnity

- A. Memorandum of Understanding. To the fullest extent permitted by law the Charter School and School District shall at the each's sole cost and expense with counsel acceptable to the State as applicable, indemnify, defend and hold the State harmless from and against any and all losses, costs, liabilities, claims, judgments, liens, damages (including consequential damages), actions, causes of action (whether in tort or contract law or equity or otherwise), charges, assessments, fines, penalties and expenses, including, without limitation, reasonable attorneys' fees and costs, and reasonable investigation costs (collectively "Claims"), incurred in connection with or arising from: (a) any breach or default by the Charter School or School District in the observance or performance of any of the terms, covenants or conditions of this MOU on the Charter School's or School District's part to be observed or performed; (b) the construction, operation, maintenance, alteration, use or occupancy of the Facilities by the Charter School; (c) the condition of the Facilities, and any occurrence on the Facilities, from any cause whatsoever, and (d) any acts omissions or negligence of the Charter School, the School District or either's employees, agents or contractors in, on or about the Facilities.
- B. Facilities Use Agreement. The State is not a party to the Facilities Use Agreement and, as a result, to the fullest extent permitted by law the Charter School and School District shall at the each's sole cost and expense with counsel acceptable to the State as applicable, indemnify, defend and hold the State harmless from and against any and all Claims incurred in connection with or arising from any breach or default by the Charter School or School District in the observance or performance of any of the terms, covenants or conditions of the Facilities Use Agreement to be observed or performed.

- C. The Charter School and School District will at all times protect and defend, at its own cost and expense, the title to the Facilities from and against all claims, liens and legal processes of creditors and keep all the Facilities and the title free and clear of all such claims, liens, and processes except for the liens created or expressly permitted under the Agreements and the CSFP.

5.4 Notice

Any notice required or permitted to be given under this MOU 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 State:

**California School Finance Authority
300 S. Spring, Suite 8500
Los Angeles, CA 90013
Attention: Katrina Johantgen**

If to the Charter School:

**Tracy Learning Center
51 East Beverly Pl.
Tracy, CA 95376-3191
Attention: Virginia Stewart**

If to the School District:

**Tracy Unified School District
1975 West Lowell Ave.
Tracy, CA 95376-2238
Attention: Casey Goodall**

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 next business day 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.

5.5 Applicable Law

This MOU shall be governed by and construed in accordance with the laws of the State of California.

5.6 Amendments

- A. The terms of this MOU may not be waived, altered, modified, supplemented or amended in any manner except in writing, upon the agreement of all of the parties, or except as otherwise permitted by law.
- B. The terms of this MOU may be amended, or new agreements executed, as necessary, upon the application of the Charter School and School District and the approval by the State of a final apportionment.

5.7 Force Majeure

The time for the State, the Charter School or the School District to perform any obligation or assert any right under this MOU or the CSFP shall be extended on a day for day basis for any Force Majeure event, which shall include but not be limited to: (1) Acts of God or of the public enemy; and (2) Acts of the federal or State government in either its sovereign or contractual capacity.

5.8 Severability

Should any provision of this MOU 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.

THE STATE:

STATE ALLOCATION BOARD:

By: _____

Name: _____

Title: _____

CALIFORNIA SCHOOL FINANCE AUTHORITY:

By: _____

Name: _____

Title: _____

THE SCHOOL DISTRICT: **TRACY UNIFIED SCHOOL DISTRICT**

By: _____

Name: _____

Title: _____

THE CHARTER SCHOOL: **PRIMARY CHARTER SCHOOL**

BY: **TRACY LEARNING CENTER, ON BEHALF OF PRIMARY CHARTER SCHOOL**

By: _____

Name: _____

Title: _____

Exhibit A

Staff Summary

(attached)

Exhibit A

**Charter School Facilities Program
Proposition 51 Funding Round
Staff Summary Report – February 2018**

Applicant/Obligor:	Tracy Unified School District
Project School:	Primary Charter School
CDS (County – District – School) Code:	39-75499-0102384
School Address/Proposed Site:	51 E. Beverly Place, Tracy, CA 95376
Type of Project:	Rehabilitation
Type of Apportionment:	Preliminary
County:	San Joaquin
District in which Project is Located:	Tracy Unified School District
Charter Authorizer:	Tracy Unified School District
Total OPSC Project Cost:*	\$5,202,898
State Apportionment (50% Project Cost):	\$2,601,449
Lump Sum Contribution:	\$2,601,449
Total CSFP Financed Amount:	N/A
Length of CSFP Funding Agreement:	N/A
Assumed Interest Rate:	N/A
Estimated Annual CSFP Payment:	N/A
First Year of Occupancy of Project:	2019-20

**The amount identified as total project costs represents an estimate provided by the Office of Public School Construction for purposes of Preliminary-Appportionment financial soundness review. Final project costs will be provided at the time of Final Apportionment.*

Staff recommends that the California School Finance Authority (“Authority” or “CSFA”) Board determine that Tracy Unified School District (“District” or “TUSD”) on behalf of Primary Charter School (“Primary”) is financially sound for the purposes of Charter School Facilities Program (“Program” or “CSFP”) Preliminary/Advance Apportionment. This determination as it relates to Preliminary/Advance Apportionment is in place for twelve months and assumes no financial, operational, or legal material findings within this time period. This recommendation is contingent upon Primary Charter School electing to have its CSFP payments intercepted at the state level, pursuant to Sections 17199.4 and 17078.57(a)(1)(A) of the Education Code. Staff recommends that the Authority Board direct staff to notify the Office of Public School Construction and the State Allocation Board regarding this determination.

For purposes of providing proof of the funds available to make the lump sum payment towards the local match, TUSD has confirmed their expected lump sum payment. The funds for the lump sum will come from Measure B bond proceeds with a balance after the first bond issuance of \$29 million. Of that first issuance, \$15 million remains and is in TUSD’s Fund 21. The second issuance will occur during the next three to six months for approximately \$30 million.

This rehabilitation project is part of a Facility Use Agreement between the District and the Tracy Learning Center. TUSD and TLC have agreed that TUSD shall complete \$30,350,000 in improvements on the site. The portion of that project specific to Primary Charter School is the subject of this application. The construction project has already begun on these facility improvements and approximately \$24 million have been encumbered into two construction contracts and approved by the District Board of Directors. The construction project is anticipated to be completed in December 2018.

Application Highlights: Below staff has highlighted key criteria that were evaluated when conducting its financial soundness review of Tracy Unified School District on behalf of Primary Charter School. Detailed information is contained in the body of the report.

Criteria	Comments
District Information	
Demographic Information	In 2016-17, the District operated/authorized three comprehensive high schools, two alternative education high schools, one community school, two middle schools, four K-8 schools, seven K-5 schools and one charter school. Enrollment totaled 16,702 with an ADA rate of 88.3% for 2016-17. By 2019-20, TUSD projects a decline in enrollment to 15,983.
Debt Service Coverage	The District is providing its matching share through Measure B bond proceeds. Measure B was approved by the voters in 2014 for \$82 million.
Other Financial Factors	<ul style="list-style-type: none"> • TUSD’s general fund had a balance of \$52,457,331 at the end of 2016-17. • Net working capital of \$52,457,331 for 2016-17 represented 33.7% of total expenses, which exceeds the preferred minimum of 5.0%.
Special Considerations and Mitigating Factors	Notwithstanding its projected net deficits, TUSD is projecting sufficient fund reserves to offset the deficits in the projected years.
School Information	
Eligibility Criteria	Primary Charter School has met all eligibility criteria: (1) Primary commenced operations in 2004 (2) Primary’s renewal charter was approved in August 2015 and is in place through June 2021; (3) Primary is in good standing with its chartering authority, and in compliance with the terms of its charter.
Student Performance	Primary students have outperformed both the closest local Elementary schools and the District as a whole in both English Language Arts and Mathematics per the “Smarter Balanced” assessment provided by the California Department of Education.

Demographic Information	Primary Charter School currently serves 362 students in grades K-4. Enrollment in 2018-19 is expected to be 363 students. ADA rates average 96.3% from 2013-14 through 2019-20.
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Program Eligibility: On November 16 2017, at CSFA staff’s request, verification was received from the Tracy Unified School District confirming that Primary Charter School is in compliance with the terms of its charter agreements, and in good standing with its chartering authority. Primary’s current charter is effective through June 2021.

Legal Status Questionnaire: Staff reviewed the applicant’s responses to the questions contained in the Legal Status portion of the application. No information was disclosed that would lead staff to question the financial or legal integrity of this applicant.

Project Description: Primary currently serves 362 grade K-4 students in 7 classrooms (3 permanent classrooms and 4 portable classrooms), a music room and auxiliary facilities. The school plans to renovate all the classrooms and auxiliary facilities, and the estimated total area of the project will be 11,000 square feet. The projected opening date for the project is September 2019.

District Organizational Information: TUSD is a school district located in San Joaquin county and operates/authorized a total of twenty two schools: three comprehensive high schools, two alternative education high schools, one community school, two middle schools, four K-8 schools, seven K-5 schools and three charter schools.

TUSD is comprised of the following mix of races/ethnicities: 50.5% Hispanic or Latino; 21.9% Caucasian; 6.3% African American; 10.8% Asian; 5.5% Filipino; 1.0% Pacific Islander; .3% American Indian/Alaskan Native; and 3.7% identifying with two or more races/ethnicities.

Key staff members of TUSD’s management team are Superintendent, Dr. Brian Stephens, Associate Superintendent for Business Services, Dr. Casey Goodall, and School Board President Greg Silva. Staff reviewed the credentials of TUSD’s management team and determined that collectively and individually, the management team demonstrates having the required experience and educational background.

School Organizational Information: Primary Charter School is located in the city of Tracy, in San Joaquin County. The school’s demographics are not particularly dissimilar to those of their parent school district, Tracy Unified School District. Primary’s enrollment is 44.5% Hispanic vs. TUSD’s 50.5%; 6.9% African American vs. TUSD’s 6.3%; 3% Filipino vs. TUSD’s 5.5%; 28.2% White vs. TUSD’s 21.9%; 9.4% Asian vs. TUSD’s 10.8%; and 19.6% of Primary’s enrollment is socioeconomically disadvantaged vs. 52.3% of TUSD’s.

The Primary Charter School falls under the umbrella of the Tracy Learning Center (TLC). The Tracy Learning Center was founded in 2001 and is a tuition-free, K-12 public school. TLC is a three charter school campus consisting of Primary Charter (K-4), Discovery Charter (5-8) and Millennium Charter (9-12). The nine member TLC Board of Directors includes Patty Warwick, (President), Mike Sousa, (Vice President), Kim Kerr, CP Riddle, Tracy Williams,

Linda Wilcox, Tim Murray, Marni Churchill and Kerry Johnson. Daily school administration is managed by the Executive Director, Virginia Stewart.

In addition to supervising the Superintendent, the Board of Directors establishes policy, engages annually in strategic planning, and manages the primary fiduciary and oversight tasks. All Board meetings are noticed and held in accordance with Brown Act terms and provisions.

School Academic Performance: The following tables represent the 2014-15, 2015-16 and 2016-17 academic performance of Primary; the combined averages (Local Schools) of South/West Park Elementary and McKinley Elementary schools; and TUSD. The results are provided through CDE’s CAASPP Smarter Balanced testing data.

English Language Arts – Comparison

	Years		
	2014-15	2015-16	2016-17
Primary	58%	57%	49%
Local Schools	27%	35%	35%
TUSD	40%	40%	41%

	All Students Performance			Student Groups w/ Below Avg. Performance		
	2014-15	2015-16	2016-17	2014-15	2015-16	2016-17
Primary	N/A	High	Low	N/A	0/2	1/2
Local Schools	N/A	Low; Medium	Low; Low	N/A	0/4; 0/3	3/4; 1/3
TUSD	N/A	Low	Low	N/A	9/12	2/10

Mathematics– Comparison

	Years		
	2014-15	2015-16	2016-17
Primary	49%	57%	44%
Local Schools	22%	28.5%	30.5%
TUSD	27%	28%	28%

	All Students Performance			Student Groups w/ Below Avg. Performance		
	2014-15	2015-16	2016-17	2014-15	2015-16	2016-17
Primary	N/A	High	Low	N/A	0/2	0/2
Local Schools	N/A	Low; Medium	Low; Medium	N/A	2/4; 0/3	3/4; 0/3
TUSD	N/A	Low	Low	N/A	9/12	3/10

Enrollment Trends and Projections: The tables below present enrollment information for Primary from 2013-14 through 2020-21. The assumptions made in the projected years are considered reasonable by staff and consistent based on historical data.

School Student Enrollment and Average Daily Attendance

<u>Primary</u>	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21
Enrollment	336	328	361	362	363	363	363	363
ADA	96.1%	96.6%	95.6%	96.8%	96.6%	96.6%	95.6%	95.6%

District Financial Analysis:

Financial Data Sources: This financial analysis is based on the consideration and review of, the financial obligor, Tracy Unified School District’s: (1) audited financial statements for 2014-15, 2015-16 and 2016-17; (2) adopted budget for 2017-18; and (3) budget projections for 2018-19 through 2019-20 along with assumptions. Please note that staff’s analysis of TUSD’s financial performance, including the evaluation of the operating budget and liquidity, is based on the General Fund only (except in terms of the Measure B bond proceeds that will be used to pay the local matching share)

Assumptions: TUSD’s financial projections are based upon the following assumptions: (1) a occupancy of the rehabilitation project in 2018-19; (2) Enrollment projections as provided above under “Enrollment Trends and Projections”; (3) Projected District-wide ADA rates of 86.7%, which are consistent with historical performance; (4) Local Control Funding Formula (LCFF) per-ADA funding rate of \$9217, as included with TUSD’s adopted budget document for 2017-18, along with COLA rates of 4.3% (2018-19) and 3.0% (2019-20).

Long Term Liabilities: As provided by the 2016-17 audited financial statements, the District has \$260,393,142 in long term debt. The long term liabilities are from the following governmental activities: \$108,024,004 payable in general obligation bonds, \$7,402,820 in bond premiums (net), \$3,786 in compensated absences, \$129,232 in capital leases, and \$144,833,562 in pension liability and other postemployment benefits. Only \$6,322,524 is due within one year with \$5,832,000 (92%) of that amount payable towards general obligation bond debt. The remaining due is towards bond premiums (\$450,820) and capital leases (\$39,704). The general obligation bonds will be paid from property tax assessments through the bond interest and redemption fund. This fund had a balance of \$9,425,060 at the end of 2016-17.

Private Contributions: TUSD does not rely on any private contributions.

Benchmark Summary and Analysis: The following table and summary listing sets forth the results of staff’s analysis regarding TUSD’s financial soundness. Where a threshold has been established based on industry standards or practice, the listing indicates whether or not the threshold was met.

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 Tracy USD on behalf of Primary Charter School
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	Actual FY 2015	Actual FY 2016	Actual FY 2017	Projected FY 2018	Projected FY 2019	Projected FY 2020
OPERATIONAL & FINANCIAL						
Enrollment	16,935	16,702	16,426	16,212	16,147	15,983
Average Daily Attendance (ADA)	15,019	14,752	14,401	14,057	13,713	13,370
Average Daily Attendance (%)	88.7%	88.3%	87.7%	86.7%	84.9%	83.7%
Retention Rate	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
FTE Teachers	0	0	0	0	0	0
Pupil-Teacher Ratio	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!
LCFF Sources/ADA	\$ 7,501	\$ 8,377	\$ 8,938	\$ 9,217	\$ 9,610	\$ 9,904
% Change		11.7%	6.7%	3.1%	4.3%	3.0%
Operating Revenues/ADA	\$ 9,010	\$ 10,501	\$ 10,825	\$ 11,170	\$ 11,206	\$ 11,532
% Change		16.5%	3.1%	3.2%	0.3%	2.9%
Operating Expenses plus CSFP Lease/ADA	\$ 8,678	\$ 9,520	\$ 10,807	\$ 11,974	\$ 11,639	\$ 12,168
% Change		9.7%	13.5%	10.8%	-2.8%	4.5%
Free Cash Flow/ADA	\$ 332	\$ 981	\$ 18	\$ (805)	\$ (434)	\$ (636)
Free Cash Flow	\$ 5,011,304	\$ 14,482,394	\$ 299,875	\$ (6,313,275)	\$ (3,527,430)	\$ (6,083,310)
LIQUIDITY						
Current Assets	\$ 42,177,239	\$ 56,651,096	\$ 59,615,345	\$ -		
Current Liabilities	4,502,177	4,493,640	7,158,014	-		
Net Working Capital	\$ 37,675,062	\$ 52,157,456	\$ 52,457,331	\$ -		
Net Working Capital/Oper. Expenses	28.9%	37.1%	33.7%	0.0%		
Unrestricted Cash & Cash Equivalents	\$ 35,923,216	\$ 51,116,506	\$ 55,491,713	\$ -		
Unrest. Cash & CE/Oper. Expenses (Days)	101	133	130	0		
Unrest. Cash & CE/All Expenses (Days)	101	133	130	0		

Benchmark Summary:

- Free Cash Flow/ADA – Did Not Meet: (\$90) (>\$0)
- Free Cash Flow – Met: \$429,951 avg. (>\$0)
- Net Working Capital as Portion of Operating Expenses – Met: 24.9% avg. (>5%)
- Unrestricted Cash & Cash Equivalents as Portion of All Expenses –Met: 91 days avg. (> 90 days)

Summary of Financial Findings and Special Considerations: Given that TUSD has agreed to make a lump-sum payment of \$2,601,449 to cover the local matching share, no loan is anticipated and debt service coverage is not a consideration. Rather, the financial analysis focuses on whether TUSD can meet its “General Fund” annual operating obligations. Though projecting negative net income for 2017-18 through 2019-20, the General Fund’s balance averages \$101,220,498 over those three fiscal years. Staff also notes that in the projected years of 2017-18 through 2019-20, the net deficits would represent 15.3%, 10.02%, and 22.7% of the projected ending balances, respectively. Hence, TUSD has sufficient reserves to offset its net deficits, if necessary.

Though Primary has no financial obligation with the CSFP project, staff reviewed their financials to ensure the school is financially viable to continue operations. In 2015-16, Primary had a negative net income of (\$65,270) but closed the 2016-17 year with a positive net income of \$89,406. Their ending fund balance for 2016-17 was \$799,767. Major funding sources for Primary include LCFF income sources, federal income sources (No Child Left Behind/Every Student Succeeds Act, Federal Special Education) state income sources (State Special Education and other state income) and other local income sources. On average, Primary has 94 operating days of unrestricted cash & equivalents and the available working capital averages 29.1% as a portion of the operating expenses.

Strengths, Weaknesses and Mitigants:

- + Primary students have performed much better than two local schools and TUSD on average in both English Language Arts and Mathematics assessment in the last three years.
- + TUSD has confirmed the matching share will be through a lump sum payment from Measure B bond proceeds, which as of June 30, 2017, had a balance of \$9,425,060. The balance is expected to raise after the second bond issuance in 2018 for approximately \$30 million.
- + TUSD's general fund balance for 2016-17 was \$59,457,331.
- +/- TUSD projects its general fund performing at a deficit from 2017-18 through 2019-20 but has an adequate fund balance at the end of each of these years to offset it.

Staff Recommendation: Staff recommends that the California School Finance Authority Board determine that Tracy Unified School District, on behalf of Primary Charter School, is financially sound for the purposes of Charter School Facilities Program Preliminary/Advance Apportionment. This determination as it relates to Preliminary/Advance Apportionment is in place for twelve months and assumes no financial, operational, or legal material findings within this time period. This recommendation is contingent upon Primary Charter School electing to have its CSFP payments intercepted at the state level, pursuant to Sections 17199.4 and 17078.57(a)(1)(A) of the Education Code. Staff recommends that the Authority Board direct staff to notify the Office of Public School Construction and the State Allocation Board regarding this determination.

Exhibit B

Facilities Use Agreement

(attached)

FACILITIES USE AGREEMENT

This Facility Use Agreement (“Agreement”) is made by and between Tracy Unified School District (“District”) and Tracy Learning Center (“TLC”), a California nonprofit public benefit corporation, (collectively "the Parties") with regard to the following representations and assumptions:

RECITALS

- a. District is the sole owner of the school site described in Section 1 of this Agreement, which site is suitable for a public charter school program.
- b. Tracy Learning Center operates three charter schools: Primary Charter School, Discovery Charter School and Millennium High School, that are duly formed and approved by the District under the laws of the Charter School Act of 1992 (Education Code §§ 47600 et seq.) (the “Act”). For purposes of this Agreement, Primary Charter School, Discovery Charter School, and Millennium Charter School shall collectively be referred to as “Charter Schools.” All references herein to the Charter Schools shall include TLC. TLC desires to utilize the District’s H.A. Clover facility at 51 East Beverly Place, City of Tracy, County of San Joaquin in the State of California, for its educational programs as described in the amended charters for the Charter Schools approved by the District Board (collectively "Charters"). Proposition 39 took effect on November 8, 2003, and the District recognizes the spirit and intent of the statutory initiative to provide facilities to students attending charter schools. As set forth in Section 7 of this Agreement, the parties have mutually agreed that this Agreement fully satisfies the District’s obligations under Proposition 39 and its implementing regulations.
- c. Prop. 39 and the attendant regulations adopted by the State Board of Education require a separate written agreement regarding allocating facilities under Prop. 39. This Agreement satisfies those requirements. This Agreement incorporates by reference applicable state law and the regulations approved by the State Board of Education (e.g., 5 C.C.R. §§ 11969 et seq.) which may be amended from time to time by the State Board of Education.
- d. The District’s voters passed Measure B in 2014, which will, in conjunction with funds received through the Charter School Facilities Program, State School Facilities Program, and Measure S, provide funding to perform renovations to the Clover facility for the benefit of the Charter Schools. While these renovations are performed, a portion of the students enrolled in the Charter Schools will need to re-locate to an interim facility at the former Institute for Global Commerce and Government at 1904 N. Corral Hollow Road (“Interim Facilities”).
- e. This Agreement shall not be considered a lease or other agreement as described in sections 17400 et seq. of the Education Code.

AGREEMENT

The Parties desire to enter into an agreement defining their rights, duties, and liabilities

relating to the premises. In consideration of mutual covenants contained herein, the Parties agree as follows:

1. **PREMISES.** The Charter Schools shall hereby be entitled to exclusive use certain portions of the District's H.A.-. Clover facility, located at 51 East Beverly Place, City of Tracy, County of San Joaquin in the State of California, including classrooms, restrooms, office space, and staff space detailed in the attached Exhibit A and Exhibit B (hereinafter "Premises") and acreage of approximately 12.5 acres (the Premises and the grounds are referred to herein as "Site") to operate the Charter Schools. At the corner of Holly Drive and E. Beverly Place, there will be a sign visible at all times to passersby stating that it is the H.A. Clover site. The District will pay for and maintain the sign.

For the Term of this Agreement, TLC shall have the exclusive use of certain portions of the Premises as set forth in the map of the facility attached to this Agreement as Exhibit A and Exhibit B, except as specifically provided otherwise in this Agreement.

Although Charter School shall have the exclusive use of the Site, Charter School agrees to comply with the provisions of the Civic Center Act (Education Code section 38131 et seq.) in making use of the facilities and grounds accessible to members of the community. For purposes of compliance with the Civic Center Act with respect to the Site, the Charter School Governance Council shall hold the same powers and obligations applicable to School District Board of Trustees under Education Code sections 38130-38139 and shall also follow District Board Policy and Administrative Regulations in making use of the facilities accessible to members of the community. Fees received by TLC for use of the Site pursuant to the Civic Center Act shall be split between TLC and the District 90% (TLC) to 10% (District), and TLC shall send the District's portion of any fees received to the District on a monthly basis.

The Charter Schools shall not request, and the District shall not grant, any request for additional facilities to be located at the Site for the Term of this Agreement. The parties expressly agree that any future increase in enrollment during the Term of this Agreement that would require additional facilities shall require TLC to secure private facilities to accommodate this increase in enrollment.

2. **TERM.** The term of this Agreement ("Term") shall be for thirty (30) fiscal years (July 1, 2016 to June 30, 2046).
3. **USE OF SITE.** The Site shall be used by TLC only for the operation of Primary Charter School, Discovery Charter School, and Millennium Charter School, as authorized by California Education Code of the State of California and more fully described in the Charters and the MOU between the Parties. TLC shall not knowingly do, or permit anything to be done, without the prior written consent of the District, in or about the Site nor bring or keep anything therein that will in any way increase the existing rate of or affect any fire or other insurance upon the Site or its contents, or cause cancellation of any insurance policy covering the facilities on the Site or any part thereof or any of its contents. TLC shall not permit anything to be done in or about the Site that will in any way obstruct or interfere with the rights of other tenants or occupants of the Site, if any, or injure or annoy them. TLC shall not use or allow the Site to be

used for any improper, immoral, unlawful or objectionable purpose, nor shall TLC cause, maintain, or permit any nuisance in, on, or about the Site. TLC shall not commit or suffer to be committed any waste in or upon the Site.

4. FACILITY USE FEE IN LIEU OF PRO RATA SHARE.

In lieu of a pro rata share charge, TLC shall pay to the District a fixed Facility Use Fee in an amount equal to 2% of all revenues (excluding private grants and private monies outside of the funding model) received by TLC for the Charter Schools. The District shall invoice TLC for the Facility Use Fee no later than September 15 of each school year. TLC will make payment of the Facility Use Fee on or before October 15 of each school year. If there is a dispute regarding the amount of the Facility Use Fee owed, the Parties agree to follow the dispute resolution process in the Charters.

5. ATHLETIC FACILITIES USAGE. The Parties desire to provide Millennium High School with access to high school athletic facilities for purposes of use by Millennium High School sports teams and related programs (e.g., marching band) on the following conditions:

- a. TLC's Millennium High School shall have use of an appropriate District athletic facility (as determined by the District) on the dates and times to be determined by the District and requested by TLC in a separate written agreement as outlined herein. Each year TLC shall notify the District in writing of its requested game dates (both league and non-league) and times no later than eight weeks prior to the first requested game date for each seasonal sport. The District will meet with TLC's athletic director to determine the final version of the master schedule of District league games generated by the Athletic Commissioner to schedule TLC league games ahead of third party usage of the fields and gymnasiums. Non-league games and any requested date/time for a non-league game or dates/times for league games received by the District after the required deadline will be scheduled on vacant dates/times around District and third party usage.
- b. Use of the Premises includes use of the attendant locker rooms, bathrooms, ticket booth, Public Address system, lighting, and all other features of the Premises normally used for High School athletic games.
- c. All Football Field markers and safety pads are to be supplied by TLC.
- d. TLC understands that it must insure that an adult is present in the Public Address booth at all times that the Public Address system is in use and an adult will be responsible for the operation of the electronic scoreboards at all times they are used.
- e. In exchange for use of the District athletic facility, TLC will be fully responsible for any expenses that accompany use, including, but not limited to extra custodial charges, maintenance charges for grounds keeping and clean up, and utilities costs, including lighting for the Site, as well as any costs related to the repair of damage to the athletic facilities resulting from the Millennium Charter School's use of the athletic facilities.

- f. TLC has previously paid to the District a security deposit for use of the District's athletic facilities for Millennium High School in the amount of \$2,500.00 to guarantee payment for the expenses incurred by its use of the Site. If the District uses any portion of this Security Deposit to repair any damages to or pay expenses for its athletic facilities caused by TLC's use, TLC shall immediately replenish the security deposit back to its full amount.
6. OWNERSHIP. The Site and any furnishing and equipment provided to the Charter Schools by the District shall remain the property of the District. If any furnishings and equipment is provided to TLC during the term of this Agreement by the District, such furnishings and equipment shall be added to the District's inventory and shall remain the property of the District.
7. CONDITIONS REASONABLY EQUIVALENT. TLC agrees that the provision of the Site pursuant to this Agreement, as well as those facilities provided as Interim Facilities while the Improvements on the Site are being performed and the Site after the Improvements have been performed, constitutes full and complete satisfaction of the District's obligation to provide reasonably equivalent facilities, including furnishings and equipment, to TLC under Education Code section 47614 and the Proposition 39 regulations for the Term. As an example but not as a limitation, due to budget and site constraints as well as programmatic decisions, TLC have stated that they wish the District to construct the Improvements such that the facilities constructed will not be reasonably equivalent, as that term is defined in Education Code Section 47614 and Title 5, California Code of Regulations Section 11969.3, to District facilities. These variations include but are not limited to reducing the size of the staff room, counseling offices, band/music room, performing arts classrooms, library, computer labs, and cafeteria/MPR space, and site amenities (for example, outdoor basketball courts, seat walls and concrete and landscaped areas), etc. in order to maintain the size and number of general education classrooms.

TLC agrees that, by accepting the Site, as well accepting as those facilities provided as Interim Facilities while the Improvements are being constructed on the Site, and accepting the Site after the Improvements are complete, it certifies that the District has fully and completely satisfied the District's obligation to provide facilities, including furnishings and equipment, to TLC under Education Code section 47614 and all Proposition 39 implementing regulations for the Term. The Charter Schools waives and forever release the District from any claim that the Charter Schools, or any successor entity, may have against the District regarding any allegation that the District has taken action to impede the Charter Schools from expanding its enrollment to meet pupil demand for the Term. Furthermore, the Charter Schools waive any rights they may have to subsequently object to the District's perceived failure to offer facilities, including furnishings and equipment, in accordance with applicable law and waives any rights they may have to challenge those aspects of the District's provision of facilities under this Agreement, including furnishings and equipment, that the Charter Schools believe violates the substantive or procedural requirements of Proposition 39 and its implementing regulations for the Term. Notwithstanding the foregoing, the Charter Schools preserve the right to argue that a similar allocation of facilities for a future academic year after the Term is concluded does not satisfy the obligations of Proposition 39 and the Implementing Regulations. TLC acknowledges and agrees the Site is

being offered and used by the Charter Schools without representation or warranty of any kind, and subject to all applicable laws, rules and ordinances governing their use, occupancy and possession. The Charter Schools represents and warrants to the District that the Charter Schools has investigated and inspected, either independently or through agents of the Charter Schools' own choosing, the condition of the Premises and the suitability of the Site for the Charter Schools' intended use. TLC acknowledges and agrees that neither the District nor any of its agents have made, and the District hereby disclaims, any representations or warranties, express or implied, concerning the Site, the physical or environmental condition of the Site or any other property beneath, adjacent to, or otherwise related to the Site.

8. **COMPLIANCE WITH LAW.** TLC shall not use the Site, or permit anything to be done in or about the Site, that will in any way conflict with any law, statute, applicable ordinance or governmental rule or regulation now in force or which may hereafter be enacted or promulgated. The District and TLC shall each do all acts required to comply with all applicable laws, applicable ordinances, regulations and rules of any authority relating to their respective maintenance obligations as set forth herein. The District is not aware of any defect in or condition of the Site that would prevent its use for the Charter Schools' purpose. District has received no notice of any violation of statute, ordinance, regulation, order or holding from any state or federal agency with jurisdiction over the Site that call into question the appropriateness or sufficiency of the Site for its intended purpose. TLC, at its sole cost and expense, shall comply with all applicable laws, regulations, rules and orders with respect to its use and occupancy of the Site that arise after TLC takes possession of the Site and that are based upon its use and/or modification of the Site, including, without limitation, those relating to health, safety, noise, access, environmental protection, waste disposal, and water and air quality. The District will remain responsible for ensuring compliance with all access laws, discrimination laws, environmental and zoning law, including but not limited to compliance with ADA, FEHA, and the Field Act for the Site in accordance with Section 9.b(i) below. TLC agrees to operate only those educational programs and related activities upon the Site as outlined in the Charters.

9. **MAINTENANCE AND ALTERATIONS.**

- a. **Maintenance Responsibilities.** The maintenance of the Site, and the furnishings and equipment, shall be the responsibility of TLC; provided that the replacement of furnishings and equipment supplied by the District in accordance with District schedules and practices shall remain the responsibility of the District in accordance with Title 5, California Code of Regulations Section 11969.4. TLC shall maintain the Site and the furnishings and equipment in accordance with applicable provisions of the Education Code, the implementing regulations and the District's policies and/or practices, and shall maintain the Site in a clean and orderly state, in as close to the condition as when the Site is turned back over to TLC after the Improvements are performed, reasonable wear and tear excepted. TLC shall make making necessary repairs to the Site promptly and with good quality work. The District's only obligation for maintenance shall be projects eligible to be included in the District deferred maintenance plan established pursuant to Education Code section 17582 and the replacement of furnishings and equipment in accordance with District schedules and practices as required under Title 5, California Code of Regulations Section

11969.4. If there is a dispute over whether a repair is the obligation of the District or TLC, such dispute shall initially be decided by the District's Director of Facilities and the Executive Director of TLC; if the parties are unable to reach agreement the issue shall be resolved using the dispute resolution provision of the affected Charter School's charter.

b. Maintenance and Alterations. TLC shall be allowed to conduct maintenance, upgrades/alterations, and/or renovation of the Site by outside vendors (collectively "Alterations"). Except as otherwise specifically required for structural Alterations under subparagraph 9.b.i below, all contracts for maintenance, upgrades/alterations, and/or renovations must be reviewed and approved in writing by the District prior to the vendor beginning work on the Site, at the District's sole discretion.

i. If the Alterations are structural, TLC shall obtain the written agreement of the District prior to commencing the work. Such written agreement must include the following information: (1) who will perform the work; (2) the timeline for completion; (3) whether the structural Alteration made will be removed at the end of the term of this Agreement or whether such modifications will remain with the Site; and (4) prior to using any volunteer labor, TLC shall provide certificates of insurance for general liability and workers' compensation naming Tracy Unified School District as an additional insured with respect to any work to be completed on the H.A. Clover site. The District shall respond to each request by TLC for the District's written agreement to make any such structural Alterations within sixty (60) calendar days following the District's receipt of TLC's request. If the District fails to respond within such 60-day period, TLC may trigger the dispute resolution provisions of Section 21. All Alterations to the Site must be made in compliance with District standards and procedures and/or standards applicable to public school districts, as well as all applicable federal, state and local laws, regulations, codes, requirements, and ordinances. In the event District consents to the making of any structural Alterations to the Site by TLC, the same shall be made by TLC at TLC's sole cost and expense unless otherwise agreed in writing. Upon the expiration or sooner termination of the Agreement, TLC shall, upon written demand by District, at TLC's sole cost and expense, forthwith and with all due diligence, remove any structural Alterations made by TLC, designated by District to be removed, and TLC shall, forthwith and with all due diligence, at its sole cost and expense, repair any damage to the Site caused by such removal. On and after the Commencement Date of this Agreement TLC, at TLC's sole cost and expense, shall promptly make any and all Alterations (whether structural or nonstructural) to the Site necessary to bring the Site and the use thereof by TLC in compliance with the ADA, FEHA or other applicable building code standard, provided these requirements are a direct result of TLC's modification of the Site after commencement, subject to District's approval and other rights of District provided in this Agreement. The District shall remain responsible for compliance with the ADA, FEHA, and other applicable building code standards regarding access for any compliance issues existing prior to TLC or any Charter School taking possession of the Site. Should TLC

make Alterations to the Site without first seeking the written consent of the District as set forth in this Section, the District shall have the right to direct TLC to immediately remove the Alteration at TLC's sole cost and expense, and restore the Site to the same condition as existed prior to the Alterations being performed, and TLC shall do so immediately.

- ii. If the Alterations are not structural, the Charter Schools shall provide the District with advanced written notice of commencement of the nonstructural Alterations which notice shall include the following information: (1) who will perform the work; (2) the timeline for completion; (3) whether the nonstructural Alteration made will be removed at the end of the term of this Agreement or whether such modifications will remain with the Site; and (4) prior to using any volunteer labor, the Charter Schools shall provide certificates of insurance for general liability and workers' compensation naming Tracy Unified School District as an additional insured with respect to any work to be completed on the H.A. Clover site. If the District does not provide TLC with written objection to commencement of all or any part of the nonstructural Alterations described in the notice within ninety (90) days following the District's receipt of TLC's notice hereunder, the District shall be deemed to have approved TLC making the nonstructural Alterations described in the applicable notice.
 - iii. If TLC performs any Alterations to the Site in violation of this Section, the District may direct TLC to immediately remove the Alterations at the sole cost and expense of TLC.
- c. Changes and Repairs to Site. Subject to the conditions listed below, District reserves the right from time to time:
- i. To install, maintain, repair, and replace pipes, ducts, conduits, wires and appurtenant meters and equipment for service to other parts of the Site above the ceiling surfaces, below the floor surfaces, within the walls and central core areas, and to relocate any pipes, ducts, conduits, wires, and appurtenant meters and equipment included in the Site;
 - ii. To make repairs, changes, and modifications to any and all parts of Site, including, without limitation, changes in the location, size, shape, and number of buildings, driveways, lobbies, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas and walkways;
 - iii. To use the common areas while engaged in making additional improvements, repairs or alterations to the Site, or any portion thereof;
 - iv. To erect scaffolding and other necessary structures where reasonably required by the character of the work to be performed, always providing that the entrance to the Site shall not be blocked thereby for any reason, and further

providing that the educational programs of TLC shall not be interfered with for any reason; and

- v. To enter any part of the Site to conduct maintenance as outlined in this section.

Except in cases of emergency, the District's rights identified in Section 9(c)(i)-(v) must occur at a time previously and mutually agreed upon by the Parties so as to limit unnecessary interruptions to educational programs at TLC.

d. District's Employees, Contractors and Independent Contractors.

- i. District acknowledges that TLC is operating public charter schools using the Site for public education purposes. District therefore agrees that any of its employees, agents, contractors or independent contractors utilized to perform any of the repairs pursuant to this Agreement that may have contact with Charter Schools' pupils will undergo criminal background checks as specified in California Education Code section 44237 and California Education Code section 45125.1 or any other applicable law addressing third party access to Charter Schools' minor students or any person entering the premises for the above-stated purposes who will be in contact with the Charter Schools' minor pupils.

e. Improvements to Clover Site.

- i. The District and TLC have agreed that the District shall complete certain improvements on the Site, to be paid for with monies from the District's Measure B Bond, Measure S Bond, Proposition 39 Clean Energy Jobs Act funds awarded to the Charter School, the state Charter School Facilities Program and/or the State School Facilities Program. The improvements are attached as Exhibit B ("Improvements"). Both Parties agree that Exhibit B represents the Improvements that the District shall complete on the Site, except that the District may make changes to the scope of the Improvements, including elimination of certain Improvements to be constructed, if it becomes necessary as a result of budget considerations or overruns, or because bids for the performance of the Improvements exceed the total budget of \$30,350,000 for the Improvements (which is made up of all monies received from the Charter School Facilities Program, State School Facilities Program, Proposition 39 Clean Energy Jobs Act funds awarded to the Charter School, Measure S, and Measure B).

The District agrees to expend \$30,350,000 on the Improvements, but shall not be required to spend any more than \$30,350,000 on the Improvements, and shall not be required to contribute any money from its general fund for the construction of the Improvements. As an example but not a limitation, if the lowest responsive bid for performance of the Improvements exceeds the total budget of \$30,350,000 for the Improvements by \$1,000,000, the District may

change the scope of the Improvements in order to keep the project budget at \$30,350,000; however, TLC will have the option to contribute funds to make up for any shortfall as set forth in Section 9(e)(ii).

The Parties agree that the priority for use of the budget for the Improvements is the construction and modernization of general education classrooms (for English Language Arts, Mathematics, Science, Social Studies, and Art, and not including physical education) as well as bringing the Site into compliance with all accessibility laws, fire, life and safety laws, and the California Building Code as required by the California Department of Education, the Division of the State Architect (“DSA”), and all other applicable laws as well as address site infrastructure needs. The District understands that construction of the gymnasium is also a priority for TLC. After addressing compliance and infrastructure needs, after modernizing existing classrooms to a standard of equitability, after constructing the two story building as represented in Exhibit B, and after considering input from TLC, the District agrees to make a good faith attempt, in finalizing the scope of the Improvements if there is a budget shortfall to consider value engineering options to direct as many dollars as deemed prudent by the District School Board toward construction of the gymnasium.

The District agrees that it shall include the gymnasium in Exhibit B in the plans it submits to the Division of the State Architect for approval. If the District is unable to contribute funds necessary for the completion of the gymnasium in Exhibit B, the District expressly agrees that TLC may, at TLC’s election, choose to construct the gymnasium at its own expense and cost, using the approved plans from DSA, and in compliance with applicable law. The approved plans from DSA for the gymnasium (“DSA-Approved Plans”) shall be deemed approved by the District for purposes of Section 9(b) above; however, should the DSA-Approved Plans expire prior to TLC commencing construction of the gymnasium, TLC agrees to take all necessary steps to prepare new plans that are in compliance with all applicable laws and receive approval from DSA and any other required agencies or entities prior to moving forward with construction. Should this circumstance occur, the District agrees that TLC may construct the gymnasium without first seeking District pre-approval if the plans prepared by TLC comply with all applicable law, provide for the same footprint as the original plans, and do not change the planned use of the gymnasium. The District further agrees to provide assistance where necessary to assist TLC and their consultants with required tasks related to the construction of the gymnasium (e.g., assisting with seeking any required approvals from state or local agencies, proceeding through any required bidding processes, responding to State inquiries that require District approval, etc.) though TLC will retain overall responsibility for receiving all necessary approvals and compliance with applicable law. If the gymnasium is funded in accordance with this paragraph, TLC shall be responsible for all costs associated with the gymnasium project.

However, the District agrees that any modifications to the scope of Improvements made to ensure the Improvements are under budget will maintain the total number of academic classrooms that were used by TLC on the Site on the last day of the 2015-2016 school year as reflected in Exhibit A with Portable P-3 as outlined in Exhibit B.

The District shall provide TLC with the plans and specifications for the Improvements to be included in the bid packets. TLC shall have five (5) business days to provide the District with comments and suggestions in writing regarding the plans and specifications, and the District will consider these comments and suggestions.

If the final specifications for the Improvements will include material, significant changes from the plans and specifications included in the bid packet, the District will provide TLC with a copy of the final plans and specifications, and TLC will have three (3) business days to provide good faith recommendations to modify the final plans and specifications, and the District will consider these comments and suggestions.

- ii. If the District elects to change the scope of the Improvements because of budget constraints or overruns, the District will provide TLC with written notice of its intent, and TLC shall have five (5) calendar days to provide written notice to the District that it is electing to contribute money to cover the entire bid cost of any of the Improvements that have been eliminated or reduced in size or scope, and the District –agrees that it shall provide that Improvement. Full payment by TLC of the entire bid cost must be made within fifteen (15) business days of the District notifying the Charter School in writing that it will be changing the scope of the Improvements. Notwithstanding the foregoing, should TLC elect to contribute money to restore some aspect of the Improvements, said contribution shall not give TLC any ownership or other interest in the Improvements, nor shall it reduce any obligations of TLC under this Agreement to pay the District for use of the Site or the Interim Facilities, and title for the Improvements shall remain in all respects with the District.
- iii. The District will be responsible for performing the Improvements on the Site, and shall be responsible for all costs and expenses associated therewith. TLC shall within ten (10) business days transfer any funds they receive from the State of California or other revenue sources as described in section 9(e)(i) for construction of the Improvements on the Site to the District, even if the District has already completed the Improvements on the Site. Except for funds received specifically to construct a field on the Site or perform improvements to a gymnasium, if any, constructed as part of the Improvements, if any unanticipated funds are received by the Charter Schools for performance of the Improvements other than those described in section 9(e)(i), the Charter Schools shall transfer a portion of that funding to the District in the same proportion as the total Improvements budget of \$30,350,000 to the amount of

cash contributed to the Improvements by the Charter Schools. As an example but not as a limitation, if the Charter Schools have contributed \$3,000,000 pursuant to Section 9(e)(ii), the District has contributed \$30,350,000, and the Charter Schools subsequently receive \$1,000,000 in additional funding from any other funding sources which may be allocated by the State legislature or other revenue sources that contribute to the completion of the Improvements, the Charter Schools will pay to the District 89.8% of the \$1,000,000 received.

- iv. The Charter Schools shall ensure that none of its students, staff, volunteers, parents or invitees go into construction areas without written permission from the District's Facilities Department, and must be accompanied by a District employee in order to enter into construction areas at all times.
- v. The contractors performing the Improvements will require large staging areas on the Site, which will need to be moved as individual stages of construction are completed. The District will provide TLC with notice regarding when a specific area that will be required for staging at least fifteen (15) school days prior to the date that the contractor will be using a particular staging area, and will make a reasonable and good faith effort to select staging areas that will minimize the impact on TLC's educational programs. The Charter Schools will then make that staging area available for the District's contractors on the date indicated in the District's notice.
- vi. The District will maintain the same standard of insurance for the Improvements that it maintains for its other Measure B construction projects, and shall name TLC as an additional insured on relevant insurance policies. TLC shall maintain any additional liability insurance recommended by its insurance company as a result of being located in close proximity to a construction site, as well as in the Interim Facilities, and shall name the District as an additional insured on its insurance policies.

When construction on the Site is complete, the Charter Schools will move back to the Site within thirty (30) days after receiving written notice from the District that construction is complete, and will be responsible for all costs and expenses associated with packing and moving its programs back into the Site, or with moving its programs around on the Site. The District will provide TLC with notice of the likely moving schedule within five (5) business days after it receives this information from its contractor or architect, and will provide TLC with updates as they are received, in order to allow TLC to plan in advance for any necessary moves.

- vii. TLC will continue to be responsible for all utilities costs for the Site as set forth in Section 15 of this Agreement.
- viii. The District agrees that TLC, after the completion of the Improvements, may construct a field for use of athletics on the Site, with accompanying facilities for spectators, pursuant to Section 9 of the Agreement. TLC shall be solely

responsible for paying for the construction of the field, and shall construct the field and associated facilities in compliance with all applicable law.

ix. Interim Facility

1. While the Improvements are being constructed on the Site, a portion of TLC's enrollment will need to be relocated to Interim Facilities located at 1904 N. Corral Hollow Road attached as Exhibit C.) TLC shall inform the District regarding which portion of its enrollment it will relocate to the Interim Facilities no more than five (5) days after it receives notice from the District pursuant to Section 9.e.viii.8 below. While TLC will have the option to move some combination of its elementary, middle or high school grades to the Interim Facilities, and leave the remaining students on the Site, during construction, TLC acknowledges and agrees that its students will only be housed in the facilities that still remain on the Site (not to include the relocatables that are being demolished for construction of the Improvements) and in the buildings currently in place at the Interim Facilities. No other facilities will be provided by the District, but the District acknowledges its responsibility, during the completion of the Improvements, to at least provide TLC the total number of academic classrooms indicated in Exhibit A at the Site and Interim Facilities.
2. The District will provide TLC with a list of the number of classrooms to be made available at the Interim Facilities, as well as the square footage each classroom, and whether each classroom is a specialized classroom or a general classroom.
3. The District will also provide TLC with one District staff person who will be available to troubleshoot issues when TLC move to and from the Interim Facilities.
4. The District anticipates at the time this Agreement is executed that construction will commence on the Site, and the Interim Facilities will be made available to TLC, between December of 2016 and March of 2017. However, the Parties agree that this date is tentative and the Interim Facilities may be made available at a later date, because the Interim Facilities are currently occupied by students from South/West Park Elementary School as their facilities are being renovated. Once these renovations are complete the students from South/West Park Elementary School will vacate the Interim Facilities for use by TLC. As a result, the date that construction will commence on the Site and the Interim Facilities will be made available to TLC is dependent on completion of renovation to South/West Park Elementary School and vacation of the Interim Facilities by South/West Park Elementary School students, as well as delays associated with planning for and negotiating the construction contract for the Improvements as well as

receiving approvals or permits for the Improvements through the Division of the State Architect or other governmental agencies.

5. The District will deliver the Interim Facilities to TLC in broom-clean condition, free of debris.
6. TLC will be responsible for providing custodial services to the Interim Facilities while TLC are occupying the Interim Facilities, and will maintain the Interim Facilities in a clean and orderly state. The District will be responsible for all other maintenance of the Interim Facilities.
7. TLC will be responsible for costs and expenses associated with moving to and from the Interim Facilities. The District agrees, upon written request of TLC, that it will provide trucks and drivers to TLC for transporting its programs to the Interim Facilities and back to the Site; however, District drivers shall only be responsible for driving the trucks between the Interim Facilities and the Site, and shall not be responsible for loading or unloading any of TLC's property or programs into or out of the trucks, or performing any work other than driving the trucks to and from the Interim Facilities and the Site. In addition, TLC shall assume all costs incurred by the District to pay its employees for this work, TLC agrees to indemnify, hold harmless, and defend the District, its trustees, officers, employees and agents against and from any and all claims, demands, actions, suits, losses, liability, expenses and costs for any injury, death or damage to any person or property occurring as a result of or during the loading or unloading of TLC's property and programs, or transportation of TLC's property and programs between the Interim Facilities and the Site. In addition, TLC agrees that it will be responsible for any costs necessary to repair damage to District trucks which occurs during the loading, unloading, and transportation of TLC's property and programs between the Interim Facilities and the Site.
8. The District will provide the Charter Schools with fifteen (15) days' written notice of the dates that the Charter Schools will need to move its programs to or from the Interim Facilities, and the Charter Schools agree that they will move their programs to or from the Interim Facilities no later than the dates communicated by the District. However, the District will endeavor to provide TLC with additional notice to avoid disruption of TLC's educational program.
9. TLC will pay all utilities for the Interim Facilities. TLC agree that they will comply with the District's energy policies for the Interim Facilities, including start and stop times and dates, as well as set points for specific times of year, for the heating and air conditioning units on the Interim Facilities. The District will provide TLC with copies of these policies.

10. TLC will return the Interim Facilities to the District at the conclusion of its occupancy in the same condition in which the Interim Facilities were provided, reasonable wear and tear excepted.

- x. For any written notice required by this section, and notwithstanding Section 22.g of this Agreement, it will be sufficient for the District to send an electronic mail to Virginia Stewart, Executive Director of TLC or her successor, if any, at their official school email address.

10. DESTRUCTION OR PARTIAL DESTRUCTION OF PREMISES. In the event the Premises are damaged by fire or other perils rendering the Premises unusable, or threatens the health and safety of TLC's pupils, the District agrees to provide an alternate facility that meets the District's Prop. 39 obligation. In the event that only a portion of the Premises is rendered unusable by the fire or other peril, District shall provide an alternative facility to meet the District's Prop. 39 obligation in proportion to the space that is rendered unusable on the Premises. In the event that the Premises are damaged by fire or other perils that do not render the Premises unusable, District agrees to consider repairing the damage as one solution to meeting its Prop. 39 obligation to provide a facility. The Parties recognize that TLC would like to house all charter schools that it operates on one school site but that the District is not obligated under Proposition 39 to provide a single school site for all three of these charter schools.

11. INSPECTION BY DISTRICT/ACCESS TO SITE. District reserves the right to enter the Site to inspect the same to ensure compliance with this Agreement, and to submit (at a mutually agreeable time) said Site to prospective purchasers. The District must be provided access to the Site at all reasonable times, provided that such access does not interfere with the day-to-day operations of the Charter Schools. If TLC has rekeyed any of the locks on the Site the District must be immediately notified and provide a new key.

12. DEFAULT BY CHARTER SCHOOLS. The occurrence of any one or more of the following events shall constitute a default and material breach of this Agreement by TLC:

- a. The vacating or abandonment of the Site by any one or more of the Charter Schools before the expiration of the Agreement term.
- b. The failure by TLC to utilize the Site for the sole purpose of operating the Charter Schools as authorized by this Agreement, the Charters and the MOU.
- c. The failure by TLC to make timely payment of the Facility Use Fee or any other payment required under this Agreement where such failure shall continue for a period of twenty (20) days after written notice thereof by District to TLC.
- d. The failure by TLC to observe or perform any of the express covenants, conditions or provisions of this Agreement to be observed or performed by TLC where such failure shall continue for a period of thirty (30) days after written notice hereof by District to TLC; provided, however, that if the nature of TLC's default is such that

more than thirty (30) days are reasonably required for its cure, then TLC shall not be deemed to be in default if TLC commence such cure within said thirty (30) days period and thereafter diligently prosecute such cure to completion.

- e. Revocation, surrender or nonrenewal of either one or more of the charters of the Charter Schools shall render the Facilities Use Agreement inapplicable to the Charter School that has had its Charter revoked or nonrenewed.

13. **DEFAULT BY DISTRICT.** District shall be in default and in material breach of this Agreement if District fails to perform any obligation required by this Agreement within a reasonable time, but in no event later than thirty (30) days after receipt of written notice by TLC to District specifying wherein District has failed to perform such obligation; provided, however, that if the nature of District's obligation is such that more than thirty (30) days are required for performance, then District shall not be in default if District commences performance within such thirty (30) day period and thereafter diligently pursues the same to completion.

14. **MATERIAL DEFAULT OR BREACH.**

- a. In the event of any material default or breach by TLC, and after the District has complied with the notice and opportunity to cure requirements contained in Section 12(d) of this Agreement, District may commence a termination of this Agreement. The remedies District may pursue, at any time thereafter, in its sole discretion, with written notice or demand and without limiting District in the exercise of a right or remedy, which District may have by reason of such default or breach are as follows:

- i. Terminate TLC's right to possession of the Site by any lawful means (provided that, in the case of a material breach in accordance with Section 12, the District's remedy shall be limited to the right terminate TLC's proportionate share of the Site utilized by the applicable charter School(s) and collect that proportion of fees as noted below), in which case this Agreement shall terminate and TLC shall immediately surrender possession of the Site to District. Upon termination of this Agreement or TLC's right to possession the District has the right to recover from TLC (i) the amount of unpaid Facility Use Fee that had been earned at the time of such termination; and (ii) the amount of unpaid Facility Use Fee that would have been earned after the date of such termination until the end of the fiscal year (with the exception of revocation and nonrenewal of the Charter(s) and (iii) any other amount, including reasonable attorneys' fees and collections costs incurred in terminating the Agreement and enforcing District's right to possession. In the event District elects not to terminate the Agreement but takes legal action to collect any sums due hereunder, District shall be entitled to reasonable attorney fees and costs associated with any and all successful collection action(s). Unpaid installments of the Facility Use Fee or other sums shall bear interest from the date due at the minimum legal rate; or
- ii. Maintain TLC's right to possession, in which case this Agreement shall

continue in effect. In such event the District shall be entitled to enforce all of the District's rights and remedies under this Agreement, including the right to recover the Facility Use Fee and any other charges and adjustments as may become due hereunder.

- b. Notwithstanding any of the foregoing or anything else in this Agreement to the contrary, if the District terminates this Agreement and TLC's possession of the Site, the District shall use its good faith efforts to relet or otherwise utilize the Site for District purposes and the amounts accruing to the District as a result of such reletting or other use shall be applied to reduce any amounts payable by TLC in accordance with this Agreement to the District hereunder.
- c. In the event of any material default or breach by the District, and after TLC has complied with the notice and opportunity to cure requirements contained in Section 12 of this Agreement, TLC may terminate this Agreement or pursue remedies as provided in this Agreement or as may be provided under applicable law or in equity.

15. UTILITIES, TELECOMMUNICATIONS, HARDWARE AND SOFTWARE. TLC shall be responsible for the full cost of all utilities and telecommunications and hardware and software consumed at the Site. The Parties may seek to renegotiate this section if any of the Charter Schools are relocated during the term of this Agreement. The District is replacing its Centrex phone system; the District shall provide a basic VOIP system to the Site. TLC desires upgrades or additional hardware to this basic package TLC will be responsible for this expense.

16. ASSIGNMENT AND THIRD PARTY USE. TLC shall not assign, transfer, mortgage, pledge, hypothecate or encumber, voluntarily or involuntarily, this Agreement or any interest herein, and shall not submit the Site or any part thereof, or any right or privilege appurtenant thereto, without the prior written consent of District, which consent shall not be unreasonably withheld. The Site may not be sublet or used for third party purposes other than those that are consistent with District policies and practices for use of District school sites without written permission from the District.

17. INDEMNIFICATION. TLC shall indemnify, hold harmless, and defend the District, its trustees, officers, employees and agents against and from any and all claims, demands, actions, suits, losses, liability, expenses and costs for any injury, death or damage to any person or property occurring in, on or about the Site after the District delivers possession of the Site to TLC, or arising from TLC's use of the Site or from the conduct of their business or from any activity, work, or other things done, permitted or suffered by TLC in or about the Site, excepting those claims, demands, actions, suits, losses, liability, expenses and costs arising out of or relating to obligations of the District as they relate to the Site. TLC shall further indemnify, hold harmless, and defend the District against and from any and all claims arising from any breach or default in the performance of any obligation on TLC's part to be performed under the terms of this Agreement, or arising from any act omission or negligence of TLC, or any officer, agent, employee, guest, or invitee of TLC, and from all costs, attorney's fees, and liabilities incurred in or about the defense of any such claim or any action or proceeding brought thereon. If any action or proceeding is brought against the District by

reason of such claim (regardless of whether a claim is filed), TLC upon notice from the District shall defend the same at TLC's expense. TLC shall give prompt written notice to the District's Risk Manager in case of casualty or accidents in or on the Site.

The District shall indemnify, hold harmless and defend TLC from and defend TLC against any and all claims of liability for any injury, death, or damage to any person or property occurring in, on or about the Site when such injury, death or damage is caused by the act, neglect, fault or omission of any duty with respect to the same by the District, its agents, contractors, employees or invitees. Such indemnification shall not apply in those instances where TLC had actual knowledge and failed to inform the District of a potential or other hazard. The District shall further indemnify, hold harmless and defend TLC from and against any and all claims arising from any breach or default in the performance of any obligation on District's part to be performed under the terms of this Agreement, or arising from any act or negligence of District, or any of its agents, contractors, employees and from and against all costs, attorney's fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon. Any reasonable costs incurred (including filing fees, attorney's fees etc.) after providing written request for indemnification to the indemnifying party for indemnification shall be owed to the requesting party if it is determined the indemnification was owed.

18. **INSURANCE.** The Parties shall, at their sole cost and expense, commencing at the date TLC are given access to the Site for any purpose and during the entire Term hereof, procure, pay for and keep in full force and effect insurance in compliance with the MOU agreed upon by the Parties. The Parties will each name the other Party as an additional insured on their insurance policies.
19. **LIENS.** TLC shall keep the Site and the property in which the Site are situated free from any liens arising out of any work performed, materials furnished or obligations incurred by or on behalf of TLC.
20. **HOLDING OVER.** If TLC remain in possession of the Site or any part thereof after the expiration of this Agreement or after a termination thereof with the express written consent of the District, the payment obligations for such occupancy shall remain in effect. TLC will be responsible for paying a prorated fee, calculated using the prior years' Facilities Use Fee and the length of the hold-over period. In addition, TLC will pay a penalty for any hold over period of an extra 50% of the calculated Facilities Use Fee. TLC will also be responsible for all other charges incurred during such a holdover period and payable hereunder, and upon all the terms hereof applicable until the District terminates the possession. A hold over by TLC shall not trigger any additional term. The District shall have the right to remove TLC at any time after the expiration of the term or termination.
21. **DISPUTE RESOLUTION.** The Parties agree to attempt to resolve all disputes regarding this Agreement pursuant to the dispute resolution procedures identified in the Charters.
22. **GENERAL PROVISIONS.**
 - a. **Waiver.** The waiver by the District and/or TLC of any term, covenant or condition

herein contained shall not be deemed to be a waiver of any other term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of the Facility Use Fee hereunder by the District or payment of Facility Use Fee charge by TLC shall not be deemed to be a waiver of any preceding default by TLC or District of any term, covenant or condition of this Agreement, other than the failure of TLC to pay the particular rental so accepted, regardless of District's knowledge of such preceding default at the time of the acceptance of such Facility Use Fee.

- b. **Marginal Headings.** The marginal headings and article titles to the articles of this Agreement are not a part of the Agreement and shall have no effect upon the construction or interpretation of any part hereof.
- c. **Successors and Assigns.** The covenants and conditions herein contained, subject to the provisions as to assignment, apply and bind the heirs, successors, executors, administrators and assigns of the Parties hereto.
- d. **Prior Agreements.** This Agreement contains all of the agreements of the Parties hereto with respect to any matter covered or mentioned in this Agreement, and no prior agreements or understanding pertaining to any such matters shall be effective for any purpose. No provision of this Agreement may be amended or added to except by an agreement in writing signed by the Parties hereto or their respective successors in interest. This Agreement shall not be effective or binding on any party until fully executed by both Parties hereto. Nothing in this Agreement shall supersede the Charters or the MOU between the Parties.
- e. **Severability.** Any provision of this Agreement that proves to be invalid, void, or illegal shall in no way affect, impair or invalidate any other provision hereof and such other provision shall remain in full force and effect.
- f. **Choice of Law.** This Agreement is subject to the laws and jurisdiction of the State of California. In the event that any court action should be brought in conjunction with this Agreement, it shall be subject to interpretation under the laws of the State of California.
- g. **Notices.** All notices and demands that may be or are to be required or permitted to be given by either party on the other hereunder shall be in writing. All notices and demands by the District to TLC shall be either hand-delivered with signed proof of receipt or sent by United States Mail, postage prepaid, addressed to TLC at the Site, and to the address herein below, or to such other place as TLC may from time to time designate in a notice to the District. All notices and demands by TLC to the District shall be either hand-delivered with signed proof of receipt or sent by United States Mail, postage prepaid, addressed to the District at the address set forth herein, and to such other person or place as the District may from time to time designate in a notice to TLC.

To District at:

Linda Dopp, Director of Alternative Programs
Tracy Unified School District
1875 W. Lowell Ave.
Tracy, CA 95376

To Tracy Learning Center at:

Virginia Stewart, Executive Director
51 E. Beverly Place
Tracy, CA 95376

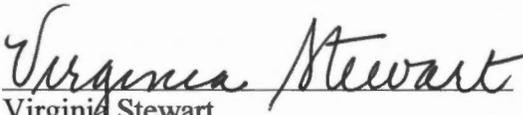
DISTRICT AND TLC have signed this Agreement on the dates set forth below.

Date: 7/21/16



Tracy Unified School District

Date: 7-21-16



Virginia Stewart
Executive Director
Tracy Learning Center

EXHIBIT A

Existing Site Plan

EXHIBIT A

LEGEND

- RELOCATABLE
- PERMANENT

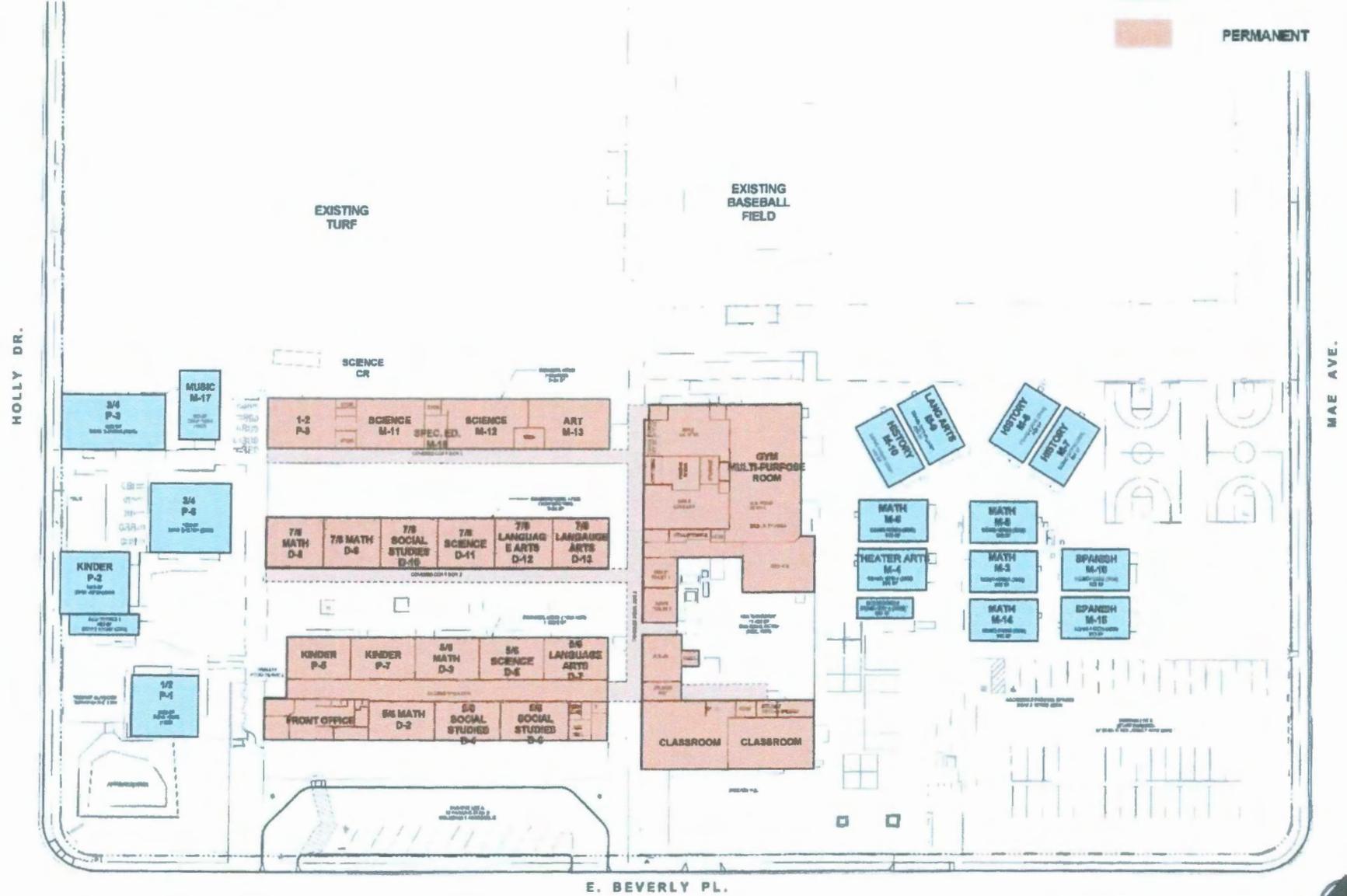


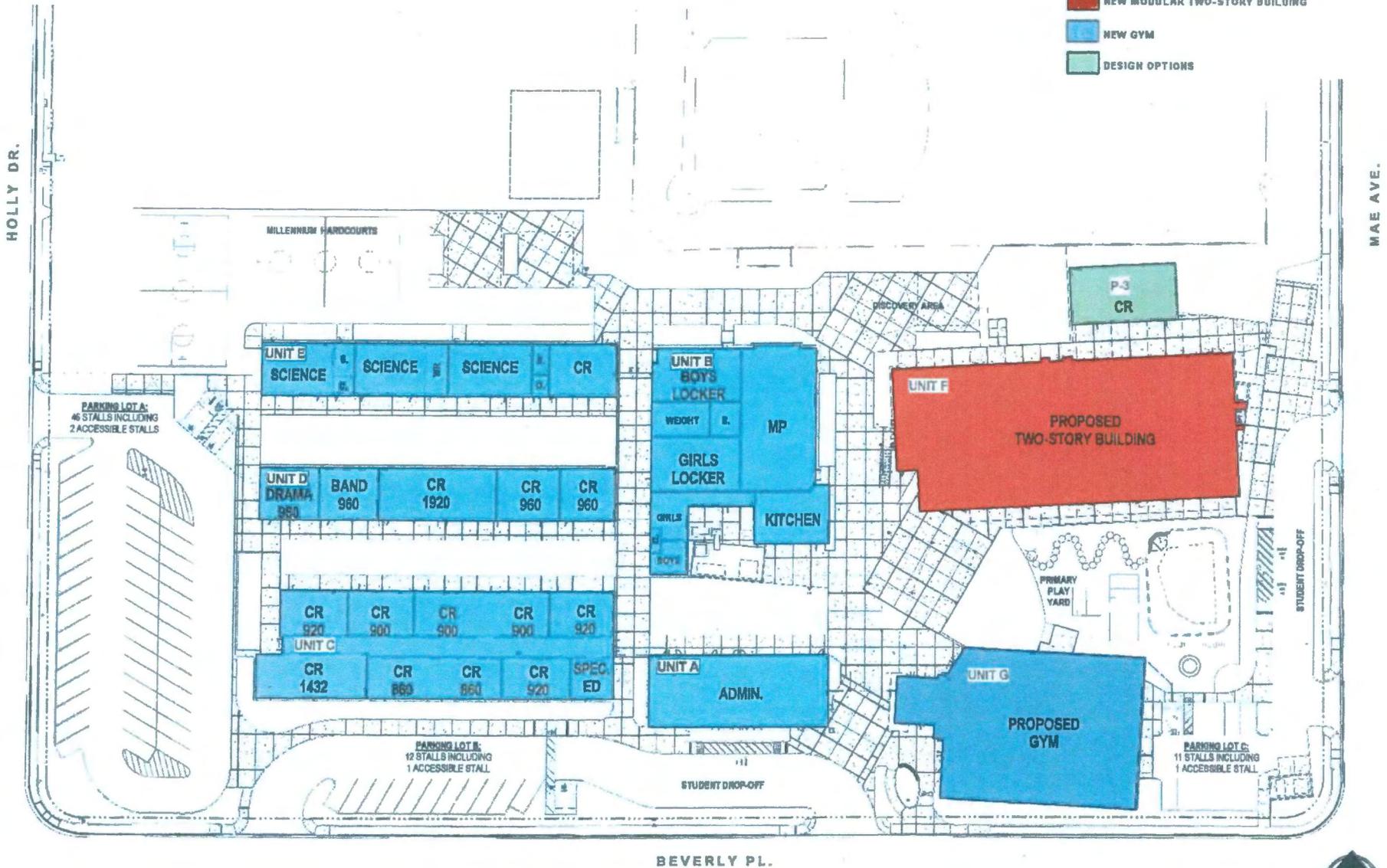
EXHIBIT B

Proposed Site Plan

EXHIBIT B

LEGEND

- EXISTING PERMANENT BUILDING TO BE MODERNIZED
- NEW MODULAR TWO-STORY BUILDING
- NEW GYM
- DESIGN OPTIONS



BEVERLY PL.



Exhibit B, Page 2

Description: Planned Improvements

Unit A : Remodeling existing 4,000 sf classroom building to Administration office space. Including 1,350 sf of office space, 830 lobby/reception sf and 620 counseling sf. The building will include staff toilets and break room. All electrical, plumbing and HVAC will be upgraded. Building will be re-roofed.

Unit B : Modernization of Kitchen, new finishes, new lighting, plumbing and HVAC. Upgrade the restrooms and locker rooms. Remove clerestory windows in Multipurpose and Locker Rooms. Multipurpose room will receive new HVAC and paint. Unit B : 9,880 sf

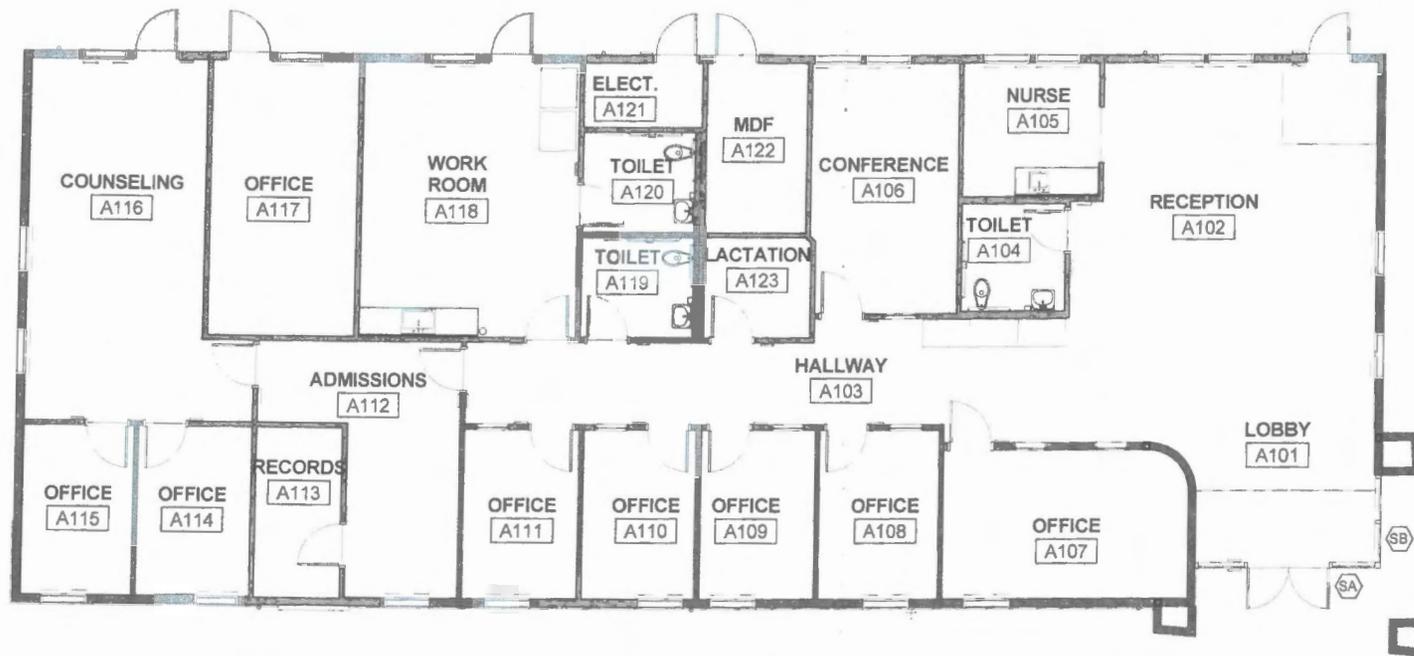
Units C, D and E : Modernization of existing buildings with new finishes, new electrical, plumbing and HVAC. Replacement of plaster as needed, remove or cover clerestory windows, replace all South wall windows. Band and Drama programs will be located in a standard classroom in these buildings. Science classrooms, 1 Art classroom. Buildings will be re-roofed. Unit C : 11,645 sf, Unit D : 5,829 sf, Unit E : 5,880 sf

Unit G : New 9,900 sf Gymnasium with Restrooms for Boys/Girls.

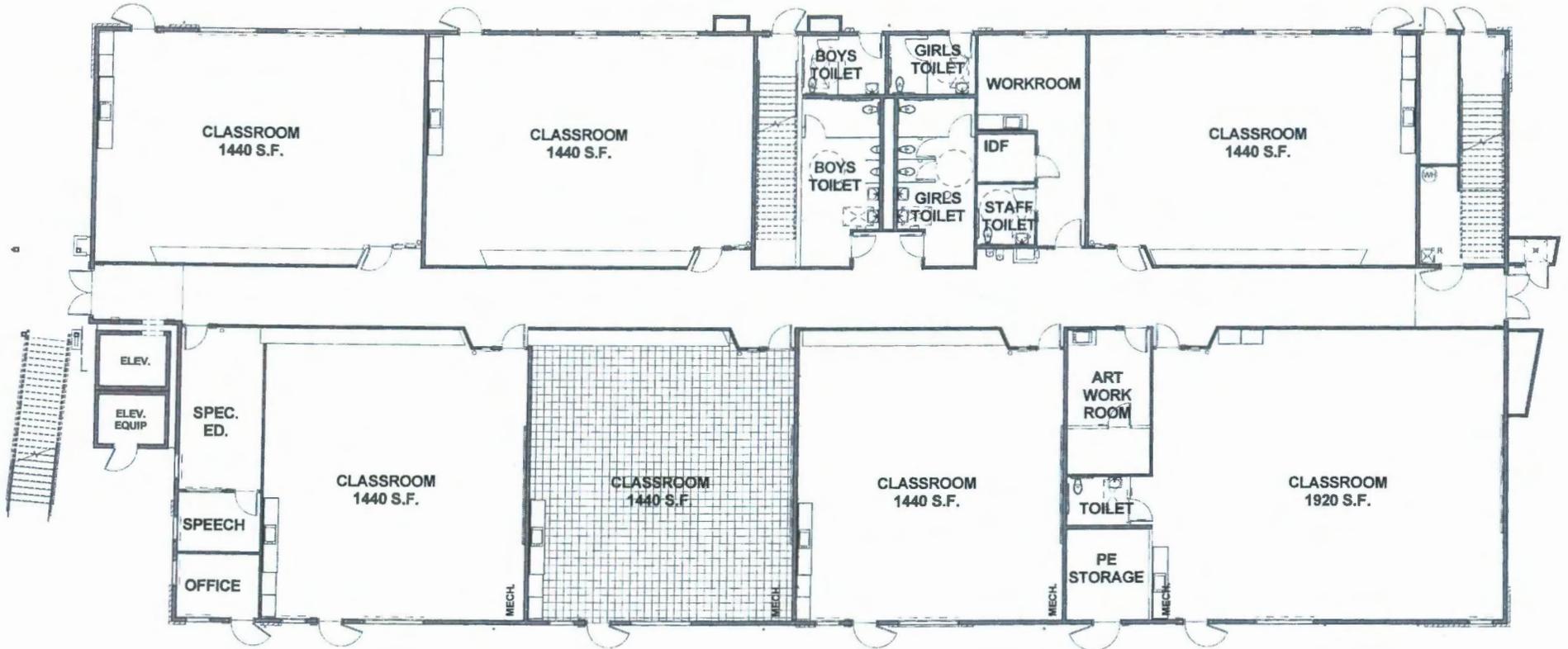
Unit F : New 33,000 sf 2 story modular classroom building, with student and staff toilets, office space for special education and Art. Science classrooms.

Unit P-3: Relocation of relocatable building. Connect utilities, no improvements to be provided.

Site : Site improvements of all paving and parking areas to meet current ADA requirements. Elementary play area with existing relocated apparatus.

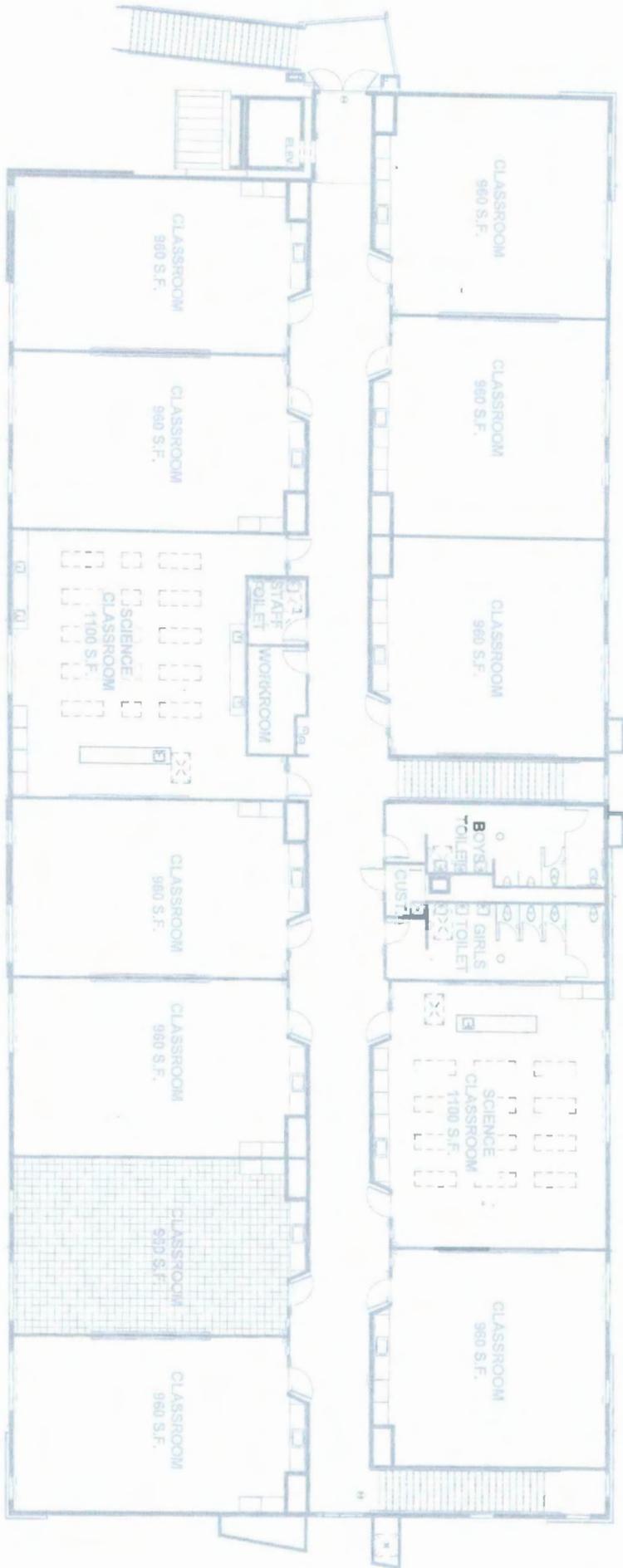


UNIT A - FLOOR PLAN



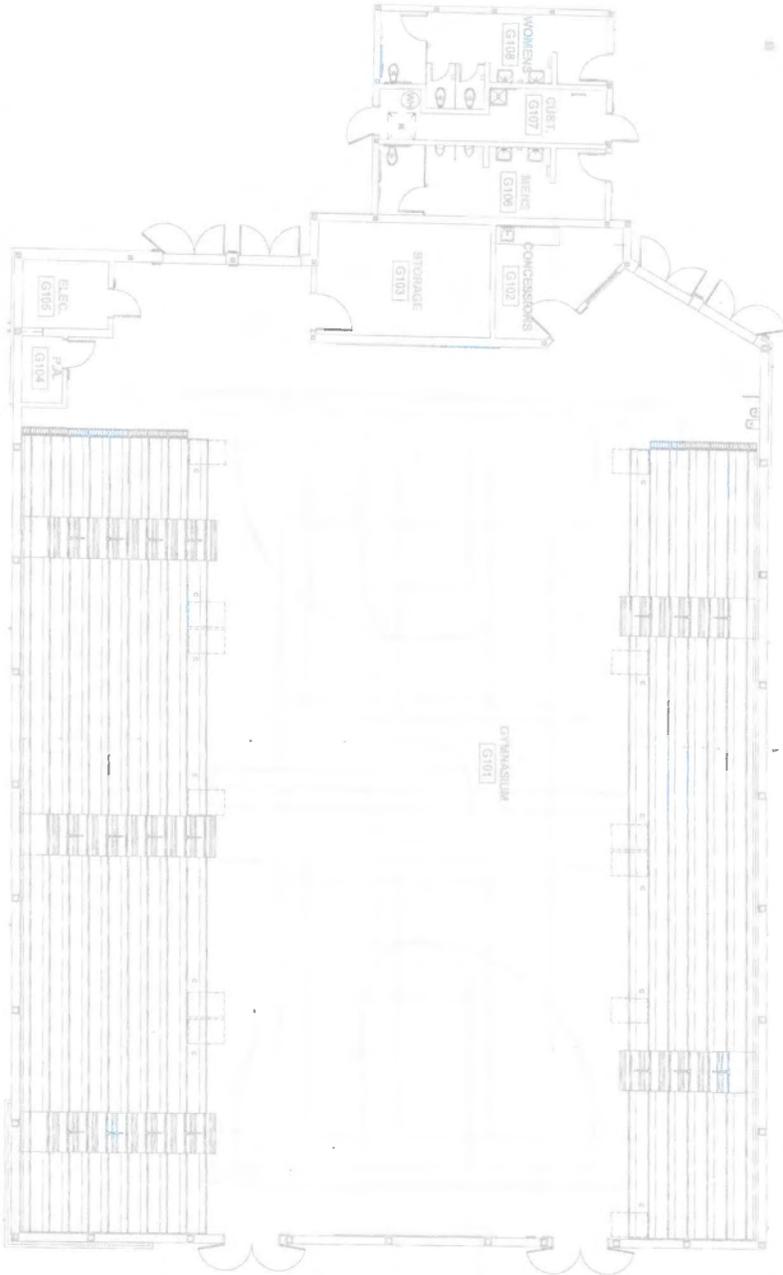
FIRST FLOOR AREA = 15,147 S.F.

UNIT F - FIRST FLOOR PLAN



SECOND FLOOR AREA = 15,147 S.F.

UNIT F - SECOND FLOOR PLAN



TOTAL AREA= 9,902 S.F.

UNIT G - GYMNASIUM FLOOR PLAN

EXHIBIT C

Exhibit C

INTERIM CAMPUS

15-960 sq ft Classrooms

2-1440 sq ft Wet Labs

1-1600 sq ft Wet Lab

1-936 sq ft Computer Lab

*Dashed lines indicate movable walls; however, the walls are moved to a fixed "open or closed" position and are not meant to be moved daily.

