

## MEMORANDUM OF UNDERSTANDING

By and Among:

Language Academy of Sacramento, a California Charter School;

and

Sacramento City 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 \_\_\_\_\_, 2011 (“Effective Date”) by and among the State Allocation Board and the California School Finance Authority (individually or collectively referred to as the “State”); Language Academy of Sacramento, a California Charter School (“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 Charter School has applied to the State for financing of its charter school facilities project (“Project”) under the Charter School Facilities Program (“CSFP”) established pursuant to Article 12 of Chapter 12.5 of Part 10 of the California Education Code and the regulations for its implementation provided in Title 4, Cal. Code Regs., Section 10151, et seq., and Title 2 Cal. Code Regs., Section 1859.160, et seq. A copy of the Charter School’s application is attached hereto as Attachment 1, and incorporated herein by reference as a means of defining the Project.
- C. This MOU is intended to tie together two (2) separate legal agreements: (i) a Funding Agreement by and between the State and the Charter School; and (ii) a Facilities Use Agreement by and between the School District and the Charter School. In accordance with the CSFP, the State is the lender of certain monetary

funds to the Charter School to enable the Charter School to acquire real property and/or construct improvements thereon. This loan transaction is set forth in the Funding Agreement of which the School District is not a party to because it is not a lender and does not have obligations under said Funding Agreement. In accordance with Section 17078.57(a)(3)(A) of the California Education Code, the School District must hold title to the Project, acquired with the funds loaned by the State under the CSFP, in trust for the benefit of the state public school system. Pursuant to the CSFP, the School District as the holder in trust of the Project must provide the use of the Project to the Charter School for a charter school educational program and, hence, is the basis for the

(a) Accept title to the Facilities, as defined below, as trustee for the State of California public school system. Title shall be conveyed by an instrument acceptable to the School District; 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 Agreement.

(3) in2(he F)5(aci)10(l 17.17 0( thp)14-10r44 513 294. 3 0.840 12f\*I)6( )0 1 Tf 12 0 0 42 72 708



conditions imposed upon it for the development and operation of the Facility by any applicable governmental agency.

(4) Each party is duly authorized to enter, deliver, and perform this MOU, the Funding Agreement, as applicable to the appropriate parties, and the Facilities Use Agreement, as applicable to the appropriate parties.

### **2.3 Charter School Facilities**

- A. The Charter School's Project 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 ("Facilities").
- B. The Charter School's Facilities are located or will be located at 2850 49<sup>th</sup> Street in the City of Sacramento, Sacramento County, California, and include the four (4) portable buildings identified as B1-B4 and anticipated new construction areas on the south side of the school site. The Charter School's Facilities are more particularly described on Exhibit D of this Agreement.
- C. The Facilities are physically located within the geographical jurisdiction of the School District and the high 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 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 Agreement. The Charter School 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 is solely 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 Charter School is solely responsible for the construction of all improvements, repairs, replacements, substitutions, and modifications located or to be constructed on the Facilities.

The State and/or the School District 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. Pursuant to the CSFP, the School District is obligated to take title to the Project

in trust for the benefit of the state public school system but such obligation does not make the School District a guarantor or warrantor of the Project and shall not impose any duty upon the School District to administer or oversee the construction of the Facilities by the Charter School, or in the event of any default prior to completion of construction, demolish all or any portion of the Facilities.

## **2.4 Payments**

- A. The Charter School shall make payments to the State, as provided in the Funding Agreement in satisfaction of the requirements of the CSFP.
- B. This MOU, the Funding Agreement and the Facilities Us. 3n



Title to the Facilities shall be conveyed to the School District by a Grant Deed 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 is to be located, in trust, for the benefit of the state public school system.

- B. 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



State, in its discretion, may extend this period up to one hundred and eighty (180) calendar days;

- (5) The Charter School 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 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, as the case may be, where possession is not restored in sixty (60) calendar days; or the Charter School 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 (unless, in the case of a petition filed against the Charter School, 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 Charter School's 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;
- (6) The determination by the State that any representation or warranty made by the Charter School was untrue in any material respect when made;
- (7) 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; and/or
- (8) The Charter School shall abandon the Facilities or breach the Facilities Use Agreement.

#### **4.2 Remedies on Default**

The parties acknowledge and agree that this MOU, the Funding Agreement 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 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 Funding Agreement, as amended, and the Facilities Use

Agreement, as amended, including, without limitation, the obligation to make payments to the State when due under the Funding Agreement.

- B. If the Event of Default is solely because the School District 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, as may be amended, to complete the review process contemplated in Section 47607 or 47607.5 of the Educat

(3) that has agreed to a Funding Agreement with the State and a Facilities Use Agreement with the School District.

E. 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 Facility as a public school facility; provided, that the School District shall be required to make payment to the State in accordance with Section 17078.62(b)(4) or the payments shall be reduced or eliminated if the School District satisfies the conditions set forth in Section 17078.62(b)(4)(A) and (B). In the event the payments do not qualify for reduction or elimination in accordance with Section 17078.62(b)(4)(A) and (B), the State and the School District shall enter into an agreement for the School District's assumption of the payment obligation under the Funding Agreement. Assumption of the payment obligation shall in no way release the Charter School from its payment obligations that accrued prior to the termination of the Funding Agreement or from the Charter School's obligations for any holdover; or

(2) in accordance with Section 17078.62(b)(5) of the Education Code, decline to take possession of the Facilities or if the Facility is 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) reimburse the School District for reasonable costs and expenses incurred by the School District in disposing of the Facilities; (ii) reimburse the State for reasonable costs and expenses incurred by the State in pursuing the collection of the balance of any unpaid Local Matching Share due and owing under the Funding Agreement; (iii) repay any unpaid Local Matching Share in favor of the State; (iv) repay any security interest granted pursuant to Section 17078.57(a)(3)(B); and (v) in the event any proceeds remain, equally prorated between the State and the school District.

F. The State may proceed by appropriate court action to enforce specific performance by the Charter School of its covenants under the Funding Agreement and 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 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.

- G. In the event of the Charter School's default and the recovery of the Facilities by the School District, the State shall have the right to recover from the Charter School (i) the amount of all outstanding payments or other obligations (whether direct or indirect owed by the Charter School 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 Charter School to the State, including indemnity payments, taxes, charges, reimbursement of any advances and other amounts payable by the Charter School to the State.
- H. Notwithstanding anything to the contrary, the State, the Charter School and/or 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, the Funding Agreement, or the Facilities Use Agreement or the Facilities, 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, the Funding Agreement, and/or the Facilities Use Agreement or as otherwise permitted by law, paid by the parties against whom the action was brought.
- I. 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, the Funding Agreement 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 Agreements. All remedies herein conferred upon or reserved to the parties shall survive the termination of this MOU, the Funding Agreement and/or the Facilities Use Agreement.

## **ARTICLE V – MISCELLANEOUS**

### **5.1 Release of Liability**

The State and the School District 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 or any of the Charter School's employees or agents 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 or the Charter School's Project, 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 hereby waives





THE STATE:

STATE ALLOCATION BOARD:

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

Name: \_\_\_\_\_

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

CALIFORNIA SCHOOL FINANCE AUTHORITY:

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

Name: \_\_\_\_\_

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

THE SCHOOL DISTRICT: SACRAMENTO CITY UNIFIED SCHOOL DISTRICT:

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

Name: \_\_\_\_\_

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

THE CHARTER SCHOOL: LANGUAGE ACADEMY OF SACRAMENTO:

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

Name: \_\_\_\_\_

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

Attachment 1

Charter School's Application





**Exhibit C**

<b>Apportionment</b>	<b>Purpose</b>	<b>Date</b>	<b>Amount</b>
Preliminary	Reservation of Funds (Rehab and NC)	May 26, 2010	\$1,878,376 and 6,662,240
Advance	Design (Rehab and NC)	TBD	\$187,837.60 and \$620,824

