

**AGREEMENT FOR THE PROVISION OF
CHARTER SCHOOL FACILITIES
BY AND BETWEEN
ELK GROVE UNIFIED SCHOOL DISTRICT AND THE
CALIFORNIA MONTESSORI PROJECT**

This Agreement for the Provision of Charter School Facilities ("Agreement") is entered into as of _____, 2019, by and between the Elk Grove Unified School District ("District"), a public school district operating under the laws of the State of California and the California Montessori Project ("CMP"), a California public charter school and California nonprofit corporation, collectively referred to herein as "Parties."

RECITALS

A. The District is a public school district serving children grades K-12 living within its boundaries, including those living in the City of Elk Grove, County of Sacramento, California.

B. CMP is a charter school operating under the provisions of the Charter Schools Act of 1992, Education Code section 47600 *et seq.* and pursuant to a charter granted by the District in 2006. CMP is also organized as a 501(c)(3) nonprofit corporation.

C. CMP currently operates a campus within the boundaries of the District ("Elk Grove Campus"). CMP projects that the 8828 Elk Grove Boulevard Campus will have a classroom average daily attendance ("ADA") of 109 students during the 2019-2020 school year, with 109 students being those who reside in the District ("In-District Students").

D. Pursuant to the provisions of Proposition 39, codified at Education Code section 47614, and Title 5, California Code of Regulations, sections 11969.1-11969.9 ("Proposition 39"), the District is required to make available for charter schools operating within its boundaries facilities sufficient to accommodate the charter schools' In-District Students in conditions reasonably equivalent to those in which the students would be accommodated if they were attending District schools.

E. The District and the Charter School desire that, in lieu of providing facilities pursuant to Proposition 39, the District shall provide the Charter School with funding for facilities based upon the Charter School's ADA for its students which reside in the District.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the District and CMP hereby agree as follows:

AGREEMENT

1. **Term**

The term of this Agreement shall be for one year only, extending from July 1, 2019, to June 30, 2020 ("School Year"), unless earlier terminated as provided herein.

2. Funds for Facilities

2.1 *Location of Facilities.* For the 2019-2020 school year, CMP intends to operate an Elk Grove Campus from facilities currently leased at 8828 Elk Grove Boulevard in the City of Elk Grove.

2.2 *District Contribution.* Based on a projected ADA of 109 In-District Students attending the 8828 Elk Grove Boulevard Campus, District shall provide CMP with the financial equivalent to provide facilities to 109 units of ADA generated during the School Year by CMP students residing in and otherwise eligible to attend schools of the District. Said payments will be for a total amount of \$82,840.88 (“District Contribution”). All funds provided hereunder must be used exclusively for the leasing, repair or maintenance of facilities.

2.3 *Monthly Payments.* The District shall pay the District Contribution in ten (10) installments, due on or before the 1st of each month, from September 2019, through June 2020. The payment amount shall be \$8,284.09 (“Monthly Payment”).

2.4 *Full Satisfaction.* The Parties expressly agree that the District’s payment of the District Contribution in accordance with this Agreement shall constitute full satisfaction of its obligations under Proposition 39, including Education Code section 47614 and Title 5, California Code of Regulations, section 11969.1 *et seq.* relating to the provision of charter school facilities. Such payment shall in no way be construed as obligating the District to provide CMP with facilities, or their financial equivalent, beyond the term of this Agreement. CMP waives any right to obtain facilities from the District during the term of the Agreement pursuant to Proposition 39, including any future amendments or related laws or regulations. This Agreement is intended to meet Proposition 39 requirements.

3. Building Codes

CMP represents and warrants that any facility it uses to house students and staff complies with any and all applicable State and local building codes, laws, statutes, ordinances, rules (collectively, “Laws”) of those governmental and quasi-governmental authorities having jurisdiction over the facility. CMP will promptly comply with all Laws and will cause the facilities to comply with all Laws. The Charter School agrees to obtain all applicable local use permits for facilities used to house students, including approval from the local Fire Marshall, and to otherwise comply with local ordinances governing land use where the facilities are located.

4. Over-Payment of District Contribution

4.1 *Over-Payment.* The District has overpaid the District Contribution if CMP's actual ADA of In-District Students is less than the projected ADA of In-District Students upon which the District Contribution, pursuant to Section 2.2 of this Agreement, was calculated. The District Contribution may be reduced if over-payment occurs. Said reduction shall be equal to the difference between the CMP’s actual ADA of In-District Students and the projected ADA of In-District Students set forth in Section 2.2 of this Agreement multiplied by \$806.85. For purposes of this subdivision, the actual ADA of In-District Students shall be determined using the report submitted pursuant to Title 5 of the California Code of Regulations, Section 11969.9(i), in conjunction with the second principal apportionment under Education Code section 41601.

4.2 *Adjustment.* In the event the District determines that, in accordance with the standards set forth in Section 4.1 of this Agreement, there has been an over-payment of the District

Contribution, the District may offset the Monthly Payment(s) by the amount of the reduction to the District Contribution. In the event the amount offset by the District does not fully satisfy the amount to be reduced, the District shall notify CMP in writing of the remaining amount due, and CMP shall reimburse the District for that amount within 30 days of receiving the notice.

4.3 *Reporting and Records.* CMP shall report actual ADA to the District every time that it reports ADA for apportionment purposes, broken down by ADA of In-District Students and total classroom ADA. CMP shall maintain records documenting data contained in the ADA reports and shall make ADA records available to the District upon request.

5. Termination

In the event CMP shall cease to exist during the term of this Agreement, either as a corporate entity or as an authorized public charter school, and regardless of whether by voluntary closure, charter revocation, bankruptcy, or any other means, this Agreement shall automatically and immediately terminate, and the District shall have no further obligation to pay CMP or any other entity the Monthly Payments set forth above. Either party may terminate this Agreement in the event of default by the other party where such failure has continued for fifteen (15) days after written notice thereof.

6. Insurance

Throughout the life of this Agreement, CMP shall pay for and maintain in full force and effect with an insurance company(s) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-/VII" in Best Insurance Rating Guide, the following policies of insurance:

6.1 *Commercial General Liability Insurance*, which shall include contractual, products and completed operations, corporal punishment and sexual misconduct and harassment coverage, bodily injury, and property damage liability insurance with combined single limits of not less than \$1,000,000 per occurrence.

6.2 *Property and Fire Insurance*, which shall be provided to protect: (a) Real Property, against risk or direct loss, commonly known as Special Form, and (b) Fire Legal Liability, to protect against liability for portions of premises leased or rented, and (c) Business Personal Property, to protect on a Broad Form, named peril basis, for all furniture, equipment and supplies of CMP.

The policies shall be endorsed to name the District, its officers, employees and agents as additional insured, and said Additional Insured endorsement shall be provided to the District. The insurance policy limits shall in no event limit the liability of CMP hereunder. Written notice of cancellation, non-renewal or any material change in the policies shall be mailed to the District thirty (30) days in advance of the effective date.

7. General Provisions.

7.1 *Incorporation of Recitals and Attachments.* All recitals set forth at the beginning of this Agreement and all documents attached to and referred to in this Agreement are incorporated into and made a part of this Agreement.

7.2 *Notices.* All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered or sent by registered or certified mail, postage

prepaid, return receipt requested, or sent by electronic facsimile and shall be deemed received upon the earlier of (i) if personally delivered, the date of delivery to the address of the person to receive such notice, (ii) if mailed, three (3) days following the date of posting by the United States Post Office, or (iii) if given by electronic facsimile, when received by the other party.

If to District: Elk Grove Unified School District
9510 Elk Grove-Florin Road
Elk Grove, CA 95624
Attention: Robert Pierce, Deputy Superintendent, Business Services and Facilities
Telephone: (916) 686-7711
Facsimile: (916) 686-7754

If to CMP: California Montessori Project
Administrative Offices
5330-A Gibbons Drive, Suite 700
Carmichael, CA 95608
Attention: Gary Bowman
Telephone: 916-971-2432
Facsimile: 916-971-2436

Notice of change of address shall be given by written notice in the manner described in this Paragraph.

7.3 *Indemnification and Hold Harmless.* CMP shall indemnify, hold harmless, and defend the District, its Board of Trustees, officers, employees, and agents from and against all claims, costs, demands, losses, and liability of any nature whatsoever, including but not limited to liability for bodily injury, sickness, disease or death, property damage (including loss of use) or violation of law, caused by or arising out of any negligent act, error, or omission, or willful misconduct of CMP, its directors, officers, employees or agents or any other person acting pursuant to its control, in the performance of this Agreement or in its control and use of the 8828 Elk Grove Boulevard Campus, provided, however, that CMP shall not have any obligation to indemnify, hold harmless or defend the District, its Board of Trustees, officers, employees and agents resulting from or arising out of the negligence or willful malfeasance of the District, its Board of Trustees, officers, employees and agents.

7.4 *Binding Effect.* This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their successors and assigns.

7.5 *Further Assurances.* Each of the Parties to this Agreement shall execute and deliver any and all additional papers, documents and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of their obligations under this Agreement and to carry out the intent and agreements of the Parties to this Agreement.

7.6 *No Waiver.* No delay or omission by any party in exercising any right or power conditioned upon the compliance or failure of performance by any other party under the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by any party of a breach of any of the covenants, conditions, or agreements hereof to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions, or conditions hereof. All such waivers, in order to be effective, shall be in writing, shall specifically describe the right, power or breach being waived, and shall be executed by the waiving party.

7.7 *Interpretation.* This Agreement is made and entered into in the State of California and shall in all respects be interpreted, enforced and governed under the laws of the State of California. Any action or proceeding seeking any relief under or with respect to this Agreement shall be brought solely in the Superior Court of the State of California for the County of Sacramento. The language in all parts of this Agreement shall be in all cases construed as a whole according to their fair meaning and not strictly for or against either the District or CMP. Any headings in this Agreement are included only as a matter of convenience and for reference and in no way define the scope or extent of this Lease or the construction of any provision.

7.8 *Severability.* If any term, provision, condition or covenant of this Agreement or its application to any party or circumstance shall be held, to any extent, invalid or unenforceable, then the remainder of this Agreement, or the application of such term, provision, condition or covenant, to any party or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected and shall be valid and enforceable to the fullest extent permitted by law.

7.9 *Attorneys' Fees.* If either party commences an action against the other to interpret or enforce any of the terms of this Agreement or because of breach by the other party of any of the terms hereof, the losing party shall pay to the prevailing party reasonable attorneys' fees, costs and expense and court costs and other costs of action incurred in connection with the prosecution or defense of such action, whether or not the action is prosecuted to a final judgment.

7.10 *Counterparts.* This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which shall, together, constitute one and the same instrument.

7.11 *Entire Agreement; Amendments.* This Agreement and the attachments referred to in this Agreement constitutes the entire agreement of the Parties hereto with respect to the matters contained herein, and prior or contemporaneous agreements or understandings, oral or written, pertaining to any such matters are merged herein and shall not be effective for any purpose. No provision of this Agreement may be amended or added to except by an agreement in writing which is signed by the Parties hereto or their respective successors-in-interest and indicates that it is an amendment of this Agreement. Neither party shall assign or transfer any or all of its rights, burdens, duties or obligations under this Agreement without the prior written consent of the other party.

7.12 *Mutual Cooperation.* Each party agrees to cooperate with the other party in the performance by each of the terms and provisions hereof.

7.13 *Non-Precedence of Agreement.* Each party agrees that this Agreement is for one year only for the School Year. The calculations used shall not be binding for subsequent years' facilities agreements between the Parties.

7.14 *Authority.* If CMP is a corporation, then each individual executing this Agreement on behalf of said corporation represents and warrants that he/she is duly authorized to execute and deliver this Agreement on behalf of said corporation in accordance with a duly adopted resolution of the Board of Directors of said corporation or in accordance with the Bylaws of said corporation, and that this Agreement is binding upon said corporation in accordance with its terms.

The District and CMP have executed this Agreement as of the date first set forth below.

DISTRICT:

**ELK GROVE UNIFIED SCHOOL
DISTRICT, a California School District**

By: _____

Its: _____

Date: _____

CMP:

**CALIFORNIA MONTESSORI
PROJECT, a California Charter School
and California Nonprofit Corporation**

By: _____

Its: _____

Date: _____