

FACILITIES USE AGREEMENT

This Facility Use Agreement (“Agreement”) is made by and between NAPA VALLEY UNIFIED SCHOOL DISTRICT (“District”) and NAPA VALLEY LANGUAGE ACADEMY (“Charter School”), pursuant to Article 7 of the Financial and Operational Agreement between the parties dated July 1, 2019 (“MOU”), as renewed and/or amended.

RECITALS

WHEREAS, 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;

WHEREAS, Charter School desires to utilize the District’s facility at 2700 Kilburn Avenue, Napa, California for its educational program as described in the charter approved by the District Board on March 15, 2018.

WHEREAS, the parties desire to enter into an agreement defining their rights, duties, and liabilities relating to the Premises;

NOW THEREFORE, in consideration of the mutual agreements and covenants contained herein, the parties agree as follows:

AGREEMENT

1. Premises

Charter School shall hereby be entitled to exclusive use of the portion of the District facility located at 2700 Kilburn Avenue, Napa, California. Charter School leases 55,698¹ square feet of District-owned space, which is the square footage total used for the Use Fee component of the Total Facilities Rate. Charter School square footage includes classrooms, restrooms, office space, and staff space (hereafter “Premises”) (as outlined in the attached Premises diagram incorporated by reference as **Exhibit A**).

2. Term

This Agreement shall be effective for one year commencing July 1, 2019 and continuing until June 30, 2020. Unless and until the Charter School’s student population exceeds the facility’s current capacity, this Agreement shall be automatically renewed for an additional fiscal year commencing July 1, 2019; unless written notice of intent to renegotiate is given by either party by April 1, 2020 and

¹ NVLA requested closing the Evenstart Building for the 19-20 school year and removing 1440 sq. ft. from the 57,139 sq. ft. listed in the original Facilities Use Agreement dated April 1, 2019. The total square footage for 19-20 is 55,698.

3. Use of Premises

Charter School shall have exclusive use of the Premises during the term of the Agreement and any renewal terms. Charter School agrees to use the Premises only for the operation of the Charter School and its activities, as authorized by California Education Code and as described in Charter School's charter and MOU between the parties. Charter School shall enjoy access to and use of the Premises in the same manner as any other District facility, under all applicable laws. Charter School may utilize the Premises for any and all charter school related activities.

Charter School shall not knowingly do, or permit anything to be done, without the prior written consent of the District, in or about the Premises, nor bring or keep anything therein, which will in any way increase the existing insurance rate or affect any fire or other insurance upon the Premises or any of its contents or cause a cancellation of any insurance policy covering said Premises or any part thereof or any of its contents; nor shall the Charter School sell or permit to be kept, used, or sold in or about said Premises any articles which may be prohibited by a standard form policy of fire insurance. Charter School shall not commit or suffer to be committed any waste in or upon the Premises.

Charter School shall not use the Premises, or permit anything to be done in or about the Premises, that will in any way conflict with any applicable law, statute, ordinance or governmental rule or regulation now in force or which may hereafter be enacted or promulgated. Use of the Premises by third parties or community groups outside regular Charter School hours shall be governed by Paragraph 16 of this Agreement. District and Charter School shall each do all acts required to comply with all applicable laws, statutes, ordinances, regulations and rules of any authority relating to their respective maintenance obligations as set forth herein.

4. Facilities Fees

Charter School shall pay the Total Facilities Rate per square foot of charter Premises, specified on Appendix B which is incorporated herein by reference. The Premises square footage total is 55,698ⁱ for purposes of the Services Fee components of the Total Facilities Rate. It is understood between the parties that the dollar amounts determined by District used to calculate the Total Facilities Rate (as set forth in Exhibit B to this Agreement) are compliant with Title 5, California Code of Regulations, Section 11969.7.

Charter School shall pay the Facility Maintenance and Facility Use Fees in four equal installments on September 15, January 15 and April 15, with a final reconciliation and final payment due 14 days after the end of the fiscal year.

5. Over-Allocated Space

District believes that the number of in-District students in grades K-6 to be served by Charter School at full capacity will be at an Average Daily Attendance (“ADA”) level of approximately 644.

Pursuant to Title 5, California Code of Regulations, Section 11969.8 (“Section 11969.8”), space is considered over-allocated if 1) the Charter School’s actual in-district classroom ADA is less than the projected in district classroom ADA upon which the facility allocation is based and 2) the difference is greater than or equal to a threshold ADA amount of 25 ADA or 10 percent of projected in-district classroom ADA, whichever is greater. The District reserves the right to collect over-allocation and other applicable fees and reimbursements from Charter School if the foregoing conditions are found to exist.

It is agreed that if the over-allocated space is used for increased in-District ADA, and Charter School provides adequate documentation satisfactory to the District of such use, the District may, at its option, deduct the additional ADA in its computation of the cost for over-allocated space. On the other hand, if the actual in-District ADA is lower than the 644 projected ADA for the then current year, the District may include the additional decrease of in-District ADA in its calculation of fees for the over-allocated space. The calculation shall proceed as follows:

- i. No later than March 1 while this Agreement is in effect, the Charter School shall provide the District satisfactory documentation of the actual in-District ADA for the then current school year. The District will, after satisfying itself as to the accuracy of the data provided by the Charter School, apply the formula specified in Section 11969.8(a). The District will use the then current per-pupil rate specified by the California Department of Education (CDE) at <https://www.cde.ca.gov/sp/cs/as/rtrfrvllctdspc.asp>.
- ii. On or prior to April 15, the District will notify the Charter School of the reimbursement amount owed by the Charter School to the District for the over-allocated space. The notice shall include a copy of the CDE’s per-pupil rate calculation as well as the actual in-District ADA for the Charter School upon which the calculation is based.
- iii. Charter School shall make payment to District of all amounts due for over-allocated space within 30 days of receipt of notice of the reimbursement amount from the District.

6. Delivery of Possession

If District, for any reason, cannot deliver possession of the Premises to Charter School as outlined herein, this Agreement shall not be void or voidable, nor shall District be liable to Charter School for any loss or damage resulting there from,

nor shall the expiration date of the term be in any way extended, but in that event, the Facilities Fees shall be abated during the period between the commencement of the term and the time the District delivers possession. If the District fails to deliver a portion of the Premise the abatement shall be proportional.

7. Ownership

The Premises and any furnishings and equipment provided to Charter School shall remain the property of the District. The District shall conduct an inventory of its furnishings and equipment and other District property located on the Premises and provide Charter School with such inventory prior to occupancy of the Premises. If any furnishings and equipment are provided Charter School during the term of this Agreement, such furnishings and equipment shall be added to the District's inventory and shall remain the property of the District.

8. Conditions Reasonably Equivalent

Charter School agrees by execution of this Agreement that the Premises provided by this Agreement are "reasonably equivalent" and meet all the requirements of Proposition 39 (Education Code §47614) and its Implementing Regulations for the Term of this Agreement assuming the total student population does not exceed 700. The parties have negotiated a renewable facilities agreement for exclusive use of the Premises in lieu of strict annual District compliance with Proposition 39. The Charter School agrees that by entering into this Agreement, the District has fully and completely satisfied the District's obligation to provide facilities to the Charter School under Education Code section 47614 and the Implementing Regulations for the Term of this Agreement.

District represents and warrants that the Premises are compliant with all applicable state and federal laws, including access laws, anti-discrimination laws, including FEHA and the ADA, and environmental laws and regulations. Charter School agrees that any modifications, remodeling, or improvements to Premises, as may be allowed herein, shall also be in compliance with all applicable state and federal laws, including access laws, anti-discrimination laws, including FEHA and the ADA, and environmental laws and regulations.

The Parties agree that upon request of the Charter School, and District agreement, either Charter School or District, as agreed by the Parties, may acquire and install, furnishings, equipment or technology that constitute upgrades ("Charter School Upgrades") to the reasonably equivalent facilities provided by District and are only necessary to satisfy Charter Schools unique programmatic requirements or uses. The Parties agree that Charter School shall be fully responsible for all costs associated with any Charter School Upgrades, including without limitation any all costs relating to the operation, maintenance, repair, replacement and disposal of such items.

9. Maintenance and Alterations

a. Maintenance The maintenance of the Premises, and the furnishings and equipment, shall be the responsibility of the District. District shall maintain the Premises in accordance with the District's policies and/or practices. Charter School shall pay the Total Facilities Rate specified in Appendix B of this Agreement between the parties.

Projects eligible to be included in the District deferred maintenance plan established pursuant to Education Code § 17582 and the replacement of furnishings and equipment in accordance with the District schedules and/or practices shall remain the responsibility of the District.

b. Modifications, Alterations and Signage Upon prior written agreement with District, Charter School shall be allowed to make modifications, upgrades and/or alterations to the Premises, which will be considered Charter School Upgrades. Such written agreement must include the following information: (1) who will perform the work; (2) the timeline for completion; and (3) the cost. All alterations, additions, and/or improvements to the facility must be made in compliance with District standards and procedures and/or standards applicable to public school districts. In the event District consents to the making of any alterations, additions or improvements to the Premises by Charter School, the same shall be made by Charter School at Charter School's sole cost and expense unless otherwise agreed in writing. Any alteration, additions, or improvements to or of the Premises or any part thereof shall be made with full compliance with the Americans with Disabilities Act and all applicable buildings standards and requirements.

At Charter School's sole cost and expense, and upon review and approval of District, Charter School may post signage on the Premises.

c. Changes and Repairs to Premise Subject to the conditions listed below, District reserves the right from time to time:

- (1) To install, maintain, repair and replace locking system, pipes, ducts, conduits, wires and appurtenant meters and equipment for service to other parts of the Premises 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 Premises;
- (2) To make repairs, changes, and modifications to any and all parts of Premises, including, without limitation, changes in the location, size, shape, and number of buildings, driveways, entrances, parking spaces,

parking areas, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas and walkways;

- (3) To use the common areas while engaged in making additional improvements, repairs or alterations to the Premises, or any portion thereof;
- (4) To enter any part of the Premises to conduct maintenance as outlined in this section.

10. Utilities, Telephone and Waste Disposal

District agrees to furnish or cause to be furnished to the Premises necessary utilities and waste disposal. Charter School shall be responsible for the full actual cost of utilities, telephone and waste disposal provided to the Premises, including utilities, telephone and waste disposal resulting from third-parties' use of Premises. Utilities, telephone and waste disposal fees reasonably and logically related to third-parties use of Premises will be offset by a dollar amount not to exceed the actual fees collected by District under third party facility-use contracts for third-party use of Premises. The amount will be calculated at the close of the fiscal year and the credit will be applied to the buyback calculation. District shall invoice Charter School for actual costs on a monthly basis, payable within 30days.

11. Destruction or Partial Destruction of Premises

a. If the Premises are damaged by any casualty which is covered by applicable insurance, and Charter School still has access to at least 50 percent of the usable classroom space, then the facilities shall be restored solely from insurance proceeds available to pay for the cost of restoration, provided such restoration can be completed within 120 days after the commencement of the work in the opinion of a registered architect or engineer approved by the District. In such event, this Agreement shall continue in full force and effect. The District shall provide, to the extent available, temporary space near the Premises for any part of the Charter School's program that is displaced by the partial damage and/or the repair work of the same.

b. The District shall not be required to repair any injury or damage by fire or other cause, or to make any restoration or replacement of any Charter School Upgrades, or any other improvements or property installed in the Premises by the Charter School or at the direct or indirect expense of the Charter School. The Charter School shall have no claim against the District for any damage suffered by reason of any such damage, destruction, repair, or restoration.

c. Notwithstanding the availability of insurance proceeds, either the District or the Charter School may terminate this Agreement prior to expiration of the

term if the Premises are totally destroyed (defined as the destruction of more than 50% of the habitable classroom space), and if the District is unable to provide reasonably equivalent replacement facilities in a manner that avoids interruption of the Charter School's educational program. Any alternative or replacement will be subject to a separate facilities use agreement, which shall include payment by Charter School of all fees required by Proposition 39.

12. Inspection by District

Upon reasonable notice, District reserves the right to enter the Premises to inspect the Premises to ensure compliance with this Agreement.

13. Default by Charter School

The occurrence of any one or more of the following events shall constitute a default and material breach of this Agreement by Charter School:

a. The vacating or abandonment of the entire Premises by Charter School before expiration of the Agreement term.

b. The failure by Charter School to make timely payment of Facilities Fees pursuant to Section 4 of this Agreement where such failure shall continue for a period of 30 days after receipt of written notice thereof by District to Charter School.

c. The failure by Charter School to observe or perform any of the express covenants, conditions or provisions of this Agreement to be observed or performed by Charter School where failure shall continue for a period of 45 days after receipt of written notice hereof by District to Charter School; provided, however, that if the nature of Charter School's default is such that more than 45 days are reasonably required for its cure, then Charter School shall not be deemed to be in default if Charter School commences such cure within said 45 days period and thereafter diligently prosecutes such cure to completion.

d. Revocation or nonrenewal of Charter School's charter.

14. 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 45 days after receipt of written notice by Charter School 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 45 days are required for performance, then District shall not be deemed to be in default if District commences such cure within said 45 days period and thereafter diligently prosecutes such cure to completion.

15. Material Default or Breach

a. In the event of any material default or breach by Charter School, District may commence a termination of this Agreement. The remedies District may pursue, at any time thereafter, in its sole discretion, with written notice 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:

- (1) Terminate Charter School's right to possession of the Premises by any lawful means, in which case this Agreement shall terminate and Charter School shall immediately surrender possession of the Premises to District. If Charter School vacates or abandons the Premises prior to the expiration of the term of this Agreement or the District revokes or denies renewal of its charter, District must terminate the Agreement and enforce its right in accordance therewith; or
- (2) Maintain Charter School's right to possession, in which case this Agreement shall continue in effect. In such event District shall be entitled to enforce all of District's rights and remedies under this Agreement, including the right to recover the Facility Fees charged pursuant to Section 4 of this Agreement and any other charges and adjustments as may become due hereunder.
- (3) If the Agreement is terminated based upon the District revoking the Charter School charter or failing to renew the Charter School charter the District shall only be allowed to collect the Facility Fees for one year subsequent to the revocation or renewal. In the case of nonrenewal of the Charter School charter, this Agreement shall not be terminated until after Charter School has completed all applicable appeals to the County Office of Education and State Board of Education. If Charter School is successful in renewing its charter with the County Board of Education or the State Board of Education, then this Agreement shall not be terminated and shall continue with full force and effect.

b. In the event of any material default or breach by District, Charter School may terminate this Agreement or pursue remedies as provided in this Agreement.

16. Assignment and Third Party Use

Charter School shall not assign, transfer, mortgage, pledge, encumber, voluntarily or involuntarily, this Agreement or any interest herein, and shall not submit the Premises 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.

Charter School shall use the Premises in the same manner as any other District facility, under all applicable laws. Charter School may utilize the Premises for any and all charter school related activities.

District shall govern the use of the Premises by third parties or community groups pursuant to the Civic Center Act and other applicable provisions of law governing use of public school facilities by third parties.

17. Indemnification

a. The Charter School 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 Premises, or arising from the Charter School's use of the Premises or from any activity, work, or other things done, permitted or suffered by the Charter School in or about the Premises, 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 Premises or caused by the active negligence or wrongful intentional acts of the District, its employees, agents, officers, and invitees. The Charter School shall further indemnify, hold harmless, and defend the District against and from any and all third party claims arising from any breach or default in the performance of any obligation on the Charter School's part to be performed under the terms of this Agreement, or arising from any act, omission or negligence of the Charter School, or any officer, agent, employee, or invitee of the Charter School, 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), the Charter School upon notice from District shall defend the same at the Charter School's expense. The Charter School shall give prompt written notice to the District's Risk Manager in case of casualty or accidents in or on the Premises.

b. The District shall indemnify, hold harmless, and defend the Charter School, 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 arising out of or related to obligations of the District under this Agreement as they relate to the Premises or from the District's active negligence or wrongful intentional acts, excepting those claims, demands, actions, suits, losses, liability, expenses and costs arising out of or relating to obligations of the Charter School as they relate to the Premises or caused by the negligence or intentional acts of the Charter School, their employees, agents, officers and invitees. The District shall further indemnify, hold harmless, and defend the

Charter School against and from any and all third party claims arising from any breach or default in the performance of any obligation on the District's part to be performed under the terms of this Agreement, or arising from any act, omission or negligence of the District, or any officer, agent, employee, or invitee of the District, 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 Charter School by reason of such claim (regardless of whether a claim is filed), the District upon notice from the Charter School shall defend the same at the District's expense. The District shall give prompt written notice to the Charter School's Executive Directors in case of casualty or accidents in or on the Premises.

18. Property and Liability Insurance

In addition to the Insurance required under Article 10 of the MOU, Charter School agrees to pay District for property and liability insurance which is a component cost of the Total Facilities Rate specified in Appendix B.

19. Liens

Charter School shall keep the Premises and the property in which the Premises are situated free from any liens arising out of any work performed, materials furnished or obligations incurred by or on behalf of Charter School.

20. Dispute Resolution

The parties agree to resolve all disputes regarding this Agreement pursuant to the dispute resolution procedures provided in the charter and MOU prior to filing any action in a court of law. The parties may pursue equitable actions to maintain the status quo pending resolution through the dispute resolution process. In the event of any action at law or in equity, including an action for declaratory relief, between the parties arising out of or relating to this Agreement, then the prevailing party in such action will be entitled to recover from the other party a reasonable sum as attorneys' fees and costs. The prevailing party will be determined in accordance with Civil Code Section 1717(b) (1) or any successor statute. The prevailing party will also be entitled to its reasonable attorneys' fees and costs in any post-judgment proceedings to collect or enforce the judgment. This provision is separate and several and will survive the merger of this Agreement into any judgment on this Agreement.

21. General Provisions

a. Article 19 Miscellaneous provisions contained in the FINANCIAL AND OPERATIONAL MOU dated July 1, 2018, as renewed and/or amended, shall apply to this Agreement and are incorporated herein by reference.

b. This Agreement shall control over any inconsistent provisions in Charter School's charter or the MOU.

c. This Agreement shall not be considered a lease or other agreement as described in Education Code sections 17400 *et seq.*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates set forth below.

NAPA VALLEY
LANGUAGE ACADEMY

By: 

Date: 6/5, 2019

NAPA VALLEY UNIFIED
SCHOOL DISTRICT

By: 

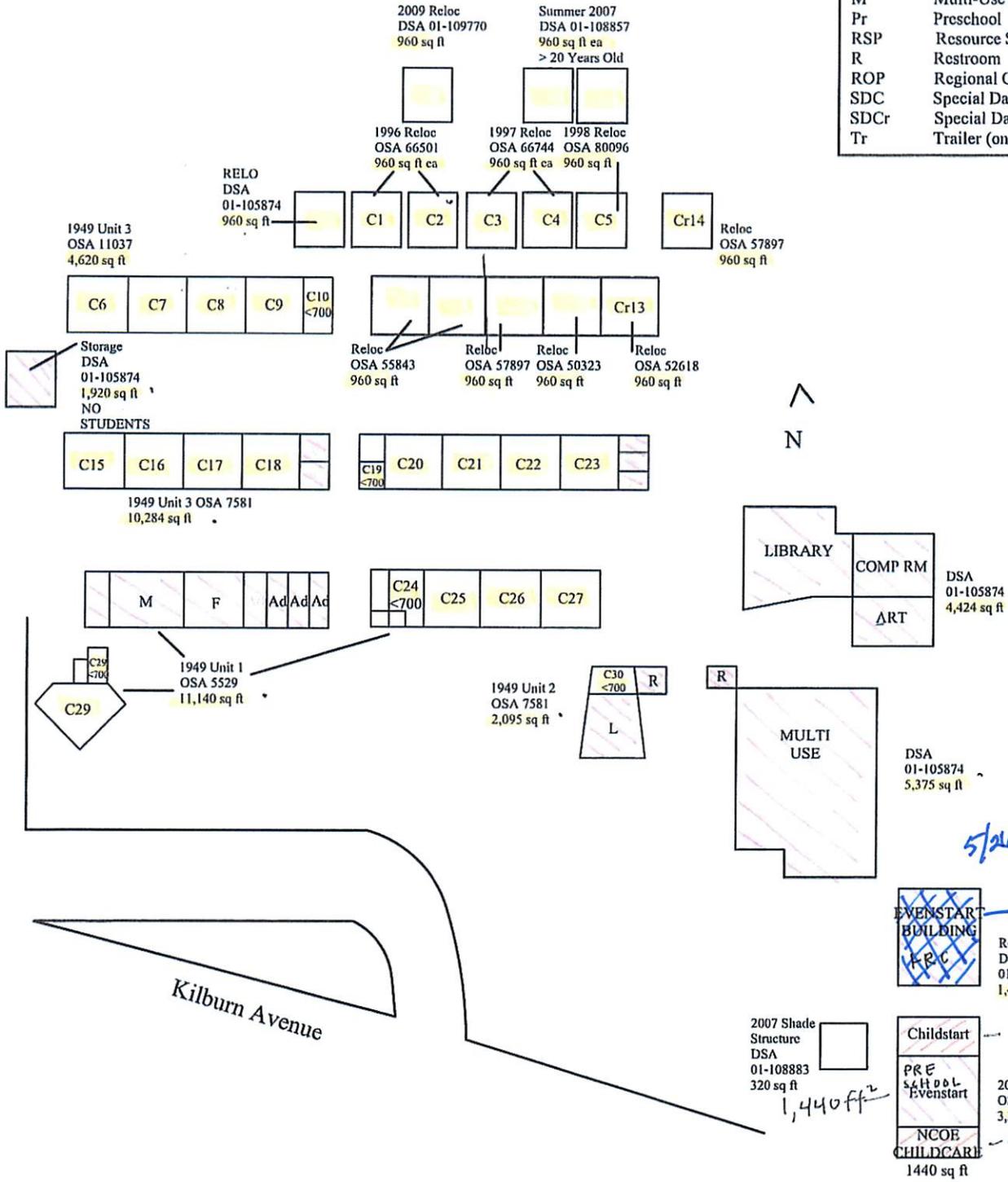
Date: 5/30, 2019

**EXHIBIT A
PREMISES DEPICTION / SITE MAP**

NAPA VALLEY UNIFIED SCHOOL DISTRICT
 Napa Valley Language Academy (Westwood)
 2700 Kilburn Avenue
 Napa, CA 94558

TOTAL 14.6 ACRES

Ad	Administration
C	Classroom (inc. labs, shops)
CC	Childcare
Cr	Classroom Relocatable
F	Faculty Room (current location)
G	Gymnasium
HdSt	Head Start
Hlth	Healthy Start
L	Library (current location)
Lr	Library Relocatable (current location)
M	Multi-Use Room
Pr	Preschool
RSP	Resource Specialist
R	Restroom
ROP	Regional Occupation Program
SDC	Special Day Class
SDCr	Special Day Class Relocatable
Tr	Trailer (on wheels)



Site Built (Including Modular Construction on Permanent Foundations) : 42,738 sq. ft.

Relocatable (On Wood Foundations) : 16,320 sq. ft. (Includes Storage Room)

Walkways and Lunch Covers 320 sq. ft.

2 [diagonal lines] = county

21 [diagonal lines] = non teacher

36 [yellow] = regular

[diagonal lines] = SPED

EXHIBIT B
NAPA VALLEY LANGUAGE ACADEMY– CURRENT FACILITIES
SCHEDULE OF FACILITIES FEES
(Based on District Costs)

Facility Square Footage: 55,698

Total Facilities Rate= \$7.96 per square foot

Total Facilities Rate includes:

Facilities Rate: \$3.49 per square foot

Includes:

- **Facilities Maintenance Fee**
- **Facility Use Fee**
- **Property and Liability Insurance**

Custodial Rate: \$4.47 per square foot

- **Custodial and Grounds Fee**

Other Charges

- | | |
|---|--------------------|
| <input type="checkbox"/> Telephone Service | Actual Cost |
| <input type="checkbox"/> Utilities (Electricity and Water) | Actual Cost |
| <input type="checkbox"/> Waste Disposal (Garbage and Sewage) | Actual Cost |
| <input type="checkbox"/> Work Orders as Needed | Actual Cost |

The Parties agree to the above marked facilities fees for the 2019-20 fiscal year commencing on July 1, 2019.

EXHIBIT B
(Continued)
DESCRIPTION OF FACILITIES FEES

Facility Maintenance Fees: These fees are charged to charter schools operating in District facilities. The fees contribute to the District costs of long-term maintenance of the facility. Such maintenance includes building, equipment, TV/VCR, grounds, maintenance, administration of these services and other facility maintenance pursuant to work orders. These fees support the District's eligibility for state modernization funds. Facility service fees are based on the District's costs included in the Standard Account Code Structure (SACS) 8100 account codes.

Facility Use Fee: This fee is charged to charter schools operating in District facilities and contributes to the District's costs to acquire, construct and provide deferred maintenance that District pays for with unrestricted general fund revenues. The facility use fee is based on the District's costs included in the SACS 8500 and 9000 account codes.

Custodial and Grounds Fees: This includes the District staffing allocation for custodial services, grounds maintenance, administrative support and related supplies.

Property and Liability Insurance: This contributes to the District's public property and liability insurance and self-insured retention if a charter school is operating in a District facility. The District may also require Charter School to purchase property and liability insurance separately.

Miscellaneous Services: Telephone; utilities of gas, electric, sewer and water; waste disposal and miscellaneous work orders provided to the District facility used by the Charter School are charged at the actual cost to the District.

"Total Facilities Rate" includes the following services charged based on square footage:

- custodial and grounds fees facilities maintenance fees,
- property and liability insurance and facility use fees