



SACRAMENTO CITY UNIFIED SCHOOL DISTRICT BOARD OF EDUCATION

Agenda Item 9.1f

Meeting Date: August 2, 2018

Subject: Approve Facility Use Agreement for NorCal Trade and Tech

- ☐ Information Item Only
- ☒ Approval on Consent Agenda
- ☐ Conference (for discussion only)
- ☐ Conference/First Reading
- ☐ Conference/Action
- ☐ Action
- ☐ Public Hearing

Division: Academic Office

Recommendation: Approve Facility Use Agreement between Sacramento City Unified School District and Success Skills, Inc.: NorCal Trade and Tech.

Background/Rationale: The District approved the initial charter petition for NorCal Trade and Tech on January 18, 2018 for a term of five years effective July 1, 2018 to June 30, 2023. NorCal Trade and Tech intends to operate in numerous locations with private leases and one district-owned property for the charter school's operations and educational programs. The mutually negotiated Facility Use Agreement is not within the auspices and requirements of Proposition 39, where districts are obligated to provide facilities to charter schools. Per the Board's direction, the District may provide the facility located at 2401 Florin Road to the charter school only with no costs to the District. NorCal Trade and Tech will pay the District "Facility Use Fees" based on a pro rata share facilities cost for the use of District facilities as described within the agreement.

Financial Considerations: The financial considerations are outlined within the Facility Use Agreement.

LCAP Goal(s): Family and Community Empowerment

Documents Attached:

1. Facility Use Agreement between Sacramento City Unified School District and NorCal Trade and Tech

Estimated Time of Presentation: N/A

Submitted by: Iris Taylor, Chief Academic Officer

Jack Kraemer, Innovative Schools and Charter Oversight, Director

Approved by: Jorge A. Aguilar, Superintendent

FACILITIES USE AGREEMENT

This Facilities Use Agreement (“Agreement”) is made by and between Sacramento City Unified School District (“District”) and Success Skills, Inc., a California non-profit public benefit corporation (“Non-Profit”), which operates NorCal Trade and Tech, a charter school (“Charter School”). The Non-Profit and District are collectively referred to as the “Parties.”

RECITALS

- A. WHEREAS, the District and its charter schools are partners in the public education of students and it is the District’s intent to ensure that its facilities are shared equally with all of its students, including those students who attend its charter schools housed in District facilities.
- B. WHEREAS, District is the owner of certain real property located at 2401 Florin Road, Sacramento, California, 95822 (“Site”).
- C. WHEREAS, the Charter School is a charter school duly formed and approved by the District under the laws of the Charter Schools Act of 1992 (Education Code §§ 47600, *et seq.*) serving adults and high school age students in the 2018-2019 to 2022-2023 school years.
- D. WHEREAS, the Charter School desires to use certain District facilities (“Facilities”) located on the Site for its public charter school program.

AGREEMENT

NOW THEREFORE, in consideration of the covenants and conditions of this Agreement, the Parties hereby agree as follows. All obligations imposed hereby on the Charter School are equally imposed on the Non-Profit.

- 1. Recitals. The recitals set forth above are incorporated herein and made part of this Agreement.
- 2. Facilities. Use of the Facilities shall be for the purposes set forth in the Charter School’s charter, and on the terms and conditions set forth herein. The District grants use of the following Facilities located on the Site, as described and/or depicted in Exhibits A and B, which are attached hereto and incorporated herein by reference, to the Charter School under the terms and conditions set forth in this Agreement. The District reserves the right to use facilities, or assign facilities, at the Site that have not been designated or assigned to the Charter School.
- 3. AS IS Condition. Except as set forth in this Agreement, District makes no representations of any kind as to the conditions of, on or under the Facilities or Site. Charter School has inspected the Facilities and Site and takes the Facilities and Site in

their “as is” condition. District has no responsibility to make any modifications to the Facilities or Site that may be required to prepare the Facilities or Site for Charter School to carry its public charter school program. Furthermore, District makes no representations or warranties regarding the fitness or suitability of the Facilities or Site for Charter School’s intended use of same.

4. Term. The term of this Agreement shall be from September 1, 2018 to June 30, 2023 (“Term”), unless earlier terminated as provided herein.
5. Facilities Use Fee. Each and every school year during the Term, Non-Profit shall pay District a Facilities Use Fee. Facilities Use Fees shall be paid out in equal installments each month throughout the respective school year within the Term. Beginning on September 1, 2018, payments shall be payable on or in advance on the first day of each month (“Due Date”) in lawful money of the United States.

The calculation for the 2018-2019 school year Facilities Use Fee and the terms of Facilities Use Fee payments are described with more particularity in Exhibit C, attached hereto and incorporated herein. These Facilities Use Fees will be calculated and adjusted annually by the District. The Facility Use Fee shall be based on a pro rata cost estimate per square foot for the Facilities provided. To calculate the fee, the District must determine actual facilities costs and total space figures in the year preceding the fiscal year in which the Facilities are provided. Such amounts may only become available to the District after each fiscal year ends. Therefore, within ninety (90) days of the beginning of each fiscal year, or as soon as the actual facilities costs and total space figures for the prior fiscal year become available, whichever is later, the District shall provide notice to the Non-Profit of any amended Facilities Use Fee calculations based on the actual data for the prior fiscal year. Amounts owed to or by the Non-Profit due to this calculation will be credited or added to subsequent remaining monthly installment payments of the Facilities Use Fees.

If any payment is made more than fifteen (15) days after the Due Date, a late fee of one percent (1%) shall apply and interest shall accrue thereafter on such late payment commencing thirty (30) days after the Due Date, provided however that no interest shall accrue on said late fee. The interest charged shall be computed at the then-current discount rate established by the Federal Reserve Bank of San Francisco plus five percent (5%), or the maximum rate permitted by law. The payment by the Non-Profit of any late fees or interest shall in no event excuse or cure any default by the Non-Profit nor waive District’s legal rights and remedies with respect to such default.

Actual costs for out-of-District students shall be paid at the Facilities Use Fee rate or up to market rate, whichever is greater. The Parties agree to and shall meet at least annually, on or about November of each year, and no later than December, and more often if requested by a Party, to determine the number of enrolled out-of-District students. The Facilities Use Fee to be paid for out-of-District students, including, pursuant to Exhibit C, the “Out of District Charge,” may be adjusted by the District on an annual basis. The Non-Profit and the Charter School shall provide all necessary current, accurate and thorough enrollment information for all out-of-District students upon request by District,

to enable District to determine then current out-of-District student enrollment. Failure to comply with these obligations will constitute a material breach of this Agreement. The District is required to provide written notification to Charter School of fee changes for out-of-District students no later than June 30 for implementation following the next school year. When recalculated annually, and upon receiving written notification, Charter School may terminate the Facility Use Agreement, if the Out-of-District Charge increases by 10% or more of the prior school year's Out of District Charge rate, with written notification to the District no later than 90 working days after receipt of the District notification. If this Agreement is terminated, the Charter School shall completely vacate the facility no later than June 30 of the school year in which the Agreement is terminated.

6. Over-Allocation. The District reserves the right to collect over-allocation and other applicable fees and reimbursements from the Charter School, pursuant to Title 5, California Code of Regulations, section 11969.8. The Charter School's projected in-District Average Daily Attendance ("ADA") for the 2018-2019 school year, and upon which the Facilities are provided, is 180.
7. Dispute Resolution. The Parties agree to attempt to resolve all disputes regarding this Agreement, including the alleged violation, misinterpretation, or misapplication of the Agreement, pursuant to the dispute resolution procedures identified in the Charter School's charter. Notwithstanding the foregoing, if any such dispute concerns facts or circumstances that may be cause for revocation of the Charter School's charter, the District shall not be obligated by the terms of any dispute resolution procedures as a precondition to revocation.
8. Use.
 - (a) Public Charter School. The Facilities shall be used and occupied by the Charter School for the sole purpose of operating a California public charter school and for no other purpose without the prior written consent of the District. The Charter School's enrollment must not exceed the safe and legal limit for the classroom space it occupies.
 - (b) Insurance Risk. The District shall maintain first party property insurance for the Facilities. The Charter School shall not do or permit anything to be done in or about the Facilities 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 Facilities, or any of the contents of the Facilities (unless the District gives its prior approval and the Non-Profit pays any increased premium as a result of such use or acts), or cause a cancellation of any insurance policy covering the Facilities 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 the Facilities any articles which may be prohibited by a standard form policy of fire insurance. The Charter School shall provide adequate and appropriate supervision for Charter School students and employees using the Facilities.
 - (c) Rights of the District. The Charter School shall not do or permit anything to be done in or about the Facilities that will in any way obstruct or interfere with the rights of the District or injure the District. The Charter School shall not use or allow the Facilities to

be used for any unlawful purpose, nor shall the Charter School cause, maintain or permit any nuisance in or about the Facilities. The Charter School shall not commit or suffer to be committed any waste in or upon the Facilities.

(d) Illegal Uses. The Charter School shall not use the Facilities or permit anything to be done in or about the Facilities that will in any way conflict with any applicable law, statute, ordinance or governmental rule, or regulation. The Charter School agrees to comply with its charter as it relates to District Facilities.

(e) Security Badges. The Charter School will provide identification cards to its staff. The identification cards will be pictured with school name, logo, staff names, and titles. All Charter School staff shall carry and have visible their identification card at all times while at the Site. This will assist District security and other staff to identify Charter School staff as needed. In the event a co-location with a District program occurs, both the Charter Schools' staff and District staff shall carry their respective identification cards at all times that they are at the Site.

(f) Civic Center Act. The 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 accessible to members of the community. The Parties understand that the Facilities are to be primarily used for school programs and activities and as such any use of the Facilities by members of the community shall not interfere with school activities. District Board Policy and Administrative Regulations related to the Civic Center Act shall control scheduling, use and collection of fees related to use of the Facilities by members of the public. Consistent with such Board Policy and Administrative Regulations, the District shall be solely responsible for coordinating access to the Facilities under the Civic Center Act and shall require users to provide appropriate proof of insurance related to use of the Facilities and to indemnify and hold harmless the District and Charter School for injury, risk of loss, or damage to property as a result of that access by members of the community. The District agrees to promptly clean and repair, if necessary, any portion of the Facilities used by members of the community immediately following such use. All requests for use of the Facilities made directly to the Charter School shall be forwarded to the District for coordination of use consistent with Board Policy and Administrative Regulations.

(g) Alarms. The Charter School shall have access to activate burglar alarms and intruder alerts corresponding to the Facilities provided at the Site. The Charter School agrees that in the event that any of Charter School's employees, directors, trustees, officers, agents, students, visitors, or contractors, trigger a false alarm at the Site, Charter School shall be responsible for costs incurred. The Charter School agrees to fully pay for the cost of all alarms and services for facilities and related areas that it occupies on district owned property.

9. Furnishings and Equipment. The furnishings and equipment provided, if any, by the District for the Facilities are those furnishings and equipment that exist at the Facilities as of July 1, 2018. The Charter School is responsible for any furnishings and equipment over and above those provided, if any, by the District. The Charter School shall return all

such furniture, fixtures and equipment to the District in like condition at the termination of this Agreement, excepting ordinary wear and tear. Upon return of the furniture, fixtures, and equipment, the District will inspect said items within sixty (60) calendar days. The Charter School shall be responsible for costs to repair or replace furniture, fixtures, and equipment to like condition, excepting ordinary wear and tear. All furniture, fixtures, and equipment that are not the property of the District or are not otherwise reimbursed by the District shall remain the property and under the ownership of the Charter School and shall be disposed of according to the provisions of the approved Charter School charter - petition.

10. Utilities. District agrees to furnish or cause to be furnished to the Facilities necessary utilities. Utilities include, but are not limited to, electrical, natural gas, sewer, waste disposal/recycling and water services. Due to cost containment efforts by the District, the number of bins associated with the Site(s), the bin capacities and the number of removals per week shall not increase during the Term of this Agreement. The District's failure to furnish or cause to be furnished necessary utilities when such failure is caused by (i) Acts of God or other acts beyond the control or fault of the District; (ii) strikes, lockouts, or other labor disturbances or labor disputes of any kind; (iii) any laws, rules, orders, ordinances, directions, regulations, requirements, or any other action by federal, state, county or municipal authority; (iv) inability despite the exercise of reasonable diligence by the District to obtain electricity, water, or natural gas; or (v) any other unavoidable delay, shall not cause the District to be in default, shall not constitute a breach of this Agreement, and shall not result in any liability of the District.

The Charter School shall reimburse the District for the cost of utilities at the Site, as charged to the District by its utility providers, pro-rated per square foot, to reflect use by other users of the Site. Thirty (30) days prior to the commencement of the 2018-2019 school year, and every subsequent school year during the Term of this Agreement, the District shall endeavor to notify the Charter School of its estimated monthly charge for utilities. The Charter School shall pay such charge to the District throughout the Term on a monthly basis concurrent with the Charter School's payment of the Facilities Use Fee to the District pursuant to Section 4 of this Agreement. Within one hundred twenty (120) days after the expiration or earlier termination of this Agreement, the District shall provide the Charter School with a reconciliation of the Charter School's actual utility usage throughout the Term and the cost thereof. The District shall either refund the Charter School for any overpayment or shall invoice the Charter School for any underpayment. The Charter School shall reimburse the District for such underpayment, if any, within thirty (30) days after receipt of said invoice.

The Charter School shall comply with all District energy conservation policies in regard to use of the Facilities, as amended from time to time, including, but not limited to, Board Policy 3511 and the District's Energy Education program.

11. Custodial Services.

Custodial service will be provided by the Charter School. Custodial Services without District staff is pursuant to the terms and conditions as defined in Exhibit D-2.

12. Signage.

(a) The Charter School shall be allowed to place signage on the exterior of the Facilities. The District will keep its own signage exhibited at the Site, identifying the school as operated or formerly operated by the District. The District shall have final approval over the design, content and location of the Charter School's signage, but shall not unreasonably deny such design, content or location. The Charter School must remove the signage upon termination of this Agreement. The Charter School must restore the Facilities, following removal of the signage, to the condition existing prior to installation of the signage to District's reasonable satisfaction.

(b) The District will ensure that all signage at the Facilities that are required by law or regulation will be posted. The District will install and such signage at the Charter School's sole cost, pursuant to those costs traditionally captured in a work order for the Site.

(c) All signage, including signage contemplated in (a) and (b), above, shall be subject to compliance with all applicable laws at Charter School's sole cost.

13. Operations, Maintenance and Repairs.

(a) The Charter School shall maintain the Facilities in good order, condition, and repair at its sole expense.

(b) The Charter School shall comply with the District's policies regarding the operations and maintenance of the school facility and furnishings and equipment, except to the extent renovation is approved by the District. However, the Charter School need not comply with policies in cases where actual District practice substantially differs from official policies.

(c) Any upgrades or improvements to any wiring/MIS infrastructure shall be the responsibility of the Charter School, in compliance with Section 14 ("Alterations and Additions"). The Charter School is responsible for the cost of internet service provided at the commercial rate.

(d) Upon the expiration or earlier termination of this Agreement, Charter School shall surrender the Facilities and furnishings and equipment in the same condition as received, ordinary wear and tear excepted.

14. Alterations and Additions. The Charter School shall only make alterations, additions, or improvements ("Improvements") to the Facilities after obtaining the prior written consent of the District's Superintendent or his designee. Any Improvements to the Facilities made by the Charter School shall be paid for by the Charter School, and shall be contracted for and performed in accordance with federal, state and local law, and all applicable building code standards, including without limitation Title 24 of the California Code of

Regulations, the Field Act, the Americans with Disabilities Act, the Fair Employment and Housing Act and all applicable District policies relating to facilities construction (the "Construction Standards"). The District Superintendent or his designee will identify persons with whom the Charter School can communicate to seek information regarding District policies and to obtain consent for Improvements.

The District may impose as a condition to the aforesaid consent such requirements as the District may deem necessary in its sole discretion, including without limitation, the manner in which the work is done, a right of approval of the contractor by whom the work is to be performed, and the times during which it is to be accomplished.

Should the Charter School fail to obtain the prior written consent of the District's Superintendent, or the Superintendent's designee, for Improvements, the Charter School shall, upon written request by the District, immediately cease making Improvements until such written consent is obtained, and the Charter School shall bear any costs, expenses and liabilities associated with the work stoppage.

Should the Charter School fail to contract and perform the Improvements in accordance with the Construction Standards or fail to adhere to the conditions on the District's consent as described above, the District may, at its sole option, direct that the Charter School immediately cease making such Improvements, and the District may alter, repair, or improve the Facilities pursuant to paragraph 15 herein, to bring the Facilities into compliance with the Construction Standards and/or the conditions on the District's consent, and the Charter School shall be responsible for all such costs and expenses incurred by the District for such alterations, repairs or improvements. No Improvement shall be made which reduces or otherwise impairs the value of the Facilities. No Improvements shall be commenced until Charter School has first obtained and paid for all required permits and authorizations of all governmental authorities having jurisdiction with respect to such Improvements. All Improvements shall be made in a good workmanlike manner and in compliance with all laws, ordinances, regulations, codes and permits.

Upon written reasonable request of the District prior to the expiration or earlier termination of the Agreement, the Charter School will remove any and all Improvements to the Facilities, at its own cost, that can be done without damage to the Facilities. In the event of charter revocation or closure of the Charter School, all property shall be disposed of in accordance with the provision of the approved Charter School charter. Unless the Parties agree otherwise in writing on an item by item basis, Charter School shall maintain its ownership rights in any Improvements and may be allowed to remove such Improvements at termination of this Agreement and restore the Facilities to their original condition which existed prior to construction or installation of the Improvements. Notwithstanding the foregoing, any Improvements to the Facilities that the Charter School does not remove prior to vacating the Facilities, shall vest in the District at District's sole discretion and election. Otherwise, removal of such Improvements shall be at Charter's expense.

15. Entry by District. The District may enter the Facilities at any time to inspect the Facilities,

to supply any service to be provided by the District to the Charter School hereunder and to alter, improve or repair the Facilities, or in the case of an emergency.

The District may erect scaffolding and other necessary structures where reasonably required by the character of the work to be performed so long as the Charter School operations do not suffer unreasonable interference. The District agrees to use its best efforts at all times to keep any interference to the academic programs at the Charter School to a minimum. The Charter School waives any claim for damages for any inconvenience to or interference with the Charter School's business, any loss or use of quiet enjoyment of the Facilities related to District's entry for the purposes identified in this Section.

16. Employees, Contractors and Independent Contractors. The Charter School and the District, their employees, agents, contractors and subcontractors shall comply with the requirements of Education Code sections 45125.1 and 45125.2 related to access to the Facilities and protection of minor students.
17. Indemnity. The Non-Profit shall indemnify, hold harmless, and defend the District, its Board of Trustees, the members of its Board of Trustees, officers, employees and agents against and from any and all claims, demands, actions, suits, losses, liabilities, expenses and costs for any injury, death or damage to any person or property arising from the Charter School's use of the Facilities, excepting those claims, demands, actions, suits, losses, liabilities, expenses and costs arising from the negligent or intentional acts of the District, its employees, agents, officers and invitees.

The Non-Profit shall further indemnify, hold harmless, and defend the District, its Board of Trustees, the members of its Board of Trustees, officers, employees and agents against and from any and all 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, and from all costs, attorneys' fees, and liabilities incurred in or about the defense of any such claim or any action or proceeding brought thereon, excepting those claims, demands, actions, suits, losses, liabilities, expenses and costs arising from the negligent or intentional acts of the District, its employees, agents, officers and invitees.

The District shall indemnify, hold harmless, and defend the Non-Profit, its trustees, officers, and agents against and from any and all claims, demands, actions, suits, losses, liabilities, expenses and costs for any injury, death or damage to any person or property arising from the District's conduct of business at the Facilities, excepting those claims, demands, actions, suits, losses, liabilities, expenses and costs arising from the negligent or intentional acts of the Charter School, its employees, agents, officers and invitees.

The District shall further indemnify, hold harmless, and defend the Non-Profit against and from any and all 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, and from all costs, attorneys' fees, and liabilities incurred in or about the defense of any such claim or any action or proceeding brought thereon, excepting those claims, demands, actions, suits, losses, liabilities, expenses and costs arising from the negligent or intentional acts of the District, its employees, agents, officers and invitees.

Upon becoming aware of any casualty or accident in or on the Facilities, each Party to this Agreement shall give prompt written notice thereof to the other Party.

In the event of a third party claim or potential claim covered by these provisions, the Parties agree to take all steps reasonable or necessary to cooperate in defending and protecting their joint interests, and in expediting all reasonable or necessary efforts to gain coverage for the Parties under any liability policy or indemnity agreement issued in favor of the Non-Profit, including indemnity rights or agreements existing in contracts between the Non-Profit and any third party (such as contract with a supplier of goods or services), and further including efforts to reduce defense costs (through joint representation whenever possible), expenses and potential liability exposures.

18. Insurance. The Charter School, at the Charter School's sole cost and expense, shall obtain and keep in full force and effect, beginning on or before July 1, 2018, and continuing throughout the Term, the following insurance:

- Liability Insurance. Commercial general liability insurance with respect to the Site and the operations of or on behalf of the Charter School in, on or about the Site, including but not limited to: bodily injury, product liability (if applicable), blanket contractual, broad form property damage liability coverage in an amount not less than Five Million Dollars (\$5,000,000) in the aggregate, and excess liability coverage on a basis consistent with coverage for schools or a type similar to the Charter School as required by District as a public school district. In addition, the Charter School shall procure, pay for and keep in full force and effect primary automobile liability insurance in an amount not less than Three Million Dollars (\$3,000,000) per occurrence covering owned, hired and non-owned vehicles used by the Charter School. Such commercial general and automobile policies shall contain (i) severability of interest, (ii) cross liability, and (iii) an endorsement stating "Such insurance as is afforded by this policy for the benefit of Sacramento City Unified School District shall be primary with respect to any liability of claims arising out of the occupancy of the Site by the Charter School, or out of the Charter School's operations, and any insurance carried by Sacramento City Unified School District shall be excess and non-contributory."
- Workers' Compensation, Employer Liability. Workers' Compensation insurance as required by law and Employer's Liability insurance in an amount not less than One Million Dollars (\$1,000,000).

If there is any other written agreement or agreements between the District and the Charter School that obligates the Charter School to have different policy limits, then the Charter School shall hold the highest of the policy limits required by the agreements.

Property Insurance: District shall maintain property insurance against fire, vandalism, malicious mischief and such other additional perils as now are or hereafter may be included in a standard "All Risks" coverage, including coverage for earthquake and sprinkler

leakage.

Insurance Policy Criteria: All policies of insurance required to be carried by the Charter School shall be written by responsible insurance companies authorized to do business in the State of California, rated no less than the standard that the District requires for the schools within its boundaries (A.M. Best, A-, VII, or better), or the equivalent provided through a risk-pooling joint powers authority operating pursuant to Government Code section 6500, et seq. Any insurance required of the Charter School hereunder may be furnished by the Charter School pursuant to a blanket policy carried by it or under a separate policy.

A true and exact copy of each paid-up policy evidencing insurance or a certificate of the insurer, certifying that a policy has been issued, providing the coverage required and containing the provisions specified herein, shall be delivered to District prior to July 1, 2018, and upon renewals, not less than thirty (30) days prior to the expiration of such coverage. Any policy provided by the Charter School under this Agreement shall be occurrence based, not "claims made." In addition, District shall be named as an additional insured on the liability policies. District may, at any time and from time to time, upon reasonable notice to the Charter School and at no cost to the Charter School, inspect and/or copy any and all insurance policies required hereunder.

In no event shall the policies required hereunder be considered as limiting the liability of the Charter School under this Agreement.

19. Damage to or Destruction of School Site.

(a) Cost. The cost of restoring the Facilities under this Section shall be borne by the Non-Profit if the cause of the casualty is the negligence or intentional act of the Charter School, its employees, agents, students or invitees. The cost of restoring the Facilities under this Section shall be borne by the District if the cause of the casualty is the negligence or intentional act of the District, its employees, agents, or invitees. The Parties shall tender the cost of restoring the Facilities to their respective insurance carriers if the casualty is caused by a third party.

(b) Partial Damage – Insured. If the Facilities are damaged by any casualty which is covered under fire and extended coverage insurance carried by District, then District may restore such damage provided insurance proceeds are available to pay eighty percent (80%) or more of the cost of restoration and provided such restoration can be completed within ninety (90) days after the commencement of the work in the opinion of a registered architect or engineer appointed by District. In such event, this Agreement shall continue in full force and effect, except that the Non-Profit shall be entitled to a proportionate reduction of Facilities Use Fee payments while such restoration takes place, such proportionate reduction to be based upon the extent to which the restoration efforts interfere with Charter School's business in the Facilities.

(c) Total Destruction. If the Facilities are totally destroyed (defined as the destruction of more than fifty percent (50%) of the usable classroom space) or the Facilities cannot be restored as required herein under applicable laws and regulations, notwithstanding the

availability of insurance proceeds, then this Agreement shall be terminated effective the date of the destruction.

20. Liens. The Non-Profit shall keep the Facilities free from any liens arising out of any work performed, materials furnished or obligations incurred by or on behalf of the Non-Profit or the Charter School. Notwithstanding anything stated herein to the contrary, if the Non-Profit and/or Charter School fails to promptly release and remove any such lien, District, at its sole option, may immediately (but shall not be obligated to) take all action necessary to release and remove such lien, without any duty to investigate the validity thereof, and all sums, costs and expenses, including reasonable attorneys' fees and costs, incurred by District in connection with such lien shall be immediately due and payable by the Non-Profit and Charter School, each having joint and several liability for the lien amount and all expenses incurred by District in pursuit of satisfaction and removal of the lien, including attorneys' fees and costs.
21. Holding Over. Charter School shall not remain in possession of the Facilities or any part thereof after the expiration of this Agreement or after termination thereof without the express written consent of District. Notwithstanding the foregoing, if the Charter School holds over, the Non-Profit and Charter School shall pay the monthly Facilities Use Fee plus all other charges payable required by this Agreement. Any holdover by Charter School requires the Non-Profit and the Charter School to comply with all terms of this Agreement. A holdover by the Charter School shall not trigger any additional term. The District shall have the right to remove the Charter School at any time after the expiration of the Term or termination of this Agreement.
22. Assignment and Subletting. The Non-Profit and Charter School may not assign its or their rights under this Agreement or sublet any portion of the Facilities without the prior written consent of the District.
23. Rules, Regulations and Law. The Charter School and the Charter School's agents, employees, students, visitors and invitees shall observe and comply fully and faithfully with all reasonable and nondiscriminatory policies, rules, and regulations adopted by the District for the care, protection, cleanliness, and operation of the Facilities, and the Facilities' furnishings and equipment, and shall comply with all applicable laws. The District will provide the Non-Profit with copies of the relevant written custodial and maintenance policies. The District will provide any such written policies that are amended during the term of the Agreement.
24. Smoking. Smoking or the consumption of alcohol in any form shall not be allowed in or on District property and Facilities, including but not limited to all courtyards, walkways, and parking areas.
25. Default by Non-Profit. The occurrence of any one or more of the following events shall constitute a default and material breach of this Agreement by the Non-Profit:

- (a) The failure of the Non-Profit to utilize the Facilities for the sole purpose of operating the Charter School.
- (b) The failure of the Non-Profit to make timely payments required under this Agreement.
- (c) The failure of the Non-Profit or the Charter School to observe or perform any of the express covenants, conditions or provisions of this Agreement.
- (d) The revocation or non-renewal of the Charter School's charter, or, voluntary closure of the Charter School. Notwithstanding the foregoing, this Agreement shall not be terminated pursuant to this provision provided that the Charter School continues to operate in accordance with the terms of this Agreement and is diligently pursuing a statutory appeal of the revocation or nonrenewal of its charter.

In the event of any material default or breach by Non-Profit, District may, but shall not be obligated to, terminate this Agreement and Non-Profit's right to possession of the Facilities upon thirty (30) days written notice thereof to the Non-Profit if the default is not cured within the thirty (30) day period. If the nature of the default is such that the same cannot reasonably be cured within the thirty (30) day period, the Non-Profit shall not be in default if Non-Profit shall within such thirty (30) day period commence such cure and thereafter, diligently prosecute the same to completion. In no event shall such period to cure exceed sixty (60) days.

Upon termination, District shall retain the right to recover from Non-Profit, without limitation, any amounts due under this Agreement or applicable law. Unpaid Facilities Use Fees shall bear interest from the date due at the maximum legal rate.

26. Default by District.

District shall be in default of this Agreement if District fails to perform any material obligation required by this Agreement. In the event of any default by District, Charter School may perform the action that is the obligation of the District and invoice the District for the reasonable costs thereof. Prior to taking such action, the Non-Profit must provide thirty (30) days written notice thereof to the District if the District has failed to cure the default within thirty (30) days, unless the nature of the default is such that the same cannot reasonably be cured within said thirty (30) day period, in which event District shall not be in default (and Charter School may not terminate this Agreement) if District commences to cure such default within such thirty (30) day period and thereafter, diligently prosecutes the same to completion.

27. Miscellaneous.

- (a) Waiver. The waiver by either Party of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of any charge hereunder by the District or payment of any

charge by the Non-Profit shall not be deemed to be a waiver of any preceding default by the Non-Profit or District of any term, covenant or condition of this Agreement, other than the failure of the Non-Profit to pay the particular charge so accepted, regardless of District's knowledge of such preceding default at the time of the acceptance of such charge.

(b) Headings. The marginal headings, captions, 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) Amendment. No provision of this Agreement may be amended or modified except by an agreement in writing signed by the Parties hereto.

(e) Construction. Each of the Parties acknowledges and agrees that this Agreement is to be construed as a whole according to its fair meaning and not in favor of nor against any of the Parties as draftsman or otherwise.

(f) Venue. Any action or proceeding by any Party to enforce the terms of this Agreement shall be brought solely in the Superior Court of the State of California for the County of Sacramento.

(g) Applicable Law. This Agreement shall be governed by and interpreted under the laws of the State of California applicable to instruments, persons, transactions and subject matter that have legal contacts and relationships exclusively within the State of California.

(h) Severability. If any provision or any part of this Agreement is for any reason held to be invalid, unenforceable or contrary to public policy, law, or statute and/or ordinance, the remainder of this Agreement shall not be affected thereby and shall remain valid and fully enforceable.

(i) Prevailing Authority. In the event of a conflict between the law and the terms of this Agreement, the law shall prevail, and any such conflicting terms shall be severed from this Agreement and nullified. In the event of a conflict between the terms of the charter and the terms of this Agreement, the terms of this Agreement shall prevail and shall be deemed an amendment to the charter, replacing any conflicting terms therein. In the event of a conflict between the terms of the charter and any other agreement between the Charter School and the District, the terms of this Agreement shall prevail and shall be deemed an amendment to any other such agreement, replacing any conflicting terms therein.

If any terms or provisions within this Agreement conflict or are not consistent with the terms within Exhibit E, herein, then the terms of Exhibit E shall prevail and shall be interpreted as the intention of the Parties over any conflicting or inconsistent terms.

(j) No Admission. Except as expressly agreed herein, nothing contained herein shall constitute an admission of fact or law.

(k) Binding Obligation. If and to the extent that the Non-Profit is a separate legal entity from the District, the Non-Profit expressly agrees that this Agreement is a binding obligation on the Non-Profit and the Charter School and the District agrees that this Agreement is a binding obligation on the District.

(l) 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.

(m) Subject to Approval by Governing Board. This Agreement shall become effective upon ratification by the District's Governing Board.

(n) Notices. All notices and demands that may be or are to be required or permitted to be given by either Party to the other hereunder shall be in writing. All notices and demands by the District to the Non-Profit or the Charter School shall be sent by United States Mail, postage prepaid, addressed to the Non-Profit or the Charter School at the address set forth below. All notices and demands by the Non-Profit and/or Charter School to the District shall be sent by United States Mail, postage prepaid, addressed to the District at the address set forth below.

To District:

Sacramento City Unified School District
Attn: Jack L. Kraemer, Director, Innovative Schools
and Charter Oversight
5735 47th Avenue
Sacramento, CA 95824
Facsimile: 916-399-2058

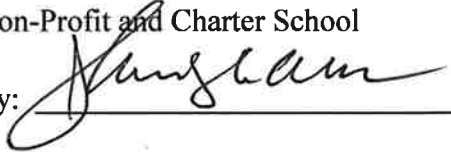
To Non-Profit or Charter School:

Attn: Mike Brunelle
Success Skills, Inc.
3501 Mesa Verdes Drive
El Dorado Hills, CA 95762
Facsimile: (916) 597-2148

(o) Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original of the Agreement. Signatures transmitted via facsimile or portable document format ("pdf") to other Parties to this Agreement shall be deemed equivalent to original signatures on counterparts.

(p) Warranty of Authority. Each of the persons signing this Agreement represents and warrants that such person has been duly authorized to sign this Agreement on behalf of the Party indicated, and each of the Parties by signing this Agreement warrants and represents that such Party is legally authorized and entitled to enter into this Agreement.

Non-Profit and Charter School

By: 

Date: 7-20-18

Sacramento City Unified School District

By: _____
Jorge Aguilar, Superintendent

Date: _____

Approved and ratified this _____ day of _____, 201_, by the Board of Education of the Sacramento City Unified School District by the following vote:

AYES:

NOES:

Abstentions:

Secretary to the Board of Education

EXHIBIT A – Description and Square Footage of Facilities

Except as otherwise provided herein, Charter School will have use of the following Facilities:

[AS APPLICABLE, LIST CLASSROOMS, OFFICE SPACE, RESTROOMS, PORTABLES, AND OTHER FACILITIES TO BE MADE AVAILABLE TO CHARTER SCHOOL. INCLUDE SQUARE FOOTAGE. ALSO INDICATE ANY SHARED FACILITIES, SUCH AS MULTIPURPOSE ROOMS AND PLAYING FIELDS, AND ANY SCHEDULE FOR SHARED USE, IF KNOWN. INDICATE LOCATION AND NUMBER OF PARKING SPACES FOR CHARTER SCHOOL STAFF AND VISITORS.]

[Will be provided by SCUSD]

EXHIBIT B – Map or Site Diagram of (2401 Florin Road) Campus Facilities/Buildings and Other Property

[Will be provided by SCUSD]

Exhibit C – Facilities Use Fee

For the 2018- 2019 school year, Non-Profit shall pay District an initial estimated Facilities Use Fee of Fourteen Thousand Four Hundred Forty-Eight Dollars and Zero Cents (\$14,448.00) based on a pro rata Facilities cost estimate of \$2.15 per square foot for the use of approximately Six Thousand Seven Hundred Twenty (6,720) square feet of the Facilities during the Term of the Agreement. The Facilities Use Fee shall be paid out in equal installments of One Thousand Two Hundred Four Dollars and Zero Cents (\$1,204.00) each month throughout the fiscal year. The aforementioned is based on enrollment of 100% of the students from in-district. In the event fewer than 100% of Charter School students are residents of the District, the Facilities Use Fee will be adjusted, for 2018-2019 and every subsequent school year, as follows: multiply Six Thousand Seven Hundred Twenty (6,720) square feet by the percentage of students who are in-District, and multiply this number of square feet by \$2.15 (“In-District Charge”). In addition, multiply Six Thousand Seven Hundred Twenty (6,720) square feet by the percentage of student who are out of District, and multiply this number of square feet by an “Out of District Charge”. The Out of District Charge is based upon a calculation of market rates, as determined by the District. The Out of District Charge will be recalculated every school year. The Out of District Charge for the 2018-2019 school year is ten dollars (\$10.00) per square foot.

The Facilities Use Fee will be the In District Charge and Out of District Charge added together. Beginning on September 1, 2018, payments shall be payable on or in advance on the first day of each month (“Due Date”), without deduction, offset, prior notice or demand, in lawful money of the United States.

The District will re-calculate and adjust these fees annually for the remaining fiscal years for the Term of this Agreement.

In the event that there are adjustments made to the allocation of space, the Facilities Use Fee will be calculated according to the square feet allocated.

Exhibit D1 – Custodial Services: Utilizing District Staff

a. Routine Services. The District shall be responsible for providing the “routine” or regularly scheduled daily or weekly custodial services for the Facilities. The level of said services will be consistent with the District’s standard practices and policies. The District’s standard policies will be provided to the Non-Profit. Said services will be provided by District employees, and the Charter School has the right to report dissatisfaction with the custodial services so that the District will take any corrective action that may be appropriate. The Charter School shall have the right to direct the custodian to perform specific duties that are within the scope of the custodian’s job duties. The Charter School will reimburse the District for the actual costs, including but not limited to time and labor (including, salary, and benefits and payroll taxes), to provide custodial services for the Facilities.

Said reimbursement shall also include all actual costs incurred by the District. The District will invoice the Charter School quarterly for these services. The Charter School will pay each invoice within thirty (30) days of receipt. The Charter School shall provide any cleaning supplies and tools necessary for those District personnel to provide custodial services, including but not limited to toilet paper, soap, and paper towels.

b. “Deep Cleaning” Services. The parties also understand that, from time to time, additional custodial services may be required for “deep cleaning”. These services may occur on a bi-annual, annual or semi-annual basis and include, but are not limited to: high dusting and power washing. The Charter School will reimburse the District for these services in the same manner as “Routine” services as outlined above.

c. Additional Services. Should the Charter School require additional custodial services above the District’s standard practices and policies, or for special events, those costs to the Charter School will be assessed separately as requested.

d. Collective Bargaining Agreements. Utilization of District Staff will include agreement to comply with all of the Collective Bargaining Agreement terms and conditions, if any, of the respective member’s Bargaining Unit. This includes terms and conditions regarding seniority, placement, transfers, and termination.

Exhibit D2 – Custodial Services: Not Utilizing District Staff

- Charter School is responsible for the routine or regularly scheduled custodial services
- Facilities Oversight
 - Charter School staff custodial staff shall participate in all custodial trainings provided by the District
 - Charter School custodial staff to attend two District meetings per school year
 - Standard of care is the District FIT or other agreed upon standard
 - Charter School custodial staff to complete one written FIT report per school year per requirements of the District
 - District staff to have unannounced inspections and visits
 - Cost to Charter School: \$2,000 per school year for training and meetings
- Charter School is responsible for damages and costs incurred due to lack of appropriate routine maintenance
- Charter School agrees to have district staff and utilize Exhibit D1 if it fails to meet the agreed upon standard of care after a remediation period

Exhibit E – Amended Terms

[RESERVED]