

CAPISTRANO UNIFIED SCHOOL DISTRICT
33122 Valle Road
San Juan Capistrano, CA 92675
BOARD OF TRUSTEES
Special Meeting

October 24, 2018

Closed Session 4:30 p.m.
Open Session 5:00 p.m.

AGENDA

CLOSED SESSION AT 4:30 P.M.

1. **CALL TO ORDER – ROLL CALL**
2. **CLOSED SESSION COMMENTS**
3. **CLOSED SESSION** (as authorized by law)

A. PUBLIC EMPLOYEE EMPLOYMENT/APPOINTMENT

EXHIBIT A-1

Tim Brooks
Executive Director, Alternative Dispute Resolution/Compliance
(Pursuant to Government Code § 54957)

B. PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE

Tim Brooks
Two Cases
(Pursuant To Government Code § 54957)

RECORDING OF SCHOOL BOARD MEETINGS

In accordance with Board Policy 9324, Board Minutes, all Regular School Board Meetings will be audio recorded.

OPEN SESSION AT 5:00 P.M.

CALL TO ORDER – ROLL CALL

PLEDGE OF ALLEGIANCE

ADOPTION OF THE AGENDA

REPORT ON CLOSED SESSION ACTION

BOARD AND SUPERINTENDENT COMMENTS

ORAL COMMUNICATIONS (Non-Agenda Items)

Oral Communications will occur immediately following Board and Superintendent Comments. The total time for Oral Communications shall be twenty (20) minutes. Individual presentations are limited to a maximum of three (3) minutes per individual.

PUBLIC HEARING

1. PUBLIC HEARING: PRESENTATION OF RENEWAL PETITION FOR CAPISTRANO CONNECTIONS ACADEMY CHARTER SCHOOL:

**INFORMATION/
DISCUSSION**

A Public Hearing is scheduled before the Board of Trustees, which necessitates this Board item. Capistrano Connections Academy charter school has presented a renewal petition for a Charter School within the District. Due to the size of the exhibit, the information can be viewed by clicking here:

Page 1

EXHIBIT 1

<https://drive.google.com/drive/folders/188yxNym8Ez6WVWxYYAwPHZkPFNGdxc5E?usp=sharing>

CUSD WIG 1: Teaching and Learning – Engage students in meaningful, challenging, and innovative educational experiences to increase post-secondary options for all students.

Contact: Susan Holliday, Associate Superintendent, Education Services

Staff Recommendation

It is recommended the Board President open the public hearing, determine if members of the public have submitted requests to speak on this item, and after hearing any speakers, formally close the hearing.

DISCUSSION/ACTION ITEMS

2. FIRST AMENDMENT TO OCTOBER 9, 2014 FACILITIES USE AGREEMENT WITH OXFORD PREPARATORY ACADEMY:

**DISCUSSION/
ACTION**

Page 2

EXHIBIT 2

On October 9, 2014, the District and Oxford Preparatory Academy (OPA) entered into a Facilities Use Agreement (Use Agreement) which describes the terms and conditions under which OPA would occupy the Barcelona Hills Elementary School campus (site) and the facilities identified in the Use Agreement (facilities). The YMCA of Orange County (YMCA) placed a portable classroom (portable) on the site according to the agreement with the District. On October 9, 2014, the District and the YMCA entered into a separate License Agreement where the YMCA licensed the portable to the District for the purposes of operating the educational programs of OPA and/or District, and the Use Agreement entitled OPA to use the portable for its own programs. OPA no longer wishes to use the portable for its own programs and wishes to have the YMCA use the portable to provide childcare for OPA's students. On October 11, 2018, the YMCA provided written notice to the District requesting termination of the License Agreement. The District and OPA amended the Use Agreement to accommodate these changed circumstances and to make it clear the portable will no longer be considered part of the site or the facilities provided to OPA by the District according to the Use Agreement.

CUSD WIG 3: Facilities – Optimize facilities and learning environments for all students.

Contact: Clark Hampton, Deputy Superintendent, Business and Support Services

Staff Recommendation

It is recommended the Board President recognize Clark Hampton, Deputy Superintendent, Business and Support Services, to present this item.

Following discussion, it is recommended the Board of Trustees approve the First Amendment to October 9, 2014 Facilities Use Agreement with Oxford Preparatory Academy.

Motion by _____ Seconded by _____

3. **TRUSTEE APPOINTMENT PROCESS PENDING A TRUSTEE VACANCY IN TRUSTEE AREA 5:** **INFORMATION/ DISCUSSION**
Page 36
EXHIBIT 3

Area 5 Trustee, Gary Pritchard is running for the office of city council in his city of residence, Aliso Viejo. Pending the outcome of the election on November 6, Trustee Pritchard may be in a position whereby, it is necessary to resign his seat on the Board of Capistrano Unified School District. Per Board Bylaw 9223 *Filling Vacancies* and pursuant to Education Code § 5090-5095, the resignation necessitates action be taken by the Board of Trustees within 60 days of the vacancy to make a provisional appointment or call for a special election.

Trustees directed staff to provide a brief overview of the process to appoint a Trustee should a vacancy become available. In the overview staff has provided two options for Trustees along with a recommended timeline to either appoint a candidate or call for a special election.

CUSD WIG 2: *Communications – Communicate with, and engage students, parents, employees, and community members in Districtwide and community-specific decisions.*
Contact: Kirsten M. Vital, Superintendent

Staff Recommendation

It is recommended the Board President recognize Kirsten M. Vital, Superintendent, to present information on this item. This is an information item only and no Board action is necessary.

4. **RESOLUTION NO. 1819-19, TO PURSUE A PROVISIONAL APPOINTMENT TO FILL BOARD VACANCY FOR TRUSTEE AREA 5:** **DISCUSSION/ ACTION**
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EXHIBIT 4

Area 5 Trustee, Gary Pritchard is running for the office of city council in his city of residence, Aliso Viejo. Pending the outcome of the election on November 6, Trustee Pritchard may be in a position whereby, it is necessary to resign his seat on the Board of Capistrano Unified School District. Pursuant to Education Code § 5090-5095, the resignation necessitates action be taken by the Board of Trustees within 60 days of the vacancy to make a provisional appointment or call for a special election. There are no financial implications to make a provisional appointment.

CUSD WIG 2: *Communications – Communicate with, and engage students, parents, employees, and community members in Districtwide and community-specific decisions.*
Contact: Kirsten M. Vital, Superintendent

Staff Recommendation

It is recommended the Board President recognize Kirsten M. Vital, Superintendent, to present information on this item.

Following discussion, it is recommended the Board of Trustees, pending the outcome of the November 6, 2018 election, adopt Resolution No. 1819-19, To Pursue a Provisional Appointment to Fill Board Vacancy for Trustee Area 5.

Motion by _____ Seconded by _____

5. **RESOLUTION NO. 1819-20, TO ORDER AN ELECTION TO FILL BOARD VACANCY FOR TRUSTEE AREA 5:** **DISCUSSION/ ACTION**
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EXHIBIT 5

Area 5 Trustee, Gary Pritchard is running for the office of city council in his city of residence, Aliso Viejo. Pending the outcome of the election on November 6, Trustee Pritchard may be in a position whereby, it is necessary to resign his seat on the Board of Capistrano Unified School District. Pursuant to Education Code § 5090-5095, the resignation necessitates action be taken by the Board of Trustees within 60 days of the vacancy to make a provisional appointment or call for a special election. Previously, the fiscal implications were provided by the Orange County Registrar of Voters who notified

the Orange County Department of Education that the estimated cost to the District of an election to fill the vacancy would range between \$164,287 and \$181,956. The actual cost will be verified by the OCDE once the Board takes action.

CUSD WIG 2: Communications – Communicate with, and engage students, parents, employees, and community members in Districtwide and community-specific decisions.

Contact: Kirsten M. Vital, Superintendent

Staff Recommendation

It is recommended the Board President recognize Kirsten M. Vital, Superintendent, to present information on this item.

Following discussion, it is recommended the Board of Trustees, pending the outcome of the November 6, 2018 election, adopt Resolution No. 1819-20, To Order an Election to Call for a Special Election to Fill Board Vacancy For Trustee Area 5.

Motion by _____ Seconded by _____

ADJOURNMENT

Motion by _____ Seconded by _____

**THE NEXT REGULAR MEETING
WEDNESDAY, NOVEMBER 14, 2018, 7:00 P.M.
CAPISTRANO UNIFIED SCHOOL DISTRICT OFFICE BOARD ROOM
33122 VALLE ROAD, SAN JUAN CAPISTRANO, CALIFORNIA**
For information regarding Capistrano Unified School District,
please visit our website: www.capousd.org

INSTRUCTIONS FOR PRESENTATIONS TO THE BOARD BY PARENTS AND CITIZENS PRESENT AT THIS MEETING

We are pleased you can be with us at this meeting, and we hope you will return often. Your visit assures us of continuing community interest in our schools.

The members of the Board of Trustees of this District are locally elected state officials, who serve four-year terms of office, and who are responsible for the educational program of our community from grades kindergarten through twelve. They are required to conduct programs of the schools in accordance with the State of California Constitution, the State Education Code, and other laws relating to schools enacted by the Legislature, and policies and procedures which this Board adopts.

The Board is a policy-making body whose actions are guided by the school district's Mission and Goals. Administration of the District is delegated to a professional administrative staff headed by the Superintendent.

The agenda and its extensive background material are studied by each member of the Board for at least two days preceding the meeting. Board Members can call the administrative staff for clarification on any item, and many of the items on the agenda were discussed by the Board during previous meetings. These procedures enable the Board to act more effectively on agenda items than would otherwise be possible.

WHAT TO DO IF YOU WISH TO ADDRESS THE BOARD OF TRUSTEES

CLOSED SESSION: In accordance with Education Code § 35146 and Government Code § 54957, the Board may recess to Closed Session to discuss personnel matters which they consider inadvisable to take up in a public meeting.

Members of the public shall have an opportunity to address the Board regarding items on the agenda to be considered during Closed Session prior to the Board adjourning the meeting to Closed Session. Individual presentations are limited to a maximum of three minutes; however, the time assigned for individual presentations could be fewer than three minutes depending upon the total number of speakers who wish to address a specific agenda topic.

ORAL COMMUNICATIONS (Non-Agenda Items): Regular, scheduled meetings of the Board shall have a portion of each meeting devoted to Oral Communications. Oral Communications, will take place following Special Recognitions. The total time for the Oral Communications portion of regular meetings shall be twenty minutes. Individual presentations are limited to a maximum of three minutes per individual but could be less if there are a large number of Oral Communication speakers. Legally, the Board may not take action on items raised by speakers under Oral Communications. The Board may, however, at its discretion, refer items to the administration for follow-up or place topics on a future Board agenda.

ORAL COMMUNICATIONS (Agenda Items): Members of the public shall also have an opportunity to address the Board on Open Session agenda items before their consideration by the Board. Individual presentations for the Consent Calendar are limited to a maximum of five minutes for all Consent Calendar items. Individual presentations for Discussion/Action agenda items are limited to a maximum of three minutes however; the time assigned for individual presentations could be fewer than three minutes depending upon the total number of speakers, who wish to address a specific agenda topic. The total time for presentations shall be limited to twenty minutes per agenda topic, unless the Board grants additional time. The Board shall hear all presentations after any staff comments but prior to the formal discussion by Board members of the agenda topic under consideration.

Once an agenda item has been opened for public comment, no additional "Request to Address the Board of Trustees" cards shall be accepted for that topic unless otherwise approved by the Board. When addressing a specific item on the agenda, the Board may vote to allow additional public speaker time for an individual Discussion/Action item.

PUBLIC HEARINGS: Any time the Board schedules a separate public hearing on a given topic, it shall not hear speakers on that topic before the public hearing, except as to the scheduling of the hearing, nor shall it hear speakers after the hearing, except as to changes in the recommended action at the time of the hearing.

REASONABLE ACCOMMODATION

In order to help ensure participation in the meeting of disabled individuals, appropriate disability-related accommodations or modifications shall be provided by the Board, upon request, in accordance with the Americans with Disabilities Act (ADA). Persons with a disability who require a disability-related accommodation or modification, including auxiliary aids and services in order to participate in a Board meeting, shall contact the Superintendent or designee in writing by noon on the Friday before the scheduled meeting. Such notification shall provide school district personnel time to make reasonable arrangements to assure accessibility to the meeting.

CAPISTRANO UNIFIED SCHOOL DISTRICT

NOTICE OF PUBLIC HEARING

The Capistrano Unified School District Board of Trustees hereby gives notice that a Public Hearing will be held as follows:

TOPIC OF HEARING

During the Board meeting of October 24, 2018, the Capistrano Unified School District Board of Trustees will hold a hearing to accept comments from members of the public on the Renewal of the Capistrano Connections Academy Charter School Petition. Copies of Capistrano Connections Academy's Charter School Renewal Petition may be inspected at 33122 Valle Road, San Juan Capistrano, CA 92675 until October 24, 2018, between the hours of 8:30 a.m. and 4:30 p.m.

HEARING DATE: October 24, 2018
TIME: 5:00 p.m.
LOCATION: CUSD Education Center
33122 Valle Road
San Juan Capistrano, CA
949-234-9200

**CAPISTRANO UNIFIED SCHOOL DISTRICT
BOARD REPORT**

To: Board of Trustees

From: Clark Hampton, Deputy Superintendent Business and Support Services

Prepared by: Heidi Crowley, Coordinator Charter Schools and Strategic Initiatives

Date: October 24, 2018

Board Item: First Amendment to October 9, 2014 Facilities Use Agreement with Oxford Preparatory Academy

HISTORY

The District is the owner of real property located at 2300 Via Santa Maria, Mission Viejo, California 92691 (site). On October 9, 2014, the District and Oxford Preparatory Academy (OPA) entered into a Facilities Use Agreement (Use Agreement) which sets the terms and conditions under which OPA would occupy the site and the facilities identified in the Use Agreement. The YMCA of Orange County (YMCA) placed a portable classroom (portable) on the site according to an agreement with the District. On October 9, 2014, the District and the YMCA entered into a separate License Agreement where the YMCA licensed the portable to the District for purposes of operating the educational programs of the Charter School and/or District. The Use Agreement entitled OPA to use the portable for its own programs.

BACKGROUND INFORMATION

OPA no longer wishes to use the portable for its own programs and wishes to have the YMCA use the portable to provide childcare for its students. On October 11, 2018, the YMCA provided written notice to the District requesting termination of the License Agreement. The District and OPA have determined the following provisions of the Use Agreement must be amended to accommodate these changed circumstances and to make it clear the portable will no longer be considered part of the site or the facilities provided to the Charter School by the District according to the Use Agreement:

- Section 12.B(a), which states the District will make the YMCA portable available to the Charter School beginning in the 2014-2015 school year; and
- Exhibit “A,” which is a site map depicting the location of the YMCA portable for Charter use.”

CURRENT CONSIDERATIONS

The District and OPA amended the Facilities Use Agreement to accommodate these changed circumstances and to make it clear the portable will no longer be considered part of the site or the facilities provided to OPA by the District according to the Use Agreement.

FINANCIAL IMPLICATIONS

The District will no longer pay the YMCA \$600 per month. The total savings from November 2018 through June 2019 is \$4,800.

STAFF RECOMMENDATION

It is recommended the Board approve the First Amendment to October 9, 2014 Facilities Use Agreement with Oxford Preparatory Academy.

PREPARED BY: Heidi Crowley, Coordinator Charter Schools and Strategic Initiatives

APPROVED BY: Clark Hampton, Deputy Superintendent Business and Support Services

**FIRST AMENDMENT TO OCTOBER 9, 2014 FACILITIES USE AGREEMENT
BY AND BETWEEN
CAPISTRANO UNIFIED SCHOOL DISTRICT AND
OXFORD PREPARATORY ACADEMY**

This First Amendment to the Facilities Use Agreement dated October 9, 2014 (“First Amendment”) is made by and between the Capistrano Unified School District, a public school district organized and existing under the laws of the State of California (the “District”) and Oxford Preparatory Academy, a California non-profit benefit corporation whose address is 2300 Via Santa Maria, Mission Viejo, California (“Charter School”). The District and Charter School are hereinafter collectively referred to as the “Parties.”

RECITALS

WHEREAS, the District is the owner of that certain real property located at 2300 Via Santa Maria, Mission Viejo, California 92691 (“Site”);

WHEREAS, on or about October 9, 2014, the Parties entered into a Facilities Use Agreement (“Use Agreement”), which set forth the terms and conditions under which Charter School would occupy the Site and the facilities identified in the Use Agreement (“Facilities”);

WHEREAS, the YMCA of Orange County (“YMCA”) placed a portable classroom (“Portable”) on the Site pursuant to an agreement with the District;

WHEREAS, on October 9, 2014, the District and the YMCA entered into a separate License Agreement whereby the YMCA licensed the Portable to the District for purposes of operating the educational programs of the Charter School and/or District;

WHEREAS, the Use Agreement entitled Charter School to use the Portable for its own programs;

WHEREAS, Charter School no longer wishes to use the Portable for its own programs;

WHEREAS, Charter School wishes to have the YMCA use the Portable to provide childcare for Charter School’s students;

WHEREAS, on October 11, 2018, the YMCA provided written notice to the District requesting termination of the License Agreement;

WHEREAS, the Parties have determined that the following provisions of the Use Agreement must be amended to accommodate these changed circumstances and to make it clear that the Portable will no longer be considered part of the Site or the Facilities provided to Charter School by the District pursuant to the Use Agreement:

- Section 12.B(a), which states that the District will make the YMCA portable available to the Charter School beginning in the 2014-15 school year; and
- Exhibit “A,” which is a Site map depicting the location of the “YMCA Portable For

Charter Use.”

NOW THEREFORE, in consideration of the promises, mutual covenants and agreements described herein, the Parties hereby agree as follows:

AGREEMENT

1. Section 12.B(a). The following sentence is hereby added to the end of Section 12.B(a) on page 9 of the Use Agreement to reflect the Parties’ intention that the Portable will no longer be considered part of the Site or the Facilities provided to Charter School by the District pursuant to the Use Agreement: “The District will no longer make the YMCA portable available to the Charter School effective October 24, 2018.”

2. Exhibit “A” is hereby amended to remove the language stating “YMCA Portable For Charter Use.”

3. The Parties affirm that no other terms or conditions of the Use Agreement not hereby modified or amended shall be negated or changed as a result of this First Amendment.

IN WITNESS WHEREOF, the Parties have executed this First Amendment as of the dates set forth below.

Dated: _____

CAPISTRANO UNIFIED SCHOOL DISTRICT

By: _____
Kirsten M. Vital, Superintendent

Dated: 6/12/18

OXFORD PREPARATORY ACADEMY

By: *Jill Marks*
Jill Marks, Executive Director

**FACILITIES USE AGREEMENT
BY AND BETWEEN
CAPISTRANO UNIFIED SCHOOL DISTRICT AND
OXFORD PREPARATORY ACADEMY**

THIS AGREEMENT ("Agreement") is made this 9th day of October, 2014, by and between the Capistrano Unified School District, a public school district organized and existing under the laws of the State of California ("District") and OPA, Inc., a California non-profit benefit corporation, which operates Oxford Preparatory Academy, South Orange County a California public charter school (collectively "Charter School") existing under the District's oversight authority. The District and the Charter School are collectively referred to as "the parties."

RECITALS

WHEREAS, Charter School received approval of its Petition and Charter ("Approved Charter") from the District in or about March 14, 2014;

WHEREAS, on or about November 1, 2013, Charter School submitted to the District a request for facilities under the provisions of Education Code section 47614 and its implementing regulations set forth in Title 5 of the California Code of Regulations section 11969.9(a) *et seq.* (the "Proposition 39 Request") for the 2014-2015 academic year;

WHEREAS, pursuant to the requirements of Education Code section 47614 and its implementing regulations, the District has offered to provide the Charter School with facilities for its projections of in-District students;

WHEREAS, the Charter School has accepted the District's offer for use the District's former Barcelona Hills Elementary School site located at 23000 Via Santa Maria, Mission Viejo, CA, 92691 ("Site"), and the facilities at the Site ("Facilities") depicted in Exhibit "A" hereto and incorporated herein by this reference, for the 2014-2015, 2015-2016, 2016-2017, 2017-2018 and 2018-2019 academic years (the "Applicable Years"), pursuant to the conditions set forth below;

WHEREAS, the Parties desire to set forth the terms and conditions herein, pursuant to which the Charter School will occupy classrooms and use Facilities at the Site for the Applicable Years.

NOW THEREFORE, in consideration of the covenants and agreements hereinafter set forth, the parties agree as follows:

Section 1. Use of Site and Facilities.

Charter School shall have full and exclusive use of Facilities allocated to the Charter School except:

1. District and Charter School are bound by the terms of the Civic Center Act (Education Code section 38131 *et seq.*) and/or any joint use or recreational program use established by the District, and

2. District may require use of the Site and Facilities to fulfill any other legal obligation such as in support of local emergencies.

Subject to the aforementioned exceptions, the District agrees to allow Charter School exclusive use of the Site and Facilities for the sole purpose of operating the Charter School in accordance with the Approved Charter and any MOU related to its operations, as follows:

Site:	Barcelona Hills Elementary School campus 23000 Via Santa Maria Mission Viejo, CA, 92691
Grade Configuration:	Grades K-8
Regular Classrooms:	21 classrooms of Proposition 39 Space (Proposition 39 Space) 2 Non-Proposition 39 Space (Additional Space)
Specialized Classroom:	Science Lab (1 classroom) Computer Lab (1 classroom) Art Classroom (1 classroom) Music Classroom (1 classroom) Band and Locker Room (2 separate classrooms)
Non-Classroom Space:	Administration Kitchen MPR Library Storage and Custodial Nurse's Office RSP/Pullout Rooms Psychologist Room Staff Break Room
Non-classroom Outdoor Space:	Playgrounds and Fields Parking Lot

Total Facilities Allocation: The total estimated square foot allocation of facilities for the Prop 39 Space is Thirty-Seven Thousand Seventy-Seven (37,077) sq. ft. and the Additional Space is One Thousand Three Hundred Sixty (1,360) sq. ft.

Upon the termination of this Agreement pursuant to Section 8 hereof, the right to use and occupy the Site and Facilities shall revert to the District. As titleholder to the Site and Facilities (with the exception of those Charter School furnishings and equipment referenced in Section 6

below), the District reserves the right at the termination of this Agreement to recoup the full rights and benefits of such ownership, including but not limited to use of such Site and Facilities for District programs and services. If the Charter School desires to have facilities provided by the District for the 2019-2020 academic year, the Charter School must submit a facilities request pursuant to Proposition 39 no later than November 1, 2018, or the then-applicable submission deadline.

Section 2. Term.

The term of this Agreement commenced on July 1, 2014 and shall end on June 30, 2019. This Agreement is not a lease of real property pursuant to Education Code section 17455 *et seq.*

The District makes no guarantee or representation that the Site and Facilities will be available for any additional term beyond the current Term and/or that the Site shall not be required to be shared with other programs or District charter schools beyond the current Term. The District retains all rights including the right to move the Charter School in the future in conformity with law. But, as mandated by Education Code section 47614(b), the District shall not move the Charter School unnecessarily.

Section 3. Allocation of Space.

Pursuant to the requirements of Proposition 39, the allocation of classrooms and shared space on the Site and Facilities to the Charter School is based upon an assumption of 621.32 in-District ADA for the 2014-2015 school year. The allocation of space to the Charter School is made by the District with the express understanding and on the assumption that the total Proposition 39 space provided pursuant to this Agreement is based upon square footage believed sufficient for the housing of in-District classroom based ADA only.

Section 4. Subletting.

The Charter School shall not sublet Site and/or Facilities. Charter School shall not allow use of Site or Facilities by any party other than Charter School. Charter School shall not use Site or Facilities for any other purpose other than the purposes stated in the Approved Charter and any MOU related to its operations. The Charter School may operate a daycare on the Site provided that it is consistent with the Approved Charter, any MOU related to its operations, and the law.

Section 5. Civic Center Act Compliance.

The Charter School shall have primary use of the space allocated to the Charter School for the operation of its educational program pursuant to the Approved Charter during its regular school hours; provided, however, that after 5 pm during the week and all day on weekends and holidays, the Site and Facilities shall be subject to use by the public pursuant to the Civic Center Act and/or any joint use or recreational program use that has been established by the District. Civic Center Act use requests, for use of the Site and/or Facilities by users other than Charter School, shall be evaluated and handled by the District, but coordinated with the Charter School.

Charter School shall direct all Civic Center requests for use of the site to the District. All proceeds derived from the use of the Facilities pursuant to the Civic Center Act shall be the property of the Charter School and will be used by the Charter School to offset utility expenses, custodial expenses etc. The District will remit said proceeds to Charter School on a monthly basis. Direct costs collected pursuant to Education Code section 381344(g) shall be deposited into a special fund that shall only be used for direct cost purposes.

Section 6. Furniture, Fixtures and Equipment ("FF&E").

FF&E shall comprise all property not affixed to the real property including but not limited to items such as chairs, desks, filing cabinets, bookcases, library books for all grades served by the Charter School, mobile demonstration table, lab tables, stools for science lab, computer equipment, copiers, and, telephone equipment, and are described on the Furniture, Fixtures and Equipment Inventory attached hereto as Exhibit "B." The Facilities include reasonably equivalent telephone and computer data connectivity infrastructure including such items as servers, routers and switches. FF&E purchased with non-district funds are excluded from the analysis of reasonable equivalence. Charter School has elected to provide certain FF&E for its own use during the Term. District has agreed to provide the types and numbers of FF&E for Charter School's use for the Term as described in the Furniture, Fixtures and Equipment Inventory (Exhibit "B").

FF&E will be provided from existing District inventory, will be reasonably equivalent to the average FF&E provided to District students at comparison schools, and will remain the property of the District.

The Charter School shall return all District-owned FF&E in the same condition as received to the District at the end of the Term, or upon vacating the Site and Facilities, reasonable wear and tear excepted.

Charter School will be responsible for any damage to District FF&E caused by its use that is beyond reasonable wear and tear. District shall have no obligation to provide any FF&E beyond that described in the Furniture, Fixtures and Equipment Inventory Exhibit "B". However, if District provides additional FF&E, Charter School shall cooperate with District to update Exhibit "B" such that it reflects all FF&E provided by District for Charter School's use. In the event the District determines that it will repair and/or replace FF&E, said repairs and/or replacement will be performed in a manner that is consistent with District policy and practice.

The Charter School shall not sell or otherwise dispose of any District-owned Facilities or FF&E or equipment for any reason. If the Charter School deems any District-owned FF&E or Facilities to have become excess, obsolete, or beyond economical repair, the Charter School shall contact the District to request that the District remove the FF&E or Facilities from the site.

Section 7. Enrollment Cap. Charter School shall cap enrollment for its in-seat program at the Site to 720 students during the Term of the Agreement.

Section 8. Termination.

This Facilities Use Agreement will automatically terminate upon the effective date of any termination, non-renewal, or revocation of Approved Charter or the cessation of Charter School's operations for any reason, or upon the commission of a default or breach of its obligations by Charter School.

A. Default or Breach.

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

- 1) The failure by Charter School to make timely payment of any fees due under this Agreement where such failure shall continue for a period of thirty (30) days after receipt of written notice thereof by District to Charter School;
- 2) The failure by Charter School to observe or perform any of the covenants, conditions or material provisions of this Agreement to be observed or performed by Charter School (including, but not limited to, shared use or neighborhood issues, or failure by the Charter School to cooperate in a timely manner to minimize or eliminate such issues) where such failure shall continue for a period of thirty (30) days after receipt of written notice thereof by District to Charter School (hereinafter "Notice of Failure"). In the event that the Charter School makes a diligent effort to cure its failure to observe or perform any of the covenants, conditions or material provisions of this Agreement after receipt of the Notice of Failure from the District, then this Agreement shall continue for a reasonable period of time to permit Charter School to cure its failure. However, such reasonable period of time to cure shall not exceed ninety (90) days from the date of the Notice of Failure, unless agreed to in writing by the parties;
- 3) Revocation or non-renewal of Charter School's charter by the District or cessation of the Charter School's program for any reason; however, if the Charter School appeals any such revocation or non-renewal, this Agreement shall not terminate before either the Charter School has completed the appeals process and has not prevailed, or the end of the Term, whichever occurs first;
- 4) The failure by Charter School to utilize the Site or Facilities for the sole purpose of operating a charter school as authorized by this Agreement and the Charter School's charter and any MOU where such failure shall continue for a period of fifteen (15) days after receipt of written notice thereof by District to Charter School;
- 5) The failure of Charter School to limit its use of the Site and Facilities to the space allocated to Charter School pursuant to this Agreement and in conformity with the District's policies and practices for use of District facilities

where such failure shall continue for a period of fifteen (15) days after receipt of written notice thereof by District to Charter School.

Section 9. Use Fee.

Charter School shall pay District a Use Fee in the amount equal to those facilities costs that the school district pays for with unrestricted revenues from the District's general fund divided by the total space of the school district multiplied by the amount of space allocated by the school district to the charter school, as well as the fair market value of space not allocated under Proposition 39.

The total Use Fee for the period July 1, 2014 through June 30, 2015 is One Hundred Fifty-Nine Thousand Four Hundred Thirty-Eight Dollars and Seventy-Five Cents (\$159,438.75) calculated as follows:

Charter School shall pay the District Three Dollars and Seventy-Five Cents (\$3.75) per square foot for Proposition 39 Space (Pro-Rata Share) and Fifteen Dollars (\$15.00) per square foot for Additional Space (Fair Market Value).

Proposition 39 Space: $\$3.75 \times \text{Thirty-Seven Thousand Seventy-Seven (37,077) sq. ft.} = \text{One Hundred Thirty-Nine Thousand Thirty-Eight Dollars and Seventy-Five Cents (\$139,038.75)}$

Additional Space: $\$15.00 \times \text{One Thousand Three Hundred Sixty (1,360) sq. ft.} = \text{Twenty Thousand Four Hundred Dollars (\$20,400.00)}$

Charter School shall receive a credit for the Use Fee amount already paid for the months of July, August and September 2014. If the District adds additional square footage in future years, the Use Fee will be adjusted accordingly. Additional space added by the Charter School pursuant to this Agreement shall not result in any increase to the Use Fee.

Payment shall be payable in ten (10) monthly payments, each year. The first payment shall be due no later than November 1, 2014, and each additional payment will be due on or before the first day of each month thereafter. Late payments shall be subject to interest at the rate of ten percent (10%) per annum. If the Charter School does not pay the invoice within fifteen (15) calendar days, the amount owed may be deducted by the District from any state or federal revenues of the Charter School which are passed through the District, in-lieu property tax allocations or from the Charter School's State Apportionment. The Use Fee shall increase by three percent (3%) each academic year, starting July 1.

Section 10. Utilities.

Charter School shall be solely responsible for the cost of utilities used or consumed by the Charter School on the Site and Facilities, including, if applicable, the cost of telephone and internet access services.

Section 11. Maintenance of Site and Facilities.

Charter School shall provide landscaping and mowing as well as custodial services to maintain the Site and Facilities in their existing conditions. The Charter School shall comply with all District policies and practices for maintenance of the facilities and grounds that the District provides to the Charter School, except in cases where actual District practice substantially differs from official policies. Notwithstanding the foregoing, however, the Charter School shall be solely responsible for providing all supplies necessary for custodial services, as well as all restroom supplies. Charter School will use District approved cleaning solutions, chemicals, and pesticides or commercial equivalent; the District will provide the Charter School with a list of District-approved cleaning solutions, chemicals, and pesticides upon execution of this Agreement. If Charter School desires, it may request that District provide landscaping and mowing or custodial service, which shall be at an additional cost to be determined by the District, but which will be no less than the District's actual cost of providing those services including all supplies necessary for custodial services as well as all restroom supplies. The District will provide all other grounds keeping services, including tree trimming, fire abatement, and any major repairs to the irrigation systems.

District shall promptly respond to and act upon all maintenance requests or work orders submitted by Charter School that are emergencies or compromise safety. District shall respond to all other maintenance requests or work orders submitted by Charter School in the same manner that it responds to District maintenance requests or work orders that are not emergencies and do not compromise safety.

District shall provide routine maintenance and repair of the Site and Facilities, except for the following: the Charter School shall be responsible for repairs or corrections to the Site or Facilities required as the result of intentional or negligent damage caused by the Charter School, its students, employees, invitees, agents, or representatives, and for repair of vandalism to the Site or Facilities, except when such vandalism or damage has been reported by Charter School to the police and the police have determined that the vandalism was not caused by the Charter School, its students, parents, employees, agents, representatives or invitees.

District shall provide scheduled maintenance of the Site and Facilities including plumbing, heating, ventilation, air conditioning, in-wall communication wiring, electrical, roofing, and floor systems, exterior and interior painting, and any other items that would have been considered deferred maintenance under Education Code section 17582. District shall assume the cost and responsibility for projects that would have been eligible to be included in the District deferred maintenance plan established pursuant to Education Code section 17582 in accordance with District schedules and customary practices. All other kinds of maintenance shall be the Charter School's responsibility. The District shall have access to the Site and Facilities to perform maintenance and inspections and will coordinate such work with the Charter School administration.

Section 12. Installation of Improvements.

A. By Charter School.

District consents to Charter School adding one restroom portable, one band room portable and one science room portable at the specific locations set forth in the Construction Site Map, attached hereto and incorporated by this reference as Exhibit "C," at Charter School's sole cost and expense, which includes all hard and soft costs associated with acquisition, installation and any required site upgrades, subject to compliance with the requirements set forth in this Section, Section 13 and any other applicable section of this Agreement. The portables referenced above shall primarily be used for band and science programs. If the designated location of the band room or science room portable is not financially viable, as determined by Charter School, Charter School may install one portable at the location designated "new classroom" adjacent to the proposed location of the restroom portable to be installed by the District.

Charter School shall not construct or install any improvements (as defined in Civil Code 660) on the Site or otherwise alter the Site without the prior written consent of District, and if required, the Division of the State Architect ("DSA"). District's approval of any improvements, including the construction schedule, work hours, and modifications, shall be at District's sole and absolute discretion, and District may disapprove of such improvements for any reason. Unless otherwise specified in this Agreement, in each case where prior written consent of the District is required, such consent shall be obtained exclusively from the District's Executive Director-Facilities, and consent obtained from any other source shall be invalid. Contractors retained by Charter School with respect to the construction or installation of improvements shall be fully licensed and bonded as required by law and must maintain levels of casualty, liability and workers' compensation insurance and performance and payment bonds consistent with District construction requirements. The construction or installation of improvements shall be performed in a sound and workmanlike manner, in compliance with all laws applicable including, but not limited to building codes, fingerprinting requirements and prevailing wage laws. District or District's agent shall have a continuing right at all times during the period that improvements are being constructed or installed to enter the premises and to inspect the work, provided that such entries and inspections do not unreasonably interfere with the progress of the construction or interrupt instruction to students. Charter School shall indemnify, defend and hold harmless District, its directors, officers and employees from any loss, damage, claim, cause of action, cost, expense or liability arising out or caused by any violation by the Charter School or its directors, officers, employees or contractors of any applicable federal, state or local statute, ordinance, order, governmental requirement, law or regulation that applies to any work, including, without limitation, any labor laws and/or regulations requiring that persons performing work on any improvements be paid prevailing wage.

Charter School shall deliver to District, promptly after Charter School's receipt thereof, originals or, if originals are not available, copies of any and all of the following instruments and documents pertaining to any testing, construction, repair or replacement of improvements on the Site: (a) plans and specifications for the subject improvements, (b) test results, physical condition and environmental reports and assessments, inspections, and other due diligence materials

related to the subject improvements, (c) permits, licenses, certificates of occupancy, and any and all other governmental approvals issued in connection with the subject improvements, (d) agreements and contracts with architects, engineers and other design professionals executed with respect to the design of the subject improvements, (e) construction contracts and other agreements with consultants, construction managers, general and other contractors, and equipment suppliers pertaining to the construction, repair or replacement, as the case may be, of the subject improvements and (f) all guarantees and warranties pertaining to the construction, repair or replacement, as the case may be, of the subject improvements.

Charter School will not permit any liens or claims to stand against the Site for labor or material furnished in connection with any work performed by Charter School. Upon reasonable and timely notice of any such lien or claim delivered to Charter School by District, Charter School may bond and contest the validity and the amount of such lien, but Charter School will immediately pay any judgment rendered, will pay all proper costs and charges, and will have the lien or claim released at its sole expense. Additionally, Charter School may not use or operate the improvements until the project is closed-out and certified by DSA, if applicable, and/or final approval is received from any applicable agency. Charter School shall provide evidence of close-out and certification or approval, in a form reasonably acceptable to the District.

B. By District.

District agrees to perform the following improvements over the duration of the Agreement as follows:

(a) 2014-2015 Academic Year: District will (1) make the YMCA portable available to the Charter School, (2) provide science furniture and equipment as described in the Furniture, Fixtures and Equipment Inventory, which has already been provided as of the Effective Date of this Agreement.

(b) 2015-2016 Academic Year: District will provide, place and hook up, at its expense, subject to the limitations set forth below, one portable restroom near the kindergarten classrooms at the location designated in the attached Exhibit "C." Although this improvement is listed as being performed in the 2015-2016 Academic Year, upon execution of this Agreement, the District agrees to initiate the necessary investigations, seek necessary approvals and order materials so that the District may install the portable restroom earlier, if reasonably possible. Installation of the restroom portable by the District is contingent on the Site's existing infrastructure, including electrical and sewer systems, having the capacity to accommodate an additional restroom portable. In the event the District is unable to install the restroom portable, as determined by the DSA, the District shall provide the District's estimated cost of installing the portable, One Hundred Seventy-Five Thousand Dollars (\$175,000.00), toward other improvements at the Site, to be mutually determined by the Parties.

(c) 2016-2017 Academic Year: District will replace the sand in the upper grade play area with rubberized ground cover prior to the start of the 2016-2017 Academic Year. Alternatively, Charter School may install rubberized ground cover in the upper grade play area at its own cost, and District agrees to reimburse Charter School for such costs prior to the start of

the 2016-2017 Academic Year, for an amount not to exceed Eighty Thousand Dollars (\$80,000.00). Charter School agrees that any cost in excess of the estimated amount set forth above shall be the responsibility of the Charter School. Any reimbursement shall be at the time determined by the District, so long as it occurs prior to the start of the 2016-2017 Academic Year. Charter School shall provide backup documentation to support the cost to be reimbursed, and shall not be entitled to interest on any costs.

(d) 2017-2018 Academic Year: District will replace yellow/orange cabinets.

(e) Upon installation of the band portable by Charter School, District shall provide and install cabinets for the band portable. If Charter School is unable to install the band portable, District agrees to install the cabinets in another location mutually agreed to by the Parties, at a cost not to exceed Twenty-Five Thousand Dollars (\$25,000.00).

(f) Upon Charter School's determination of which portable will be used for a locker room, District agrees to install up to 324 lockers (including 4 handicapped accessible lockers) in the designated portable.

Work may be required to be performed over break or summer periods. District will work with Charter School to schedule any construction during times that cause minimal disruption to Charter School activities.

Section 13. Condition of Property.

The District is not aware of any defect in or condition of the Site that would prevent their use for the Charter School's purposes. The District has not received any notice of violation of statute, ordinance, regulation, order or holding from any state or federal agency with jurisdiction over the Site that calls into question the appropriateness or sufficiency of the Site for their intended purpose. The District, at its expense, shall remain responsible for compliance with all applicable laws regarding the Site during the Term of this Agreement. Charter School, at its expense, shall comply with all applicable laws, regulations, rules and orders with respect to its use and occupancy of the Site, including, without limitation, those relating to health, safety, noise, environmental protection, zoning compliance and approvals, waste disposal, and water and air quality. The Charter School shall not be responsible for any and all environmental conditions that existed prior to the Charter School's occupancy of the Site, so long as such environmental conditions are not exacerbated by the Charter School's negligence or willful misconduct. The District shall remain responsible for compliance with the ADA, FEHA, and other applicable building code standards for any existing compliance issue prior to the date of Charter School's occupancy of the Site or that are not triggered by any modifications or improvements made by the Charter School. The Charter School shall only assume responsibility for compliance with ADA and FEHA access rights to the extent the result from any modifications or improvement made by the Charter School. Should any modifications or improvements made by the Charter School change or affect the character of any existing improvements, Charter School shall be responsible for bringing said existing improvements into compliance with ADA, FEHA, and other applicable building code standards. Charter School shall comply with all licensing, payment and performance bond and prevailing wage laws with respect to all modifications.

Notwithstanding the foregoing, if the Charter School engages in any activity on the Site or Facilities that constitutes a "project" under CEQA, the cost of CEQA compliance shall be borne in full by the Charter School. Should Charter School fail to inform District of activities that may require CEQA compliance in advance of engaging in such activities, Charter School shall assume all liability for legal claims arising out of said failure.

The Charter School will be required to continue the existing practices or measures that have been in place to ensure that any potential environmental impacts are minimized or eliminated. These mitigation measures require, amongst other things, the Charter School to implement practices to address traffic impacts at the Site and Facilities, consistent with the District's agreement with the City of Mission Viejo, including a plan to limit vehicle traffic during the 15 minutes before and after school to 175 vehicle trips. This limitation is necessary, due to the configuration, design, and location of both the Site generally, and the drop off circle and central parking loop specifically. The Charter School has discretion to determine how it will accomplish this mitigation; provided, however, that the Charter School must meet and confer with the District prior to implementing any mitigation measures, and the Charter School must comply with all of the District's applicable policies and practices in implementing its environmental mitigation. In addition, the Charter School must comply with the agreements made with the District and memorialized in correspondence from Dr. Farley to the Charter School dated April 24, 2012, which requires the Charter School to mitigate the traffic as follows:

1. The Charter School will limit before and after school vehicle trips through its central parking loop to no more than 175 cars in any fifteen-minute period of time. This limitation does not apply to special events or activities, such as open house and school performances.
2. The Charter School will identify multiple drop-off and pick-up locations for its students to minimize the number of vehicles using the front of the school as a drop-off and pick-up destination.
3. The Charter School will continue to pursue formation of a carpool program among parents to reduce traffic congestion near the school.
4. The Charter School will continue to implement an usher program that facilitates safe and efficient drop off and pickup of students in front of the school.
5. The Charter School will investigate the possibility of offering busing to students.
6. The Charter School will investigate the possibility of hiring crossing guards at key crossing locations.
7. The Charter School will implement a curb etiquette program to assure compliance with all traffic laws and expectations, including not parking next to red curbs.

8. The Charter School will publicize the above-referenced agreements with parents and students to contribute to their successful implementation.
9. The Charter School will modify the teacher start time so staff members arrive prior to the morning drop-off time.
10. The Charter School will also publicize its morning and afternoon child care options for parents as another method of reducing the number of students who would be dropped off just before school opens and just after it closes each day.

The Charter School will continue to implement these mitigation measures to minimize or eliminate any environmental impacts caused by the enrollment increase. If the District has any additional concerns regarding any environmental impacts caused by the enrollment increase, the Charter School will consult and work with the District to address these concerns.

In the event that any CEQA compliance or documentation is necessary for the Charter School's use of the site, such compliance shall be the responsibility of the Charter School and be at Charter School's sole expense. Charter School acknowledges that obtaining CEQA approval for a project may cause delays and/or require that a project be modified or abandoned. The Charter School waives any claims against the District regarding delays, modifications or abandonment of a project or use due to any inability to meet CEQA requirements.

Further, should any discharge, leakage, spillage, emission, or pollution of any type occur upon or from the Site due to the Charter School's use and occupancy thereof, Charter School, at its expense, shall be obligated to clean all the property affected, including, if applicable, any properties in the vicinity of the Site, to the satisfaction of District and any governmental agencies having jurisdiction over the Site or any other properties affected by the discharge, leakage, spillage, emission, or pollution. If the Charter School fails to take steps to clean the property(ies) or otherwise fails to comply with any requirements regarding the clean up, remediation, removal, response, abatement or amelioration of any discharge, leakage, spillage, emission, or pollution of any type, or fails to pay any legal, investigative, and monitoring costs, penalties, fines and disbursements the District reserves the right to takeover the required action and to take all necessary steps to recoup any and all costs associated therewith from the Charter School.

Section 14. Title to Property.

The parties acknowledge that title to the Site and Facilities is held by the District and shall remain in the District at all times. In the event Charter School fails to limit its use of the Site and Facilities to the space allocated to Charter School pursuant to this Agreement it shall be in breach of the Agreement as set forth in Section 8A(5).

Section 15. Fingerprinting.

Charter School shall be responsible for ensuring compliance with all applicable fingerprinting and criminal background investigation requirements described in Education Code section 45125.1. The District shall be responsible for complying with all criminal background

check laws for all employees or vendors that it directs to the Site for any work to be performed at its direction.

Section 16. Insurance.

The Charter School shall, at its sole cost and expense, commencing as of the date of this Agreement, and during the entire Term hereof, procure, pay for and keep in full force and effect insurance in the amounts and nature set forth in the Approved Charter and adhere to all risk management guidelines as set forth in the Approved Charter.

In the event Charter School fails to maintain the required insurance and liability coverage as stated above, it shall be in breach of the Agreement pursuant to Section 8A where such failure shall continue for a period of ten (10) days after receipt of written notice thereof by District to Charter School.

Section 17. Neighborhood Issues.

(a) It shall be the responsibility of the Charter School to make reasonable efforts to maintain control and supervision of its students, staff, parent volunteers and other invitees at all times, and to implement rules of conduct for students, staff, parent volunteers and other invitees while on the Site. The Charter School shall ensure that its students are adequately supervised at all times during the school day, and during after school hours or weekends when they are participating in school-related activities. The Charter School shall ensure that the Site and Facilities are adequately locked and secured when they are unattended by the Charter School.

(b) So as to minimize the impact of the Charter School's operations on the surrounding neighborhood, the Charter School agrees to continue to do the following:

- (i) The Charter School shall take all reasonable steps necessary to ensure that Charter School staff, students and all visitors (including parents) observe traffic laws and park in designated parking spaces located on the Site. The Charter School also agrees to take all reasonable steps necessary to ensure that student drop-off and pick-up occurs solely in designated areas located on the Site.
- (ii) The Charter School shall forward copies of all written complaints received by the Charter School regarding use of the Site and Facilities to the District within five (5) business days of receipt. The Charter School shall, in consultation with the District, timely respond to all complaints, and shall provide copies of responses to complaints to the District within five (5) business days of response.
- (iii) The Charter School will work with the District to develop directives to monitor the impact that the Charter School's operations have on the surrounding neighborhood, by receiving and considering comments from

affected neighbors in a timely manner. Upon request by the District, the Charter School will prepare written results of the monitoring.

Section 18. Indemnification.

The Charter School shall, to the fullest extent permitted by law, indemnify, defend, and hold harmless the District, its trustees, officers, employees and agents (collectively hereinafter District and District Personnel) against and from any and all actions, suits, claims, demands, losses, costs, penalties, obligations, errors, omissions, or liabilities, including legal costs, attorney's fees, and expert witness fees, whether or not suit is actually filed, and/or any judgment rendered against District and/or District Personnel, that may be asserted or claimed by any person, firm or entity, arising out of the Charter School's use of the Site and/or Facilities or from the conduct of its business or from any activity, work, or other things done, permitted or suffered by Charter School in or about the Site and/or Facilities, after District delivers possession and/or use of the Site and/or Facilities to the Charter School. This indemnity and hold harmless provision shall exclude actions arising out of the willful negligence or intentional acts, errors or omissions of the District and/or District Personnel.

The District shall, to the fullest extent permitted by law, indemnify, defend, and hold harmless the Charter School, its trustees, officers, employees and agents (collectively hereinafter Charter School and Charter School Personnel) against and from any and all actions, suits, claims, demands, losses, costs, penalties, obligations, errors, omissions, or liabilities, including legal costs, attorney's fees, and expert witness fees, whether or not suit is actually filed, and/or any judgment rendered against Charter School and/or Charter School Personnel, that may be asserted or claimed by any person, firm or entity, arising from the District's prior or current use or maintenance of the Site or Facilities or from prior or current conduct of the District's business or from any activity, work, or other things done by the District and/or District Personnel in or about the Site and/or Facilities. This indemnity and hold harmless provision shall exclude actions arising out of the willful negligence or intentional acts, errors or omissions of the Charter School and/or Charter School Personnel.

Section 19. Full Satisfaction of Proposition 39/Release of Claims.

Charter School agrees that the provision of the Site pursuant to this Agreement constitutes full and complete satisfaction of the District's obligation to provide facilities, including furnishings and equipment, to Charter School under Education Code section 47614 and the Proposition 39 regulations for the Applicable Years, and that Charter School shall not be entitled to any additional facilities, including furnishings and equipment, during the Term of the Agreement. Charter School agrees that the District has fully and completely satisfied the District's obligation to provide furnishings and equipment by providing the items listed in the Furniture, Fixtures and Equipment Inventory. Charter School agrees that, by accepting the Site, it certifies that the District has fully and completely satisfied the District's obligation to provide facilities, including furnishings and equipment, to the Charter School under Education Code section 47614 and all Proposition 39 implementing regulations for the Applicable Years. The Charter School waives and forever releases the District from any claim that the Charter School, or any successor entity, may have against the District regarding any allegation that the District

has taken action to impede the Charter School from expanding its enrollment to meet pupil demand for the Applicable Years as a result of the negotiation of and terms of this Agreement and/or the implementation of the Agreement. Furthermore, the Charter School waives any rights it may have to subsequently object to the District's perceived failure to offer facilities, including furnishings and equipment, in accordance with applicable law and waives any rights it may have to challenge those aspects of the District's offer of facilities, including furnishings and equipment, that the Charter School believes violates the substantive or procedural requirements of Proposition 39 and its implementing regulations for the Applicable Years.

Section 20. Access.

Charter School shall permit District, its agents, representatives or employees, to enter upon the Site or Facilities for the purpose of inspecting same or to make repairs, alterations, or additions to any portion of the Site or Facilities required by this Agreement. District shall attempt to give reasonable notice where practicable but shall not be obligated to do so in the event of emergency or imminent threat to health or safety of occupants.

Section 21. Notice.

Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served and received if given in writing and personally delivered, deposited in the United States mail, registered or certified mail with postage prepaid and return receipt required, sent by overnight delivery service, or sent by facsimile transmission, addressed as follows:

If to the District: Clark Hampton, Deputy Superintendent
Capistrano Unified School District
33122 Valle Road
San Juan Capistrano, CA 92675
Ph: (949) 234-9216
Fax: (949) 248-9563

If to the School: Sue Roche, Executive Director
Oxford Preparatory Academy, South Orange County
23000 Via Santa Maria
Mission Viejo, CA 92691
Ph: (949) 305-6111
Fax: (949) 297-4747

Any notice personally given or sent by facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

Section 22. Subcontract and Assignment.

Neither party shall assign its rights, duties or privileges under this Agreement, nor shall a party attempt to confer any of its rights, duties or privileges under this Agreement (including that of sublease) on any third party, without the written consent of the other party. Charter School shall not sublease, pledge, encumber, mortgage or otherwise transfer or assign to any party whatsoever any interest in the Site and/or Facilities.

Section 23. Independent Status.

This Agreement is by and between two independent entities and is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, or association.

Section 24. Entire Agreement of Parties.

This Agreement, and all its incorporated documents, constitute the entire agreement between the parties concerning the subject matter contained herein and supersedes all prior discussions, negotiations and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by the parties expressly indicating an intent to modify or amend this Agreement.

Section 25. Drafting.

Each of the Parties has cooperated in the drafting and preparation of this Agreement, hence, in any construction to be made of this Agreement, the same shall not be construed against any party on the basis that the party was the drafter.

Section 26. California Law; Legal Interpretation.

This Agreement shall be governed by, and the rights, duties and obligations of the parties shall be determined and enforced in accordance with, the laws of the State of California. The parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in Orange County, California. The parties expressly understand and agree that this Agreement constitutes a license for use of the Site. This Agreement is not intended by the parties, nor shall it be legally construed, to convey a leasehold, easement, or other interest in real property. Charter School acknowledges that a license is a valid form of agreement and shall not contest the validity of the form of this Agreement in any action or proceeding brought by Charter School against the District, or by the District against Charter School. Should either party be compelled to institute arbitration, legal, or other proceedings against the other for or on account of the other party's failure or refusal to perform or fulfill any of the covenants or conditions of this Agreement on its part to be performed or fulfilled, the parties agree that the rules and principles applicable to licenses shall govern such actions or proceedings.

Section 27. Waiver.

The waiver by any party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

Section 28. Successors and Assigns.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors, and assigns.

Section 29. Counterparts.

This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.

Section 30. Captions.

The captions contained in this Agreement are for convenience only and shall not in any way affect the meaning or interpretation hereof nor serve as evidence of the interpretation hereof, or of the intention of the parties hereto.

Section 31. Severability.

Should any provision of this Agreement be legally determined to be invalid, illegal or unenforceable in any respect, such provision shall be severed and the remaining provisions shall continue as valid, legal and enforceable.

Section 32. Incorporation of Recitals and Exhibits. The Recitals and each exhibit attached hereto are incorporated herein by reference.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

CAPISTRANO UNIFIED SCHOOL DISTRICT

By: Kirsten M. Vital

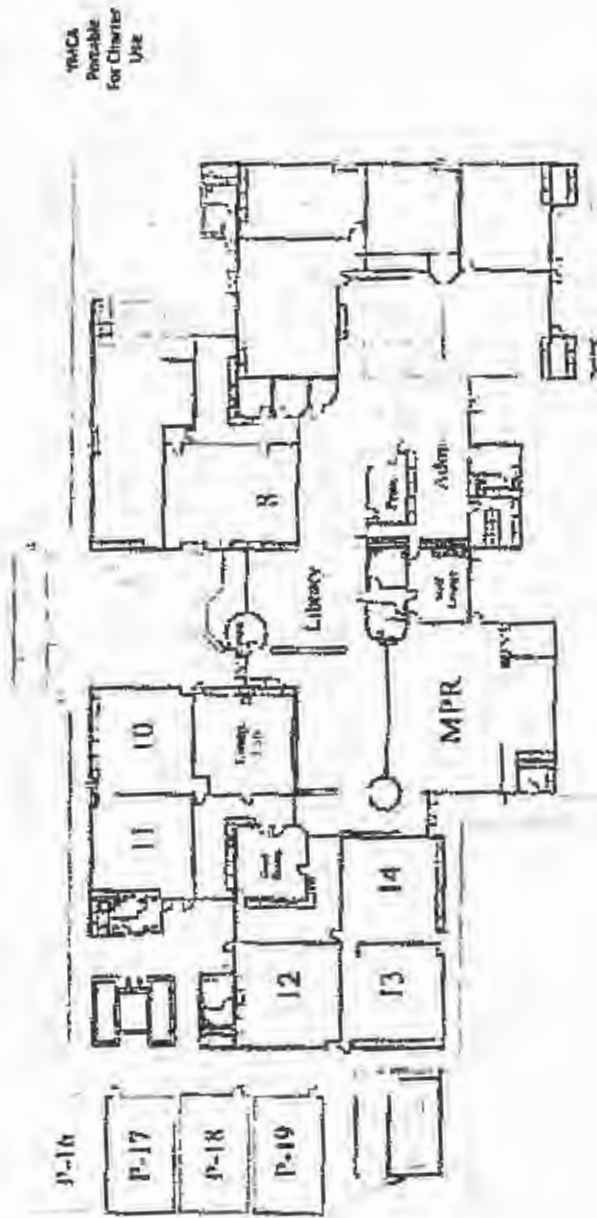
Name/Title: Kirsten M. Vital, Superintendent

OPA, INC. and OXFORD PREPARATORY ACADEMY

By: Sue Roche

Name/Title: Sue Roche, Executive Director

EXHIBIT "A"
SITE MAP



Total Space
38,437 Square Feet

EXHIBIT "B"
FIXTURES, FURNITURE AND EQUIPMENT INVENTORY



Oxford Preparatory Academy Charter Schools

23000 Via Santa Maria, Mission Viejo, California 92691 – Office: 949-305-6111 – FAX: 949-297-4747
www.oxfordcharterschools.org

EXHIBIT B

September 5, 2014

Capistrano Unified School District Furniture, Fixtures, and Equipment Inventory at Oxford Preparatory Academy, South Orange County

The list below comprises the District-owned Furniture, Fixtures, and Equipment ("FF&E") Inventory currently located at the Oxford Preparatory Academy - South Orange County ("Charter School") site:

Item	Quantity	Location
Lunch tables	23	Exterior - blacktop
14 ft. book shelves	2	Interior - hallway
Storage cabinets	2	Interior - classrooms
Science tables	32	Interior - science lab
Stools	32	Interior - science lab
Sink	1	Interior - science lab
Mobile gas station	1	Interior - science lab
Telephones - individual units	10	Interior - multiple locations
Telephones - wall affixed	29	Interior - classrooms
Laptop computers	14	Interior - classrooms
Desktop computers	5	Interior - front office
Student desktop computers w/monitors	37	Interior - computer lab
Computer tables	17	Interior - computer lab
Computer lab chairs	32	Interior - computer lab

EXHIBIT "C"
SITE CONSTRUCTION MAP



**SANDIEGO
AREA**

317 FREEMAN CIRCLE UNIT
SUITE 411
CARLSBAD
CALIFORNIA 92008-2512
TEL. 619-434-2712



FOR YOUTH DEVELOPMENT®
FOR HEALTHY LIVING
FOR SOCIAL RESPONSIBILITY

John G. Forney, Executive Director Operations
CUSD
33122 Valle Road
San Juan Capistrano, CA
92675

October 11, 2018

John,

This letter will confirm the substance of conversations between the YMCA Staff (YMCA), Oxford Preparatory Academy Staff (OPA) and CUSD Staff (District) over the past month.

As we have discussed the YMCA was approached by OPA to consider taking over the Childcare Program that the YMCA had previously provided at 2300 Via Santa Maria, Mission Viejo Ca, 92691 the former Barcelona Elementary School at 2300 Via Santa Maria, Mission Viejo Ca, 92691.

The YMCA has evaluated the program, met with OPA and would like to pursue providing the Childcare Program immediately for OPA in the doublewide portable that the YMCA owns on the school property and OPA has been using through a use agreement for their programs.

The YMCA entered into a use agreement with CUSD on October 9, 2014 and was to remain in effect until June 30, 2019. The YMCA is now requesting that the use agreement be terminated and that the YMCA begins occupying the portable and fees revert back to the current YMCA/CUSD rates for a YMCA owned portable.

Please let me know if there is any other information that you may need, as always we look forward to working with you on another facility project.

Sincerely;

Kevin Trump
Director of Property Management

YMCA OF ORANGE COUNTY
13821 Newport Ave, Suite 200, Tustin, CA 92780
P 714 549 9622 F 714 838 5976
www.ymcaboc.org

**LICENSE AGREEMENT
BETWEEN
CAPISTRANO UNIFIED SCHOOL DISTRICT
AND YMCA**

THIS AGREEMENT ("Agreement") is approved and entered into as of October 9, 2014, by and between the Capistrano Unified School District, a public school district duly organized and existing under Chapter 1 of Division 3 of Title 2 of the Education Code of the State of California ("District") and the YMCA, a 501(c)(3) nonprofit organization ("YMCA").

WHEREAS, District owns certain real property located at 23000 Via Santa Maria, Mission Viejo, CA, 92691, more commonly known as the former Barcelona Hills Elementary School site (the "Property"). Attached hereto and incorporated herein as Exhibit "A" is a map depicting the Property;

WHEREAS, Oxford Preparatory Academy, South Orange County, a California public charter school ("Charter School"), currently uses the Property for its educational program pursuant to a separate agreement between the District and the Charter School ("Facilities Use Agreement");

WHEREAS, the YMCA had located a portable classroom ("Portable") on the Property for YMCA program use pursuant to a separate agreement between the District and the YMCA;

WHEREAS, the YMCA will no longer be operating a YMCA program at the Portable and has agreed to allow the District to offer use of the Portable to the Charter School pursuant to the terms and conditions set forth herein.

NOW THEREFORE, the parties hereto agree as follows:

Section 1. Grant of License. Pursuant to the terms of this Agreement, the YMCA grants the District, including District's and Charter School's agents, employees, contractors, and consultants, a license to occupy and use the Portable for the purpose of operating the educational programs of the Charter School and/or District.

Section 2. Term. The Agreement shall commence on October 9, 2014 and shall remain in effect until June 30, 2019. This Agreement may be terminated upon thirty (30) days' notice for a material breach of the Agreement, unless the defaulting party cures such default within the thirty (30) days provided such defaulting party shall have such extended period as may be required beyond the thirty (30) days if the nature of the cure is such that it reasonably requires more than thirty (30) days and such defaulting party commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. The District may terminate this Agreement upon thirty (30) days' notice in the event that the Facilities Use Agreement with the Charter School is terminated for any reason.

Section 3. License Fee. The Charter School pays the District a pro-rata fee of Three Dollars and Seventy-Five Cents (\$3.75) per square foot per year for use of the Property. The Portable is 1920 square feet. As consideration for allowing the District to provide the Portable for the Charter School's use, the District will pay a fee to the YMCA equal to the pro-rata fee received for use of the Portable from the Charter School ("License Fee"). The District shall pay a License Fee of Seven Thousand Two Hundred Dollars ($\$7,200.00 (\$3.75 \times 1920)$) per year to the YMCA, which will be paid in monthly payments of Six Hundred Dollars (\$600.00). License Fee payments are due on or before the 15th of each month, without demand.

Section 4. Conditions of Use.

A. District shall be responsible for and shall pay for any repairs or replacements of any character whatsoever which are occasioned or are made necessary because of the use of the Portable by District or Charter School's agents, employees, contractors, and consultants.

B. On or before the date of termination of this Agreement, or upon notice that this Agreement is revoked, District shall, at no expense to YMCA, remove, or cause to be removed, from the Portable all of District's and Charter School's property, equipment, and fixtures, and shall, at no expense to YMCA, clean up and remove all rubbish and debris, and place the Portable in the same order and condition as existed at the commencement of this Agreement, improvements approved by YMCA and reasonable wear and tear excepted.

C. YMCA acknowledges and agrees that the District and/or Charter School will be constructing improvements to the Portable to accommodate the Charter School's use. District shall provide the YMCA with a copy of any plans and specifications or drawings of the improvements prior to the start of construction. YMCA shall have thirty (30) days to provide approval of the improvements, which approval may not be unreasonably withheld, conditioned or delayed. At the time of approval the parties will agree in writing whether or not the improvements must be removed upon termination of the Agreement.

Section 4. Insurance. District agrees to maintain in full force and effect throughout the duration of the Agreement a suitable policy or policies of comprehensive general liability and property damage insurance, insuring against all bodily injury, property damage, personal injury, and other loss or liability caused by or connected with District's use of the Portable under this Agreement. The District may self-insure or participate in a JPA with other governmental entities, in order to fulfill its insurance requirements.

Section 5. Indemnification. The District shall, to the fullest extent permitted by law, indemnify, defend, and hold harmless the YMCA against and from any and all actions, suits, claims, demands, losses, costs, penalties, obligations, errors, omissions, or liabilities, including legal costs, attorney's fees, and expert witness fees, whether or not suit is actually filed, and/or any judgment rendered against the YMCA, that may be asserted or claimed by any person, firm or entity, arising from the District's use of the Portable or from any activity, work, or other things done, permitted or suffered by District in or about the Portable. This indemnity and hold harmless provision shall exclude actions arising out of the act or omissions of the YMCA.

This Section 5 shall survive the termination or expiration of the Agreement.

Section 6. Compliance with Law. District shall comply with all laws, ordinances, rules, and regulations applicable to the Portable and provide the YMCA with documentation, that any improvements comply with all applicable federal, state or local laws, rules or regulations.

Section 7. Legal Interpretation of Instrument. The parties expressly understand and agree that this Agreement constitutes a license for use of the Portable, and is neither intended by the parties, nor shall it be legally construed to convey, a leasehold, easement, or other interest in real property. Should either party be compelled to institute arbitration, legal, or other proceedings against the other for or on account of the other party's failure or refusal to perform or fulfill any of the covenants or conditions of this Agreement on its part to be performed or fulfilled, the parties agree that the rules and principles applicable to licenses shall govern such actions or proceedings. This Agreement shall be governed by the laws of the State of California with venue in Orange County, California.

Section 8. Attorneys' Fees. If any legal action is necessary to enforce any of the terms or conditions of this Agreement, each party shall bear their own attorneys fees.

Section 9. Entire Agreement; Amendment. This Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof, superseding all negotiations, prior discussions and preliminary agreements made prior to the date hereof. This Agreement may not be changed except in writing executed by both parties.

Section 10. Successors; Assignment. This Agreement shall be binding and inure to the benefits of the successors of the respective parties. This Agreement may only be assigned upon the written consent of both parties.

Section 11. Exhibits. The following exhibits which are attached hereto are incorporated herein and made a part of this Agreement:

Exhibit "A" - Map of Property

Section 12. Recitals. The Recitals are incorporated into this Agreement as though fully set forth herein.

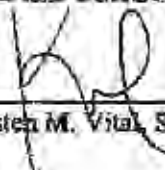
Section 13. Execution in Counterpart. This Agreement may be executed in several counterparts, and all so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all parties are not signatories to the original or the same counterpart.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the day set forth above.

Dated: _____, 2014

CAPISTRANO UNIFIED SCHOOL DISTRICT

By:


Kirsten M. Vital, Superintendent

Dated: 10/21, 2014

YMCA

By:

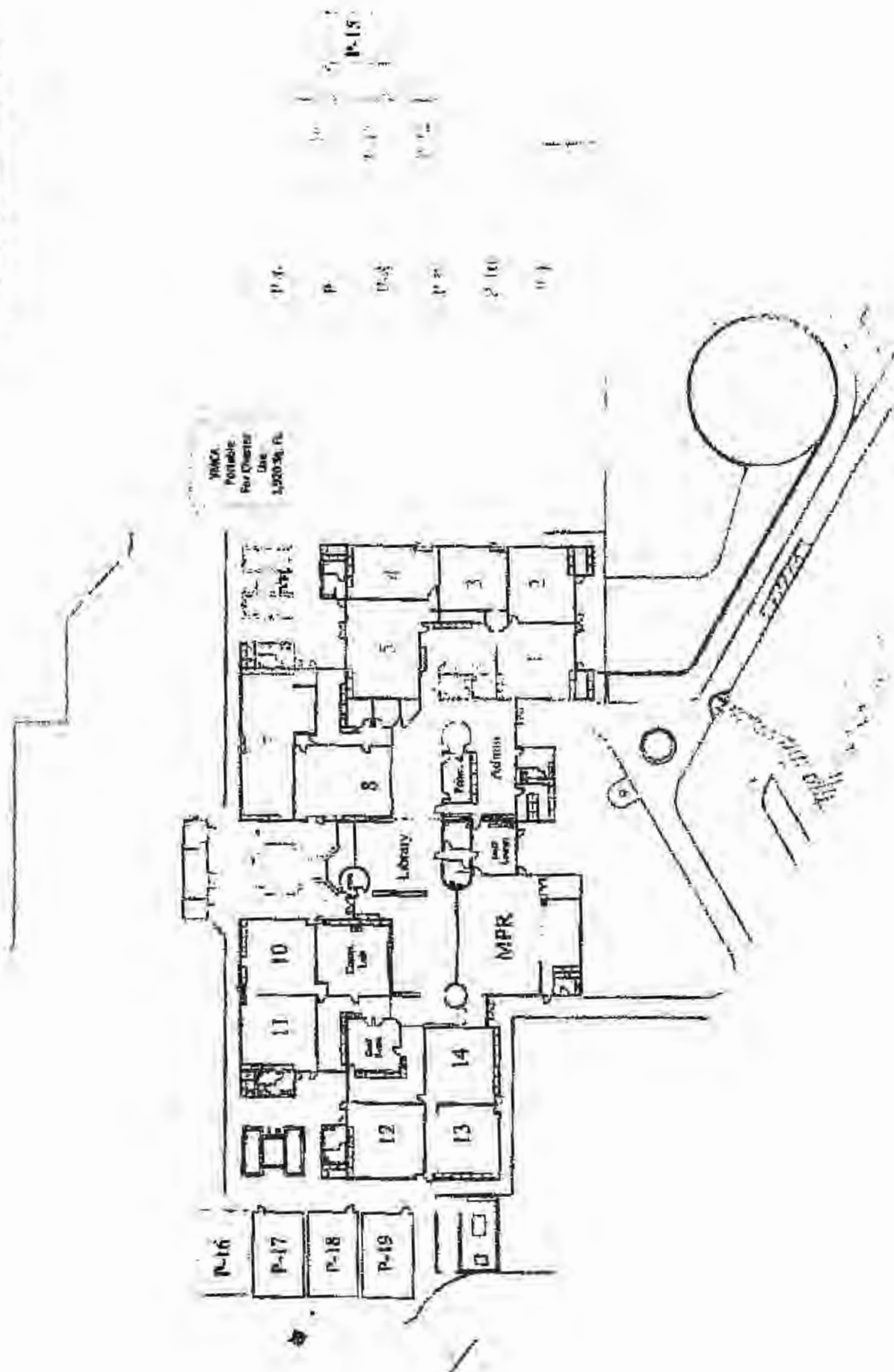


Cara Owens, COO

EXHIBIT "A"

MAP OF PROPERTY

Barcelona Hills Campus



**CAPISTRANO UNIFIED SCHOOL DISTRICT
BOARD REPORT**

To: Board of Trustees

From: Kirsten Vital, Superintendent

Date: October 24, 2018

Board Item: Trustee Process to Fill a Vacancy

HISTORY

After a vacancy to the Board in spring of 2017, Trustees voted to make a provisional appointment to fill the Board seat. A Trustee asked staff to bring back the options the Board has to take action pending the outcome of the election on November 6.

BACKGROUND INFORMATION

Area 5 Trustee, Gary Pritchard has served on the Capistrano Unified School District Board of Trustees since 2010. Trustee Pritchard is running for the office of city council in his city of residence, Aliso Viejo. Pending the outcome of the election on November 6, Trustee Pritchard may be in a position whereby, it is necessary to resign his seat on the Board of Capistrano Unified School District.

CURRENT CONSIDERATIONS

Per Board Bylaw 9223 *Filling Vacancies* and pursuant to Education Code § 5090-5095, the resignation necessitates action be taken by the Board of Trustees within 60 days of the vacancy to make a provisional appointment or call for a special election. Election results are certified 30 days after an election. On December 7, 2018, a vacancy could be determined. Government Code 1302, 1360 an officer may continue to discharge the duties of the office until a successor has qualified by taking the oath of office, or in this case until he is sworn in to his new office. 60 days from December 7, 2018, is February 5, 2019. This is also reflected in Board Bylaw 9110. Board member terms expire four years after their initial election on the first Friday in December following the election of new members. (Education Code 5000)

FINANCIAL IMPLICATIONS

There is no financial impact to the District if the Board were to take action to appoint a Trustee.

STAFF RECOMMENDATION

It is recommended the Board President recognize Kirsten M. Vital, Superintendent, to present a brief overview of the process to appoint a Trustee should a vacancy become available. In the overview staff has provided two options for Trustees along with a recommended timeline to either appoint a candidate or call for a special election.

APPROVED BY: Kirsten Vital, Superintendent

Prepared by: Colleen Hayes, Manager Board Operations, Superintendent's Office



Trustee Process to Fill a Vacancy

October 24, 2018

Special Board Meeting

Capistrano Unified School District

Board Bylaw 9223 Filling Vacancies

PROPOSED TIMELINE OF BOARD ACTIONS

- October 24, 2018, Board votes to appoint or take action to hold a special election for Trustee, Area 5
- November 14, 2018 CUSD Regular Board Meeting
- December 7, 2018 Staff communicates to the Public the vacancy for Trustee Area 5 and provides the complete application process through our District Website, with a deadline to complete the application process by January 4, 2019. The Terms of Office for all Trustees is reflected in *Board Bylaw 9110 Terms of Office*
- December 12, 2018, CUSD Regular Board Meeting
- January 4, 2019 Applications due to the District, Communications Office, by end of business

PROPOSED TIMELINE OF BOARD ACTIONS

- January 23, 2019 Nominate, interview, vote and appoint a candidate from the applicants
- Take no action January 23, 2019 and vote at the January 24, 2019 Board meeting to call for a special election or extend the deadline to apply
- January 24, 2019 CUSD Regular Board Meeting, swear in newly appointed Trustee
- Action must be taken to either appoint or call for an election no later than February 5, 2019. If no action is taken, the County Superintendent of Schools must call an election to fill the vacancy.

INTERVIEW OF CANDIDATES PROCESS FOR VACANCY WITHIN TRUSTEE AREA 5

Proposed Process:

- (1) The public is given an opportunity to address the Board on the process.
- (2) The Board may conduct a random “hat” draw to determine the order of interviews.
- (3) Each candidate will be called to the podium to first give a brief statement.
 - One (1) to three (3) minutes allotted per candidate.
- (4) The President will call for questions:
 - Trustees shall be permitted two questions.
 - Trustees may ask the two questions successively.
 - Trustees may opt to ask one question and pass until other Trustees ask a question.
- (5) Time permitting, the President can ask if any Trustee would like to ask an additional question.
- (6) Each candidate may have up to 20-30 minutes.

SELECTION OF APPOINTEE FOR TRUSTEE AREA 5

Proposed Process:

- (1) The public is given an opportunity to address the Board regarding the candidates.
- (2) The President calls for nominations of candidates.
 - The President recognizes each Trustee who wishes to nominate a candidate for appointment.
- (3) Once a nomination is made, the President calls for a second of the nomination.
 - If the nomination is seconded, it is successful.
 - If the nomination does not receive a second, it is unsuccessful.
- (4) The President repeats this process until each Trustee has had the opportunity to nominate a candidate and, thereafter, shall announce nominations are closed.

SELECTION OF APPOINTEE FOR TRUSTEE AREA 5

Proposed Process Continued:

- (5) If there are a series of nominations, the President may determine which nominee to call for a vote first.
- (a) **IF** the first candidate receives four votes, that candidate becomes the appointed Trustee for Area 5.
 - (b) **IF** the first candidate does not receive four votes, the President calls for the vote of the next nominee.
The first candidate is now disqualified from further nomination.
 - (c) **IF** the second nominee receives four votes, the appointment is made.
 - (d) **IF** the second nominee does not receive four votes, the President reopens nominations and starts the process anew. The second candidate is now also disqualified from further nomination.
 - (e) This process will continue until all nominees have been voted on.

If no other candidate is successfully nominated, the process is deadlocked.

If deadlocked, the Board will have the following options:

- **January 23, 2019:** Return to an Agendized Item and vote to extend the candidate application deadline to January 31, 2019 and repeat the interview and appointment process, OR vote to reconsider a candidate.
- **January 24, 2019:** Vote to order a special election at the Regular Board Meeting.

FILLING VACANCIES

A vacancy on the Board of Trustees may occur for any of the events specified in Government Code 1770. Removal by conviction of a grand jury or recall election shall also create a vacancy on the Board. (Government Code 3072, Elections Code 27344) Federal military deployment exceeding six months as a member of the armed services of the United States or the California National Guard shall also create a vacancy on the Board. If the absence of the Board member for this purpose exceeds six months, the Board may approve an additional six-month absence upon a showing that there is reasonable expectation that the member will return within the second six-month period, and the Board may appoint an interim member to serve in his/her absence. (Government Code 1064)

Within 60 days of the date of the vacancy or the filing of the Board member's deferred resignation, the Board shall either order an election for the next regular election date or make a provisional appointment. (Education Code 5091)

If the vacancy occurs within four months of the end of the Board member's term, the Board shall not fill the vacancy. (Education Code 5093)

Provisional Appointment

When making a provisional appointment, the Board desires to draw from the widest possible number of candidates. The Board shall:

1. Solicit applications or nominations of any legally qualified citizen interested in serving on the Board.
2. Provide candidates with appropriate information regarding Board member responsibilities.
3. Interview the candidates at a public meeting.
4. Select the provisional appointee by majority vote at a public meeting.

Within 10 days after the appointment is made, the Board shall post notices of the vacancy or dated resignation and the provisional appointment. The notice shall be published in the local newspaper and posted in at least three public places. (Education Code 5092)

The notice shall contain: (Education Code 5092)

1. The full name of the appointee.
2. The date of appointment.

FILLING VACANCIES (continued)

3. A statement notifying the voters that the provisional appointment shall become effective immediately and shall continue unless a petition calling for an election is filed in the office of the County Superintendent of Schools.

The person appointed shall hold office until the next regularly scheduled election for District Board members and shall be afforded all the powers and duties of a Board member upon appointment. (Education Code 5091)

Legal Reference:

EDUCATION CODE

5012 Declaration candidacy or nomination; withdrawal
5090 Definition (vacancy)
5091 Special election or provisional appointment
5092 Public notice of vacancy and provisional appointment
5093 Re vacancies occurring near end of term and incumbent not reelected
5094 Power of president of county board of education when majority of offices vacant
5095 Powers of remaining board members and new electees or appointees
5200 Districts governed by boards of education
5304 Duties of the governing board (re school district elections)
5325 Publication of information regarding district elections
5424 Expenses of conducting legal recall election
35107 Eligibility

ELECTIONS CODE

27344 Vacancy in office if majority vote for recall

GOVERNMENT CODE

1770 Vacancies: definition
3060-3074 Removal other than by impeachment
1064 Absence from State

Bylaw
adopted: February 27, 1995
revised: August 11, 2008

CAPISTRANO UNIFIED SCHOOL DISTRICT
San Juan Capistrano, California

TERMS OF OFFICE

The Board of Trustees shall consist of seven members whose terms shall be staggered so that as nearly as practicable, one half of the members shall be elected in each even-numbered year. The term of office for members elected in regular elections shall be four years, commencing on the first Friday in December next succeeding their election. (Education Code 5017)

Board member terms expire four years after their initial election on the first Friday in December following the election of new members. (Education Code 5000)

A member whose term has expired shall continue to discharge the duties of the office until his/her successor has qualified by taking the oath of office. (Government Code 1302, 1360; Education Code 5017)

(cf. 9220 - Elections)

(cf. 9223 - Filling Vacancies)

(cf. 9224 - Oath or Affirmation)

(cf. 9250 - Remuneration, Reimbursement, Other Benefits)

Legal Reference:

EDUCATION CODE

5000-5033 Election of school district board members

35010 Control of district

35012 Board members; number, election and terms

35107 Eligibility

GOVERNMENT CODE

1302 Continuance in office until qualification of successor

1303 Exercising functions of office without having qualified

1360 Necessity of taking constitutional oath

Bylaw
adopted: February 27, 1995

CAPISTRANO UNIFIED SCHOOL DISTRICT
San Juan Capistrano, California

**CAPISTRANO UNIFIED SCHOOL DISTRICT
BOARD REPORT**

To: Board of Trustees

From: Kirsten Vital, Superintendent

Date: October 24, 2018

Board Item: Resolution No. 1819-19, Resolution to Pursue a Provisional Appointment to Fill Board Vacancy for Trustee Area 5

HISTORY

After a vacancy to the Board in spring of 2017, Trustees voted to make a provisional appointment to fill the Board seat. A Trustee asked staff to bring back the options the Board has to take action pending the outcome of the election on November 6.

BACKGROUND INFORMATION

Area 5 Trustee, Gary Pritchard has served on the Capistrano Unified School District Board of Trustees since 2010. Trustee Pritchard is running for the office of city council in his city of residence, Aliso Viejo. Pending the outcome of the election on November 6, Trustee Pritchard may be in a position whereby, it is necessary to resign his seat on the Board of Capistrano Unified School District.

CURRENT CONSIDERATIONS

Per Board Policy 9223 *Filling Vacancies* and pursuant to Education Code § 5090-5095, the resignation necessitates action be taken by the Board of Trustees within 60 days of the vacancy to make a provisional appointment or call for a special election. Election results are certified 30 days after an election. On December 7, 2018, a vacancy could be determined. Government Code 1302, 1360 an officer may continue to discharge the duties of the office until a successor has qualified by taking the oath of office, or in this case until he is sworn in to his new office. 60 days from December 7, 2018, is February 5, 2019. This is also reflected in Board Bylaw 9110. Board member terms expire four years after their initial election on the first Friday in December following the election of new members. (Education Code 5000)

FINANCIAL IMPLICATIONS

There is no financial impact to the District to make a provisional appointment. However if the Board takes action to call for a special election the cost to the District is estimated to range from \$164,287 and \$181,956. The actual cost will be verified by the OCDE once the Board takes action.

STAFF RECOMMENDATION

It is recommended the Board President recognize Kirsten M. Vital, Superintendent, to present information on this item.

Following discussion, it is recommended the Board of Trustees, pending the outcome of the November 6, 2018 election, adopt Resolution No. 1819-19, To Pursue a Provisional Appointment to Fill Vacancy of Trustee Area 5.

APPROVED BY: Kirsten Vital, Superintendent

Prepared by: Colleen Hayes, Manager Board Operations, Superintendent's Office

**BEFORE THE BOARD OF TRUSTEES OF THE
CAPISTRANO UNIFIED SCHOOL DISTRICT
COUNTY OF ORANGE, STATE OF CALIFORNIA**

RESOLUTION NO. 1819-19

**RESOLUTION TO MAKE A PROVISIONAL APPOINTMENT TO FILL BOARD
VACANCY FOR TRUSTEE AREA 5**

(Education Code § 5090 *et seq.*)

WHEREAS, a vacancy on the Board of Trustees is created when, among other things, a Trustee files with the County Superintendent of Schools a written resignation (Education Code section 5090);

WHEREAS, Gary Pritchard, Ph.D., a Trustee of the Capistrano Unified School District representing Trustee Area 5 is running for the office of city council in his city of residence, Aliso Viejo. Pending the outcome of the election on November 6, 2018, Trustee Pritchard may be in a position whereby, it is necessary to resign his seat on the Board of Capistrano Unified School District. Pursuant to Education Code § 5090-5095, the resignation necessitates action be taken by the Board of Trustees within 60 days of the vacancy to make a provisional appointment or call for a special election.

WHEREAS, Education Code section 5091 and Board Policy BB 9223 provide that when a vacancy occurs on the Board of Trustees, the Board of Trustees may make a provisional appointment to fill the vacancy;

WHEREAS, the Orange County Registrar of Voters previously notified the Orange County Department of Education that the estimated cost to the District of an election to fill the vacancy would range between \$164,287 and \$181,956.

WHEREAS, the Board of Trustees believes these funds can be more prudently expended on the educational programs of the District;

WHEREAS, if an election were held at this estimated cost to the District, the term of the elected Trustee would be until the next regularly scheduled election in Trustee Area 5. (Education Code section 5091(e));

WHEREAS, the Board of Trustees has determined that it is in the best interests of the District, the public funds of the District, and the communities of the District to make a provisional appointment to fill the vacancy; and,

WHEREAS, Board Policy BB 9223 provides that when making a provisional appointment, the Board shall:

1. Solicit applications or nominations of any legally qualified citizen interested in serving on the Board.
2. Provide candidates with appropriate information regarding Board member responsibilities.
3. Interview the candidates at a public meeting.

4. Select the provisional appointee by majority vote at a public meeting.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED:

1. That the Board of Trustees expresses its respect for the electoral process and acknowledges its vital importance to the communities of the District.
2. That the Board of Trustees also recognizes the Legislature's intent that provisional appointments may be used to fill school board vacancies in appropriate circumstances, such as the vacancy created by Trustee Pritchard's resignation.
3. That in light of the prohibitive cost to the District of conducting an election, the Board of Trustees' preference that the monetary resources of the District be applied, insofar as possible, toward the operation and improvement of the District's educational programs, and that the next regular election will occur in Trustee Area 5 at no additional cost to the District, the Board of Trustees shall make a provisional appointment to fill the vacancy created by Trustee Pritchard's resignation.
4. That the Board of Trustees does now solicit applications or nominations of any person who is interested in serving on the Board of Trustees that meets all the following criteria as required by Education Code section 35107:
 - a. 18 years of age or older;
 - b. A citizen of California;
 - c. A resident of Trustee Area 5;
 - d. A registered voter in Trustee Area 5;
 - e. Not disqualified by the Constitution or laws of the state from holding a civil office.
5. That the Superintendent or designee shall provide all applicants or nominees with appropriate information regarding Board member responsibilities.
6. That applicant and nominated candidates for provisional appointment shall be interviewed by the Board of Trustees at a special meeting, to be held on Wednesday, January 23, 2018.
7. That the Board of Trustees intends by majority vote to make a provisional appointment of a candidate at the same special meeting of the Board of Trustees on Wednesday, January 23, 2018.

BE IT FURTHER RESOLVED AND ORDERED that upon the Board of Trustees making the provisional appointment to fill the vacancy created by Trustee Pritchard's resignation, the Superintendent or designee shall post within the time and in all locations or publication's required by law, all notices, documents and other information as required by Education Code section 5092 and Board Policy BB 9223.

ADOPTED by the Board of Trustees of the Capistrano Unified School District this 24th day of October, 2018.

AYES: ()
NOES: ()
ABSENT: ()
ABSTENTION: ()

Martha McNicholas
President, Board of Trustees

I, Kirsten M. Vital, Secretary of the Board of Trustees of the Capistrano Unified School District, do certify that the foregoing Resolution was regularly introduced, passed and adopted by the Board of Trustees at its meeting held on the 24th day of October, 2018.

Kirsten M. Vital
Secretary, Board of Trustees of the
Capistrano Unified School District

**CAPISTRANO UNIFIED SCHOOL DISTRICT
BOARD REPORT**

To: Board of Trustees

From: Kirsten Vital, Superintendent

Date: October 24, 2018

Board Item: Resolution No. 1819-20, Resolution to Order an Election to Fill Vacancy for Trustee Area 5

HISTORY

After a vacancy to the Board in spring of 2017, Trustees voted to make a provisional appointment to fill the Board seat. A Trustee asked staff to bring back the options the Board has to take action pending the outcome of the election on November 6.

BACKGROUND INFORMATION

Area 5 Trustee, Gary Pritchard has served on the Capistrano Unified School District Board of Trustees since 2010. Trustee Pritchard is running for the office of city council in his city of residence, Aliso Viejo. Pending the outcome of the election on November 6, Trustee Pritchard may be in a position whereby, it is necessary to resign his seat on the Board of Capistrano Unified School District.

CURRENT CONSIDERATIONS

Per Board Policy 9223 *Filling Vacancies* and pursuant to Education Code § 5090-5095, the resignation necessitates action be taken by the Board of Trustees within 60 days of the vacancy to make a provisional appointment or call for a special election. Election results are certified 30 days after an election. On December 7, 2018, a vacancy could be determined. Government Code 1302, 1360 an officer may continue to discharge the duties of the office until a successor has qualified by taking the oath of office, or in this case until he is sworn in to his new office. 60 days from December 7, 2018, is February 5, 2019. This is also reflected in Board Bylaw 9110. Board member terms expire four years after their initial election on the first Friday in December following the election of new members. (Education Code 5000)

FINANCIAL IMPLICATIONS

If the Board takes action to call for a special election the cost to the District is estimated to range from \$164,287 and \$181,956. The actual cost will be verified by the OCDE once the Board takes action.

STAFF RECOMMENDATION

It is recommended the Board President recognize Kirsten M. Vital, Superintendent, to present information on this item.

Following discussion, it is recommended the Board of Trustees, pending the outcome of the November 6, 2018 election, adopt Resolution No. 1819-20, To Order an Election to Fill Vacancy for Trustee Area 5.

APPROVED BY: Kirsten Vital, Superintendent

Prepared by: Colleen Hayes, Manager Board Operations, Superintendent's Office

**BEFORE THE BOARD OF TRUSTEES OF THE
CAPISTRANO UNIFIED SCHOOL DISTRICT
COUNTY OF ORANGE, STATE OF CALIFORNIA**

**RESOLUTION NO. 1819-20
RESOLUTION TO ORDER AN ELECTION TO FILL BOARD VACANCY FOR
TRUSTEE AREA 5
(Education Code § 5090 *et seq.*)**

WHEREAS, a vacancy on the Board of Trustees is created when, among other things, a Trustee files with the County Superintendent of Schools a written resignation (Education Code section 5090);

WHEREAS, Gary Pritchard, Ph.D, a Trustee of the Capistrano Unified School District representing Trustee Area 5, pending the outcome of the election on November 6, 2018, Trustee Pritchard may be in a position whereby, it is necessary to resign his seat on the Board of Capistrano Unified School District. Pursuant to Education Code § 5090-5095, the resignation necessitates action be taken by the Board of Trustees within 60 days of the vacancy to make a provisional appointment or call for a special election.

WHEREAS, Education Code section 5091 and Board Policy BB 9223 provide that when a vacancy occurs on the Board of Trustees, the Board of Trustees may order an election to fill the vacancy;

WHEREAS, the Board of Trustees has determined that it is in the best interests of the District and the communities of the District to order an election to fill the vacancy;

WHEREAS, the Orange County Registrar of Voters previously notified the Orange County Department of Education that the estimated cost to the District of an election to fill the vacancy would range between \$164,287 and \$181,956;

WHEREAS, Education Code section 5091 requires that when an election is ordered, the election will be held on the next established election date provided it is not less than 130 days after the order of election;

WHEREAS, pursuant to Elections Code section 1000, the next established election date occurring more than 130 days after the order of the next scheduled election date provided by the Orange County Registrar of Voters.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that the Board of Trustees of the Capistrano Unified School District does hereby order an election for the vacant seat of Trustee Area 5 to be held on the next scheduled election date provided by the Orange County Registrar of Voters.

ADOPTED by the Board of Trustees of the Capistrano Unified School District this 24th day of October, 2018.

AYES: ()

NOES: ()

ABSENT: ()

ABSTENTION: ()

Martha McNicholas
President, Board of Trustees

I, Kirsten M. Vital, Secretary of the Board of Trustees of the Capistrano Unified School District, do certify that the foregoing Resolution was regularly introduced, passed and adopted by the Board of Trustees at its meeting held on the 24th day of October, 2018.

Kirsten M. Vital
Secretary, Board of Trustees of the
Capistrano Unified School District