

**FACILITY USE AGREEMENT**  
**(SWIFT STREET SCHOOL SITE)**

THIS FACILITY USE AGREEMENT ("FUA") is made on this \_\_\_ day of September, 2010, by and between the Santa Cruz City Schools, a California public school district, ("District"); and Pacific Collegiate School, a California public charter school ("PCS" or "Charter School"). The District and PCS are jointly referred to herein as "the Parties."

**RECITALS:**

WHEREAS, District owns certain real property located at 255 Swift Street, Santa Cruz, California 95060 ("School Site") which is further described on Exhibit "A" attached hereto;

WHEREAS, PCS has requested use of the school buildings, which is further depicted on Exhibit "A" ("Premises");

WHEREAS, PCS is a charter school organized under the laws of the State of California that operates education programs for students in grades 7 - 12 and PCS desires to use the Premises for such purposes;

WHEREAS, PCS previously submitted to the District a Proposition 39 request for use of District facilities for the 2009-2010 school year ("Request");

WHEREAS, the District did not allocate use of the Premises under Proposition 39 as PCS withdrew its Request and waived its rights related thereto as set forth in that certain Facilities Use Agreement entered into by and between PCS and the District on June 30, 2010, and as further set forth herein;

WHEREAS, District desires to grant the use of the Premises to PCS upon the terms and conditions set forth herein; and

NOW THEREFORE, in consideration of the covenants and agreements hereinafter set forth, District and PCS enter into this Facilities Use Agreement ("FUA") and agree as follows:

1. USE OF PREMISES.

- A. District does hereby grant to PCS exclusive use of the Premises including all improvements located thereon as shown in Exhibit "A" attached hereto.
- B. PCS's use of the Premises shall include the use of the existing furniture, fixtures and equipment ("FF&E"); provided, however, that PCS shall provide the District with an inventory of District furnishings and equipment located on the Premises prior to July 1, 2010, subject to approval by the District. Any additional furnishings and equipment provided by the District during the Term of the FUA shall be added by PCS to the inventory. Upon termination of this FUA all

furnishings and equipment not listed on the District inventory shall be considered the property of the Charter School.

- C. PCS's shall have priority use of the playing fields, gymnasium and Life Lab Gardens, subject to the condition that PCS will be subject to and compliant with both the Civic Center Act (as set forth in paragraph 23 below) and the Reciprocal Facilities Use Agreement and the addendum thereto ("Reciprocal Use Agreement") that exists between the City of Santa Cruz and the District as they relate to the School Site.
2. **WAIVER OF RIGHTS UNDER PROPOSITION 39.** PCS hereby waives any and all rights under Education Code section 47614 and the implementing regulations ("Proposition 39") for each and every academic year during which this FUA is in full force and effect. It is understood and acknowledged by the parties that PCS's use of the Premises is not being granted pursuant to Proposition 39 and is not governed by Proposition 39, its implementing regulations, or case law interpreting same. Rather, the parties agree that this FUA is made in-lieu of PCS's Proposition 39 facility requests.
3. **TERM.**
    - A. The Term of this FUA shall be for four (4) years. The commencement date shall be July 1, 2010 ("Commencement Date") and unless sooner terminated under any provision hereof, this FUA shall end on June 30, 2014.
    - B. The Term of this FUA shall be automatically extended on an annual basis effective July 1, upon the same terms and conditions described herein, except as expressly provided otherwise herein ("Extended Term").
    - C. Either Party may terminate this FUA and extinguish the rights and obligations of the Parties hereunder upon providing the other Party three (3) years prior written notice of said termination to be delivered on or before June 30. However, should the District terminate on the grounds that it plans to reopen the Site as a District school, the District shall provide two year written notice of termination to be delivered on or before June 30. The date of termination shall be at the end of the notification period, and all provisions of this Agreement control until PCS vacates the Premises. Notice of termination under this section is expressly inapplicable to the right to terminate this FUA pursuant to section 16 herein.
    - D. PCS's waiver of any right to seek District facilities under Proposition 39 remains in place until either Party provides written notice of termination as provided in section 3.C. above. PCS will be eligible for facilities under Proposition 39 in the first school year after it vacates the Premises subject to this Agreement, such that it may only make a request for facilities pursuant to Proposition 39 in the last year PCS occupies the Premises for a facilities allocation in the subsequent school year after PCS vacates the Premises. Any such request must be submitted no later than May 1 of the fiscal year preceding the fiscal year in which facilities are requested.

4. PURPOSE OF FUA. The purpose of this FUA is for District to provide PCS the use of the Premises only for PCS's educational program and all of its related school activities (the "Program"). PCS warrants that it will conduct its Program in compliance with all applicable law, rules, and/or regulations.
5. RENT. For and in consideration of the use of the Premises, PCS agrees to pay the District the rent ("Rent") as follows:
  - A. PCS shall pay the District the sum of Three Hundred Forty Thousand Dollars (\$340,000) in annual rent for the period of July 1, 2010 through June 30, 2014 (\$28,334.00 monthly).
  - B. The Rent will be adjusted annually, effective on July 1<sup>st</sup> of the first year of the Extended Term and each succeeding year through the termination of this FUA. The Rent during the Extended Term shall be increased on an annual basis by three percent (3%), and the monthly payments specified in 5.A. will increase accordingly.
  - C. PCS shall pay promptly to District, the monthly Rent on the first day of each month in advance during the Term and Extended Term of the FUA, without deduction, setoff, prior notice or demand.
  - D. PCS acknowledges that late payment by PCS to District of the Rent and other sums due hereunder will cause District to incur costs not contemplated by this FUA, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, if District does not receive any installment of rent or any other sum due from PCS by 4:00 p.m. within ten (10) days after such amount is due, PCS shall pay to District, as additional rent, a late charge equal to five percent (5%) of such overdue amount or the maximum amount allowed by law, whichever is less. The parties hereby agree that such late charges represent a fair and reasonable estimate of the costs District will incur by reason of late payment by PCS. Acceptance of such late charge by District shall in no event constitute a waiver of PCS's default with respect to such overdue amount, nor prevent District from exercising any of its other rights and remedies granted hereunder.
  - E. Late charges, costs and expenses which PCS is required to pay hereunder, together with all interest and penalties that may accrue thereon in the event of PCS's failure to pay such amounts, and all reasonable damages, and costs and expenses which District may incur by reason of any Event of Default of PCS, shall be deemed to be additional rent ("Additional Rent") and, in the event of nonpayment by PCS, District shall have all of the rights and remedies with respect thereto as District has for the nonpayment of the monthly rent.
6. CONDITION OF PREMISES.

- A. The Premises are delivered to PCS on an "AS IS" basis. District shall not be required to make or construct any alterations including structural changes, additions or improvements to the Premises. By entry and taking possession of the Premises pursuant to this FUA, PCS accepts the Premises in "AS IS" condition. The District is not aware of any defect in or condition of the Premises that would prevent their use for the Charter School's purpose. The District has not received any notices of any violation of statute, ordinance, regulation, order or holding from any state or federal agency with jurisdiction over the Premises that calls into question the appropriateness or sufficiency of the Premises for their intended purpose. PCS acknowledges that neither the District nor District's agents have made any representation or warranty as to the suitability of the Premises to the conduct of PCS's business. Any agreements, warranties or representations not expressly contained herein shall in no way bind either District or PCS, and District and PCS expressly waive all claims for damages by reason of any statement, representation, warranty, promise or agreement, if any, not contained in this FUA.
  
- B. The Charter School, at its sole cost and expense, will make any and all alterations, improvements, additions and/or repairs to the Premises necessary to bring the Premises and the use thereof by Charter School in compliance with the ADA, building codes, environmental laws including asbestos, lead etc. provided these requirements are a direct result of Charter School's use or modification of the Premises after the commencement date of the Term of this FUA.

7. PERMITTED USES.

- A. PCS shall use the Premises solely for its Program. PCS shall not use the Premises for any use other than that specified in this section without the prior written consent of the District. PCS agrees to conduct its Program in a manner that meets all applicable federal, state and local regulations now or hereafter enacted relating to the use of the Premises and School Site and to the operation of its Program. The execution of this FUA shall be subject to PCS obtaining any and all permits or approvals which may be required in order for PCS to operate the Program on the Premises. PCS shall not use or permit the Premises to be used in whole or in part during the Term of this FUA for any purpose or use in violation of the laws or ordinances applicable thereto. PCS shall not commit or suffer to be committed, any waste upon the Premises, or allow any sale by auction upon the Premises, or allow the Premises to be used for any unlawful purpose, or place any loads upon the floor, walls or ceiling which endanger the structure, or place any harmful liquids in the plumbing, sewer or storm water drainage system of the Premises. No waste materials or refuse shall be dumped upon or permitted to remain upon any part of the Premises except in trash containers designated for that purpose. Any uses that involve the serving and/or sale of alcoholic beverages and the conducting of games of chance are prohibited on the Premises. PCS shall comply with the District-wide policy prohibiting the use of tobacco products on the Premises at all times. PCS shall not use or permit the use of the Premises or any

part thereof for any purpose that is inimical to public morals and welfare or morally objectionable as unsuitable for a public educational facility. PCS agrees to immediately respond to concerns expressed by neighbors or District relating to the operation of the Premises.

- B. PCS represents that it is qualified to administer and operate the Program. It is understood that PCS operates wholly independently of the District and PCS shall be solely responsible for the administration and operation of the Program, including the hiring of all employees. PCS shall be responsible for verifying the qualifications, credentials, certificates, and licenses of its staff, agents, consultants and/or subcontractors who may provide services in conjunction with PCS's activities on the Premises.
- C. If applicable, PCS shall be responsible for ensuring compliance with all applicable fingerprinting and criminal background investigation requirements. For any District employees that will be present on the Premises, the District will be responsible for ensuring compliance with applicable fingerprinting and criminal background investigation requirements as described in Education Code section 45125.1.
- D. PCS's student enrollment shall be limited to grades 7 through 12. For the 2010-2011 school year PCS's enrollment is currently capped at 480 students, 61% of which reside within the Santa Cruz City High School District ("in-District student"). Beginning in the 2011-2012 school year, PCS may increase its enrollment cap to 516 students ("overall enrollment cap"), as long as its total enrollment of in-District students is equal to or less than 61% (315 students), with a margin of error of 3% ("maximum in-District enrollment percentage").

If PCS exceeds the maximum in-District enrollment percentage during any school year during the Term and Extended Term of this Agreement measured annually in October based on CALPADS enrollment data, PCS shall pay a one-time rent increase to the District of \$2,000 per in-District student it has enrolled over the maximum in-District enrollment percentage in that school year. PCS shall make best efforts to correct its overage in in-District student enrollment such that the following school year's enrollment will be within the maximum in-District enrollment percentage.

If PCS exceeds the maximum in-District enrollment percentage for a second consecutive year, measured annually in October based on CALPADS enrollment data, PCS shall pay a one-time rent increase of \$3,000 per in-District student it has enrolled over the maximum in-District enrollment percentage in that school year. PCS shall make best efforts to correct its overage in in-District student enrollment such that the following school year's enrollment will be within the maximum in-District enrollment percentage.

If PCS exceeds the maximum in-District enrollment percentage for a third consecutive year, measured annually in October based on CALPADS enrollment data, PCS shall pay a one-time rent increase of \$4,000 per in-District student it has enrolled over the maximum in-District enrollment percentage in that school year. In addition to the \$4,000 per in-District student rent increase, PCS agrees to vacate the Premises by the end of the subsequent school year. During the final year of PCS's occupancy of the Premises pursuant to this Paragraph, PCS shall be bound by the overall enrollment cap and the maximum in-District enrollment percentage. If PCS exceeds the maximum in-District enrollment percentage in its final year of occupancy of the Premises pursuant to this Paragraph, PCS shall pay the \$4,000 per in-District student rent increase specified herein and will also continue to abide by all the terms of this Agreement. PCS acknowledges and agrees that doing so requires it to take efforts to come within the limits specified in this Paragraph.

E. If PCS violates the overall enrollment cap at any time during the Term or Extended Term of this Agreement it shall be an Event of Default within the meaning of Section 16.

F. PCS shall not preferentially target in-District students.

G. During the Term and any Extended Term of this FUA, PCS shall only enroll students in grades 7 – 12. During said term, PCS shall not seek to expand its student population to include 6<sup>th</sup> grade students through a revision of its Charter or by any other means. PCS shall not exceed the overall enrollment cap set forth in Section 7.D at any time it is occupying the Premises regardless of whether it operates any additional school sites.

8. **TAXES AND ASSESSMENTS.** PCS shall pay before delinquency any and all taxes, assessments, levies, possessory interest taxes, and other charges and governmental fees, general and special, ordinary and extraordinary, unforeseen, as well as foreseen, of any kind or nature whatsoever, including, but not limited to assessments for public improvements or benefits, which prior to or during the Term or Extended Term of this FUA are laid, assessed, levied, or imposed upon or become due and payable and a lien upon or represent an escape assessment from (i) the Premises and/or any improvements situated thereon or any part thereof or any personal property, equipment or other facility used in the operation thereof; or (ii) the rent or income received from subtenants or licensees; or (iii) any use or occupancy of the Premises and of any rights, obligations, easements and franchises as may now or hereafter be appurtenant to the use thereof that accrue as a result of any use by PCS of the Premises and School Site. Notwithstanding the foregoing, in the case of any special assessment levied upon the Premises, or any part thereof, during the Term or Extended Term of this FUA that accrues as a result of any use by PCS of the Premises and School Site, PCS shall be obligated to pay in full at the inception (or provide District sufficient funds which, together with the accrual of investment yield thereon, shall be sufficient to pay to maturity all installments) the amount of any such special assessment. Nothing in this Section shall limit District's right

to recover, as Additional Rent, Taxes and Assessments payable after termination of this FUA pursuant to the terms of this FUA. The provisions of this Section shall survive the expiration or earlier termination of this FUA; provided, however, that nothing herein shall obligate PCS to pay Taxes and Assessments which are both (i) imposed upon the Premises subsequent to the termination of this FUA and (ii) applicable to a period or periods subsequent to the termination of this FUA.

9. SWIMMING POOL AND PERFORMING ARTS SPACE. To the degree PCS wishes to use the District's performing arts venue(s) and/or the Santa Cruz High School swimming pool, such facilities will be made available to PCS to the same degree and on the same basis as they are made available to other members of the public, including use subject to fees and the requirement that PCS secure appropriate insurance coverage naming the District as an additional insured in connection with such use.

10. INDEMNITY

- A. PCS shall indemnify, hold harmless, and defend the District, its trustees, officers, employees and agents against and from any and all claims, demands, actions, suits, losses, liability, expenses and costs for any injury, death or damage to any person or property occurring in, on or about the Premises after District delivers possession of the Premises to PCS, or arising from the PCS's use of the Premises or from the conduct of its business or from any activity, work, or other things done, permitted or suffered by PCS in or about the Premises, excepting those claims, demands, actions, suits, losses, liability, expenses and costs arising out of or relating to obligations of District as they relate to the Premises or caused by the active negligence or wrongful intentional actions of the District, its employees, agents, officers and invitees.

PCS shall further indemnify, hold harmless, and defend the District against and from any and all claims arising from any breach or default in the performance of any obligation on PCS's part to be performed under the terms of this FUA, or arising from any act, omission or negligence of the PCS, or any officer, agent, employee, guest, or invitee of PCS, and from all costs, attorney's fees, and liabilities incurred in or about the defense of any such claim or any action or proceeding brought thereon. If any action or proceeding is brought against District by reason of such claim (regardless of whether a claim is filed), PCS upon notice from District shall defend the same at PCS's expense. PCS shall give prompt written notice to District's Risk Manager in case of casualty or accidents in or on the Premises.

- B. District shall indemnify, hold harmless, and defend the PCS, its trustees, officers, employees and agents against and from any and all claims, demands, actions, suits, losses, liability, expenses and costs for any injury, death or damage to any person or property arising from the District's active negligence or wrongful intentional acts, excepting those claims, demands, actions, suits, losses, liability, expenses and costs arising out of or relating to obligations of PCS as they relate to

the Premises or caused by the negligence or intentional acts of the PCS, its employees, agents, officers and invitees.

## 11. INSURANCE

- A. Coverage. PCS shall, at all times during the terms of this FUA, and at its own cost and expense procure and continue in force the following insurance coverage; Bodily Injury and Property Damage Liability insurance with a combined single limit for bodily injury and property damage of not less than \$4,000,000. The District shall be responsible for maintaining Property and Casualty insurance to the same extent the District insures its other facilities.
- B. Insurance Policies. The aforementioned minimum limits of policies shall in no event limit the liability of PCS hereunder. The aforesaid insurance shall name the District as an additional insured. Said insurance shall be with companies having a rating of not less than A- in "Best's Insurance Guide." PCS shall furnish from the insurance companies or cause the insurance companies to furnish certificates of coverage to District. No such policy shall be cancelable or subject to reduction of coverage or other modification or cancellation except after 30 days prior written notice to District by the insurer. All such policies shall be written as primary policies, not contributing with and not in excess of the coverage that District may carry. PCS shall, at least 20 days prior to the expiration of such policies, furnish District with renewals or binders. PCS agrees that if PCS does not take out and maintain such insurance, then District may (but shall not be required to) procure said insurance on PCS's behalf and charge PCS the premiums together with a 25% handling charge, payable upon demand. Such District provided coverage and PCS obligation to pay shall terminate upon the effective date of any subsequently purchased insurance coverage by PCS. PCS shall have the right to provide such insurance coverage pursuant to blanket policies obtained by PCS provided such blanket policies expressly afford coverage to the Premises and to PCS as required by this FUA.
- C. Waiver of Subrogation. District and PCS each hereby waive any and all rights of recovery against the other or against the officers, employees, agents, and representatives of the other, on account of loss or damage occasioned to such waiving party or its property or the property of others under its control to the extent that such loss or damage is insured against under any fire and extended coverage insurance policy which either may have in force at the time of such loss or damage. PCS shall, upon obtaining the policies of insurance required under this FUA, give notice to the insurance carrier or carriers that the foregoing mutual waiver of subrogation is contained in this FUA.
- D. PCS acknowledges that the insurance to be maintained by District on the Premises will not insure any of PCS's property or improvements made by PCS.

- E. Workers' Compensation Insurance. During the Term of this FUA, PCS shall comply with all provisions of law applicable to PCS with respect to obtaining and maintaining insurance including but not limited to workers' compensation insurance. PCS shall provide District prior to the commencement date of July 1, 2010 a certificate of insurance evidencing the existence of the policy required hereunder.
12. UTILITIES AND COSTS OF OPERATION. PCS shall pay for all utilities and costs of operation, including, but not limited to, water, gas, light, heat, power, electricity, telephone, data and cable access, security service, trash pick-up, and sewage fees for the School Site. PCS shall also pay for all other services supplied to or consumed on the Premises and shall pay all taxes and surcharges on all utilities and services.
13. MAINTENANCE AND REPAIRS.
- A. District at its sole cost and expense will provide routine building maintenance, landscaping and grounds maintenance for the entire School Site. District shall also assume the cost and responsibility for projects eligible to be included in the District deferred maintenance plan established pursuant to Education Code section 17582. Deferred maintenance shall be pursuant to the District's schedule of projects.
  - B. PCS hereby expressly waives the provisions of Subsection 1 of Section 1932 and Sections 1941 and 1942 of the Civil Code of California and all rights to make repairs at the expense of District as provided in Section 1942 of said Civil Code.
  - C. Notwithstanding District's obligation to provide routine and deferred maintenance, PCS shall also have the following affirmative obligations:
    - 1. PCS shall maintain the Premises in good repair and condition, normal wear and tear excepted, in compliance with the same policies or practices that govern all District schools.
    - 2. To the extent District is required to provide maintenance levels above that typically required in other similar District facilities, PCS shall be responsible for paying the excess cost of maintenance.
    - 3. Should the need for any repairs or deferred maintenance projects be necessitated by intentional or negligent acts of PCS, its employees, agents, visitors or its students, PCS shall be responsible for the cost of such repairs or maintenance.
  - D. The Parties agree and acknowledge that the District will not undertake planning and/or payment of any maintenance or improvements to the School Site, except for routine and deferred maintenance as expressly described in Section 13.A. However, to the extent that the District and PCS determine that major

maintenance to the Premises is necessitated, the District hereby agrees to contribute the total sum of \$10,000 annually toward the costs of such District-approved projects during the Term of this FUA.

14. ALTERATIONS AND IMPROVEMENTS.

- A. Except as provided in section 14.B. below and other than projects required to bring the Premises into compliance with the ADA, Building Code and environmental laws, PCS shall not request nor implement capital improvements to or an expansion of the Premises site during the Term of the FUA.
- B. PCS may install up to two (2) portable classrooms on the Premises ("Portables"), with advance written approval from the District as to placement of those Portables, and may make minor cosmetic improvements ("Cosmetic Improvements") to the Premises. PCS shall be solely responsible for the acquisition, installation, maintenance, repair and operation of the Portables, including obtaining all necessary ancillary materials, fixtures and equipment. PCS shall obtain all required permits and approvals from any regulatory or oversight agency with jurisdiction over installation and use of the Portables, including but not limited to the Division of State Architect ("DSA") and shall comply with all other applicable laws, including the California Building Code, the California Environmental Quality Act, and applicable zoning requirements with regard to the Portables and Cosmetic Improvements. PCS agrees to provide the District with notice and the opportunity for input prior to making any improvements allowed under this Paragraph and acknowledges the SCCS provides no warranty as to the fitness of any such improvements. Prior to vacating the Premises, PCS agrees to return the Premises to its original state, unless SCCS provides written approval otherwise at that time.
- C. Upon installation, the Portables shall be for the exclusive use and occupation of PCS. PCS shall also be solely responsible for, and defend, indemnify and hold District harmless, against any and all injuries, damages, death or other claim resulting from its acquisition, installation, maintenance, repair, operation and use of the Portables or any other improvements authorized by this Paragraph. PCS further expressly acknowledges and agrees that the Indemnity provisions in section 10 herein apply to PCS's acquisition, installation, maintenance, repair, use, operation and/or removal of the Portables and any other improvements authorized by this Paragraph. The District shall have no liability, in any manner, for any injuries, damages, death or other claim resulting from or in any way connected to the Portables or any other improvements made by PCS.

15. CASUALTY DAMAGE. In the event that the Premises are totally destroyed (defined as the destruction of more than 50% of the usable classroom space except the Portables as defined by Section 14.B), the Charter School shall have the right, in its sole discretion, to terminate this FUA with no further obligation to the District. If the Charter School decides to continue under this FUA for the remainder of its Term the Rent shall be

reduced in equal proportion to the loss of usable classroom space at the school site. In no event shall District have the responsibility to repair or restore the Premises and/or School Site or to otherwise provide alternate facilities for PCS. Nothing in this provision, including the termination of the FUA, shall relieve PCS of its obligations to defend, indemnify and hold the District harmless as set forth elsewhere in this FUA, including, but not limited to, Section 10. If the District elects to rebuild and/or restore the Premises, either at its cost or PCS's cost, whichever is applicable, construction of the new Premises shall be undertaken at the sole discretion and under the direction and authority of the District.

16. DEFAULT.

A. Events of Default. A breach of this FUA shall exist if any of the following events (hereinafter referred to as "Event of Default") shall occur:

1. Default in the payment when due of any installment of rent or other payment required to be made by PCS hereunder, and the default shall not have been cured within ten (10) business days after receipt of written notice from District;
2. PCS's failure to perform any other term, covenant or condition contained in this FUA and the failure shall have continued for thirty (30) days after receipt of written notice of such failure is given to PCS unless, however, the Parties agree in writing that the nature of the default is such that the same cannot reasonably be cured within said 30 day period. Charter School shall not be deemed to be in default if Charter School shall within such agreed period commence such cure and thereafter diligently prosecute the same to completion.
3. Any case, proceeding or other action against PCS or any guarantor of PCS's obligations hereunder shall be commenced seeking to have an order for relief entered against it as debtor, or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its property, and the case, proceeding or other action (i) results in the entry of an order for relief against it which is not fully stayed within seven (7) business days after the entry thereof or (ii) remains undismissed for a period of forty-five calendar (45) days.
4. Revocation, non-renewal or termination of the PCS charter or cessation of the PCS program for any reason; however, the Charter School shall not be in default under this provision pending any appeal, statutory or otherwise, of a non-renewal or revocation of its charter;

5. The failure by PCS to utilize the Premises and/or School Site for the sole purpose of the safe operation of a charter school as authorized by the Charter and this FUA.
- B. Remedies. Upon any Event of Default, District shall have the following remedies, in addition to all other rights and remedies provided by law, to which District may resort cumulatively, or in the alternative:
1. Recovery of Rent. District shall be entitled to keep this FUA in full force and effect (whether or not PCS shall have abandoned the Premises) and to enforce all of its rights and remedies under this FUA, including the right to recover rent and other sums as they become due, plus interest at the rate of Bank of America's or its successor's reference rate plus three percent (3%) per annum from the due date of each installment of rent or other sum until paid.
  2. Termination. District may terminate this FUA by giving PCS written notice of termination. On the giving of the notice all of PCS's rights in the Premises shall terminate. Upon the giving of the notice of termination, PCS shall surrender and vacate the Premises in the condition required under this FUA, and District may re-enter and take possession of the Premises and all the remaining improvements or property and eject PCS or any of PCS's subtenants, assignees or other person or persons claiming any right under or through PCS or eject some and not others or eject none. This FUA may also be terminated by a court order or judgment specifically providing for termination. Any termination under this section shall not release PCS from the payment of any sum then due District or from any claim for damages or rent previously accrued or then accruing against PCS. In no event shall any one or more of the following actions by District constitute a termination of this FUA:
    - (a) maintenance and preservation of the Premises;
    - (b) efforts to relet the Premises;
    - (c) appointment of a receiver in order to protect District's interest hereunder;
    - (d) consent to any subletting of the Premises or assignment of this FUA by PCS, whether pursuant to provisions hereof concerning subletting and assignment or otherwise; or,
    - (e) any other action by District or District's agents intended to mitigate the adverse effects from any breach of this FUA by PCS;
    - (f) authorization of use of the School Site;
    - (g) entry upon the Premises and/or School Site.
  3. Damages. In the event this FUA is terminated, District shall be entitled to damages in the following sums:

- (a) the worth at the time of award of the unpaid rent which has been earned at the time of termination; plus,
- (b) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that PCS proves could have been reasonably avoided; plus,
- (c) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that PCS proves could be reasonably avoided; and,
- (d) any other amount necessary to compensate District for all detriment proximately caused by PCS's failure to perform PCS's obligation under this FUA, or which in the ordinary course of business would be likely to result therefrom including, without limitation, the following: (i) expenses for cleaning, repairing or restoring the Premises; (ii) real estate broker's fees, reasonable advertising costs and other expenses of reletting the Premises; (iii) costs of carrying the Premises and insurance premiums thereon, utilities and security precautions; (iv) expenses in retaking possession of the Premises; (v) reasonable attorneys' fees and court costs; and, (vi) any unamortized real estate brokerage commission paid in connection with this FUA;
- (e) the "worth at the time of award" of the amounts referred to in Subsections (a) and (b) of this section, is computed by allowing interest at the rate of Bank of America's or its successor reference rate plus three percent (3%) per annum. The "worth at the time of award" of the amounts referred to in Subsection (c) of this section is computed by discounting such amount at the discount rate of the Federal Reserve Board of San Francisco at the time of award plus one percent (1%). The term "rent" as used in this section shall include all sums required to be paid by PCS to District pursuant to the term of this FUA.

17. MECHANICS LIEN. PCS shall: (i) pay for all labor and services performed for, materials used by or furnished to PCS or any contractor employed by PCS with respect to the Premises; and, (ii) indemnify, defend and hold District and the Premises harmless and free from the perfection of any liens, claims, demands, encumbrances or judgments created or suffered by reason of any labor or services performed for, or materials used by or furnished to, PCS or any contractor employed by PCS with respect to the Premises; and, (iii) give notice to District in writing fifteen (15) days prior to employing any laborer or contractor to perform services related to, or receiving materials for use upon, the Premises; and, (iv) permit District to post a notice of nonresponsibility in accordance with the statutory requirements of California Civil Code Section 3094 or any amendment thereof. In the event PCS is required to post an improvement bond with a public agency in connection with the above, PCS agrees to include District as an additional obligee.

18. INSPECTION OF AND ACCESS TO PREMISES. PCS agrees to provide District with a set of keys for routine maintenance and repairs. PCS shall permit District and its agents to enter the Premises at any reasonable time for the purpose of inspecting the same and for performing District's maintenance and repair responsibilities. At any time within three (3) months prior to the expiration of the Term of this FUA, District, for the purpose of showing the Premises to prospective tenants / bidders may place upon the Premises "For Lease" or "For Sale" signs.
19. ACCESS ACROSS PREMISES. District, and its successors in interest, included users of other areas of the School Site, shall have the right to access across the Premises for the purpose of obtaining access to the gymnasium, playing fields and Life Lab Gardens and for purposes of providing maintenance as set forth herein.
20. HOLDING OVER. PCS shall not have the right to holdover. Should PCS hold over in possession after the expiration of the original Term or any Extended Term of this FUA, the holding over shall not be deemed to extend the Term or renew the FUA. In the event of PCS's holdover, PCS hereby waives all rights and remedies provided under California Unlawful Detainer law.
22. NOTICES. Any notices which either of the parties hereto is required or may desire to send or deliver to give to the other party, shall be mailed, certified mail, return receipt requested, postage prepaid, or delivered, with all charges prepaid, to such other party at the address listed below, or to such address as either party may designate to the other from time to time in writing.

District: Superintendent  
Santa Cruz City Schools  
405 Old San Jose Road  
Soquel, CA 95073

PCS: Board President  
Pacific Collegiate Charter School  
255 Swift Street  
Santa Cruz, CA 95060

The date of service of any notice mailed as aforesaid, shall be deemed to be five (5) days after the date of such mailing, and the date of service of any notice hand delivered, as aforesaid, shall be deemed to be one (1) day after delivery thereof to the delivery service office.

23. ATTORNEYS' FEES. In the event either party shall bring any action or legal proceeding for damages for any alleged breach of any provision of this FUA, to recover rent or possession of the Premises, to terminate this FUA, or to enforce, protect or establish any term or covenant of this FUA or right or remedy of either party, the prevailing party shall be entitled to recover, as a part of the action or proceeding, reasonable attorneys' fees and court costs, including attorneys' fees and costs for appeal,

as may be fixed by the court or jury. The term "prevailing party" shall mean the party who received substantially the relief requested, whether by settlement, dismissal, summary judgment, judgment, or otherwise.

24. CIVIC CENTER ACT COMPLIANCE. PCS shall have primary use of the Premises for the operation of its educational program during its regular school hours; provided, however, that after 5 pm during the week and all day on weekends and holidays, the Premises and School Site 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 Premises by users other than PCS shall be evaluated and handled by the Charter School. Charter School understands and agrees that the obligation of PCS to indemnify the District as set forth in Section 10 covers any claims, demands, actions, suits, losses, liability, expenses, costs arising out of or related to the Charter School's handling of any Civic Center Act requests. The District shall be responsible for any Civic Center Act requests related to the playing fields and the Charter School shall refer any such requests to the District. Use of the play areas shall be open to the public at all times that school is not in session and in accordance with the normal practices of the District.
25. TITLE TO PROPERTY. The parties acknowledge that title to the Premises and School Site is held by the District and shall remain in the District at all times.
26. ASSIGNMENT/SUBLEASING. PCS may not assign and/or sublet this FUA or any portion of the Premises. Any assignment or sublease in violation of this Section shall be void and of no effect. PCS agrees that the District may assign any interest in this FUA, as required or desired at any time, provided that the assignment will not disturb PCS's possession and quiet enjoyment of the Premises.
27. SURRENDER OF THE PREMISES. On the last day of the Term hereof, or on sooner termination of this FUA, PCS shall surrender to District the Premises and any then existing improvements in good order, condition and repair, reasonable wear and tear excepted, free and clear of all liens, claims and encumbrances. This condition shall be similar to that existing as of the Commencement Date of this FUA excepting normal ordinary wear and tear and any structural improvements made by District subsequent to the Commencement Date. This FUA shall operate as a conveyance and assignment to the District of any improvements identified by the District to remain on the School Site. PCS shall remove from the Premises all of PCS's personal property, trade fixtures, and any improvements made by PCS which PCS and District agreed would be removed by PCS. All property not so removed shall be deemed abandoned by PCS. If the Premises are not so surrendered at the termination of this FUA, PCS shall indemnify District against loss or liability resulting from delay by PCS in so surrendering the Premises including, without limitation, any claims made by any succeeding PCS or losses to District due to lost opportunities to grant use to succeeding users/tenants.

28. MUTUAL COVENANTS. The parties covenant, warrant and represent that they each respectively have full right and power to execute and perform this FUA, and to grant and accept the estate demised herein.
29. BROKERAGE. District and PCS agree that no broker was involved in any of the negotiations that preceded this FUA or in the procuring of same. District and PCS agree that if any claim be made for brokerage fees by, through or on account of any acts of District or PCS or their respective representatives, the party upon whose acts such claim is made will hold the other harmless from any and all liabilities and expenses in connection therewith.
30. HAZARDOUS MATERIALS. District and PCS agree as follows with respect to the existence or use of Hazardous Materials on the Premises including any improvements made by PCS.
- A. Definition. As used herein, the term "Hazardous Materials" means any hazardous or toxic substance, material or waste that is or becomes regulated by any local governmental authority, the State of California or the United States Government. The term "Hazardous Materials" includes, without limitation, petroleum products, asbestos, PCB's, and any material or substance which is (i) defined as hazardous or extremely hazardous pursuant to Title 22 of the California Code of Regulations, Division 4.5, Chapter 11, Article 4, Section 66261.30 et seq. (ii) defined as a "hazardous waste" pursuant to Section (14) of the federal Resource Conservation and Recovery Act, 42 U.S.C. 6901 et. seq. (42 U.S.C. 6903), or (iii) defined as a "hazardous substance" pursuant to Section 10 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et. seq. (42 U.S.C. 9601). As used herein, the term "Hazardous Materials Law" shall mean any statute, law, ordinance, or regulation of any governmental body or agency (including the U.S. Environmental Protection Agency, the California Regional Water Quality Control Board, and the California Department of Health Services) which regulates the use, storage, release or disposal of any Hazardous Material.
- B. Hazardous Materials. PCS shall not cause or permit any Hazardous Material to be generated, brought onto, used, stored, or disposed of in or about the Premises and any improvements by PCS or its agents, employees, contractors, subtenants, or invitees, except for limited quantities of standard office, classroom and janitorial supplies (which shall be used and stored in strict compliance with Hazardous Materials Laws).
- C. Responsibility of PCS. From and after the Commencement Date, PCS shall be solely responsible for all environmental matters predicated upon its use of the Premises. Without limiting the preceding sentence:
1. Any handling, transportation, storage, treatment, disposal or use of Hazardous Materials in or about the Premises by PCS shall strictly comply

with all applicable Hazardous Materials Laws and the provisions of this FUA.

2. It shall be the duty of PCS to insure that its activities on the Premises are at all times in strict compliance with all Hazardous Materials Laws and that all activities conducted in or about the Premises and improvements comply in every respect with all applicable Hazardous Materials Laws including, but not limited to, all notification, record keeping, and maintenance requirements of such Hazardous Materials Laws.
3. During the Term of this FUA, PCS shall have and discharge all of the duties and obligations of the owner of the Premises and improvements under applicable Hazardous Materials Laws related to PCS's use thereof, including, but not limited to, response and remediation; and
4. PCS shall be responsible for all liability to third parties who may be harmed or claim harm resulting from an environmental condition on or about the Premises and any improvements caused by PCS's use or control thereof.

D. Indemnification. PCS shall indemnify, defend upon demand with counsel reasonably acceptable to District, and hold harmless District and its trustees, agents and employees from and against any liabilities, losses, claims, damages, lost profits, consequential damages, interest, penalties, fines, monetary sanctions, attorneys' fees, experts' fees, court costs, remediation costs, investigation costs, and other expenses which result from or arise in any manner whatsoever out of PCS's use, storage, treatment, transportation, release, or disposal of Hazardous Materials on or about the Premises.

E. PCS Action. If the presence of Hazardous Materials on the Premises brought on to the Premises or allowed upon the Premises by PCS results in contamination or deterioration of water or soil resulting in a level of contamination greater than the levels established as acceptable by any governmental agency having jurisdiction over such contamination, and if PCS is responsible therefore under applicable law, then PCS shall, at its sole cost and expense, promptly take any and all action necessary to investigate and remediate such contamination if required by law or as a condition to the issuance or continuing effectiveness of any governmental approval which relates to the use of the Premises and any improvements or any part thereof. PCS shall further be solely responsible for, and shall defend, indemnify and hold District and its agents harmless from and against, all claims, costs and liabilities, including attorneys' fees and costs, arising out of or in connection with any investigation and remediation required hereunder to return the Premises and any improvements to full compliance with all Hazardous Materials Laws.

- F. Notice. District and PCS shall each give written notice to the other as soon as reasonably practicable of (i) any communication received from any governmental authority concerning Hazardous Materials which relates to the Premises and any improvements, and (ii) any contamination of the Premises and any improvements by Hazardous Materials which constitutes a violation of any Hazardous Materials Law. PCS may use small quantities of household chemicals such as adhesives, lubricants, and cleaning fluids in order to conduct its Program on the Premises and such other Hazardous Materials as are necessary for the operation its Program. At any time during the Term, PCS shall, within thirty (30) days after written request therefore received from District, disclose in writing all Hazardous Materials that are being used by PCS on the Premises and any improvements, the nature of the use, and the manner of storage and disposal.
- G. Monitoring Wells. In the event that District has reason to believe that Hazardous Materials may be present on the Premises as a result of PCS's use during the Term of this FUA and in violation of this FUA, District may require that, at PCS's expense, testing wells be installed on the Premises and any improvements, at locations determined by District and PCS, and may cause the ground water to be tested to detect the presence of Hazardous Materials by the use of such tests as are then customarily used for such purposes. PCS shall comply promptly with any such request.
- H. Survival. The obligations of PCS under this Section shall survive the expiration or earlier termination of this FUA. The rights and obligations of District and PCS with respect to issues relating to Hazardous Materials are exclusively established by this Section. In the event of any inconsistency between any part of this FUA and this Section, the terms of this Section shall control.
- I. In the event that PCS causes any Hazardous Materials to be released, spilled or otherwise exposed through its use and occupancy of the Premises, such as, but not limited to remodeling or other construction, PCS shall be solely responsible for all costs associated with the proper handling, mitigation, remediation and disposal of the Hazardous Materials and all related cleanup.
31. SUCCESSORS. This FUA contains all of the covenants, agreements, representations and provisions thereof and shall inure to the benefit of and be binding upon the respective heirs, legal representatives, executors, administrators, successors and assigns of the parties hereto, except as provided in the preceding Section.
32. WAIVER. The waiver by District or PCS of any breach of any term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained shall not be deemed to be a waiver of the term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained.

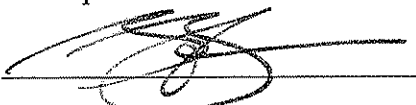
33. CAPTIONS. The captions and section headings used in this FUA are for the purposes of convenience only. They shall not be construed to limit or extend the meaning of any part of this FUA.
34. TIME OF THE ESSENCE. Time is of the essence for the performance of each term, covenant and condition of this FUA.
35. AGREEMENT TO TERMS. The Parties hereby expressly agree to all terms and conditions set forth in this FUA and recognize that the terms and conditions are not severable. The Parties further waive any claim of illegality of any and all terms and conditions in this FUA and neither Party shall be permitted to disregard or otherwise fail to comply with any term in this FUA on the ground that such term is illegal and/or invalid.
36. APPLICABLE LAW. This FUA shall be construed and enforced in accordance with the laws of the State of California.
37. JOINT AND SEVERAL LIABILITY. If PCS is more than one person or entity, each such person or entity shall be jointly and severally liable for the obligations of PCS hereunder.
38. NO SUBORDINATION. PCS agrees that District's fee interest shall at all times be and remain unsubordinated to any leasehold mortgage which may be imposed upon PCS's leasehold interest hereunder or upon the improvements, and that nothing contained in this FUA shall be construed as an agreement by District to subject its fee interest to any lien. Nothing in this Section or in any other provision of this FUA shall be construed as an agreement by District to subordinate its fee interest in the Premises to any leasehold mortgage or other lien or right. No leasehold mortgage shall impair District from enforcing its rights and remedies herein or by law provided.
39. COOPERATION WITH OTHER OCCUPANTS OF THE PROPERTY. It is understood and recognized by PCS that the School Site, of which the Premises is a part, will be used by other parties, including District, and PCS shall cooperate with the other parties in reaching amicable arrangements concerning such matters as use of the parking areas, playgrounds, policing of common areas and security measures.
40. INDEPENDENT STATUS. This FUA 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.
41. ENTIRE AGREEMENT. This FUA, together with the Settlement Agreement which is incorporated by reference, constitute the entire understanding between the parties hereto and no addition to or modification of, any term or provision of this FUA shall be effective until set forth in writing signed by both District and PCS. In addition, it is expressly agreed and acknowledged that this FUA supersedes the January 14, 2009 FUA entered into by and between the Parties.

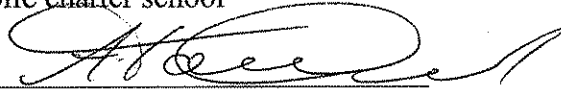
42. SEVERABILITY. If one or more of the provisions of this Agreement is found to be invalid, illegal, or unenforceable by a court of law, except for the payment of rent, the Agreement will remain in effect without that offending clause through June 30 of the school year following the year in which such determination is made, at which time this Agreement will terminate, unless renegotiated otherwise by the Parties. PCS agrees that all clauses in this Agreement are valid, legal, and enforceable, and also agrees that it will not challenge the enforceability of any clause in this Agreement. Should a third party challenge any of the terms of this Agreement, or initiate litigation that calls into question the validity, legality or enforceability of any of the clauses in this Agreement, PCS agrees to defend in good faith any challenge brought against the Agreement.
43. MEDIATION. All claims, disputes or controversies arising out of, or in relation to the interpretation, application or enforcement of this FUA may be submitted to mediation as the first method of resolution if agreeable to both Parties.

IN WITNESS WHEREOF, District and PCS have executed this FUA, through their respective officers or representatives, duly authorized, as of the day and year shown below.

District:  
Santa Cruz City Schools,  
a California public school district

PCS:  
Pacific Collegiate Charter School  
a public charter school

By: 

By: 

Name: GARY BLOOM

Name: ANDREW TOWNSEND

Title: Superintendent

Title: BOARD PRESIDENT

Date: 9/23/10

Date: 9/23/10

Attachments:  
Exhibit "A"