

WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT

BOARD OF EDUCATION  
LOVONYA DEJEAN MIDDLE SCHOOL  
3400 Macdonald Avenue  
Richmond, CA 94805

**ADDENDUM**

June 24, 2015

The following are revisions to the agenda of the June 24, 2015 Board of Education Meeting:

C. BUSINESS ITEMS

\* C.12 **Ellerhorst Elementary School Exterior Repairs Award of Contract**

Comment:

Grossmann Design Group has prepared plans and specifications for the project. Scope of work includes: removal of existing metal enclosures at condensing units and patching of roofing areas where existing metal enclosures were removed; replacement of existing deteriorated wood fascia and installation of new sheet metal flashing at fascia; removal of existing and installation of new sealant and backer rod as well as painting of existing building exterior.

The District conducted a public bid process for the project. Bids were opened on June 17, 2015. Four contractors submitted a bid: OnPoint Construction \$246,000, Painting & Décor, Inc. \$261,250, AM Woo Construction \$325,500, ERA Construction (non-responsive). The basis of award is the sum of the base bid, an allowance and unit pricing. The ~~apparent~~ lowest responsive responsible bidder is OnPoint Construction.

The contract award is only associated with the sum of the base bid and allowance: OnPoint Construction \$241,500, Painting & Décor, Inc. \$251,500, AM Woo Construction \$315,500.

Recommendation:

Award the contract to the lowest responsive, responsible bidder: **OnPoint Construction.** ~~at the expiration of the bid protest period.~~

Fiscal Impact:

**\$241,500.** Funded from Fund 14.

\* C.15 **Verde Elementary School Exterior Painting Award of Contract**

Comment:

HMC Architects has prepared plans and specifications for the project. Scope of work includes: selective demolition and surfaces preparation, including associated exterior repairs of cracks and other patching, surface sanding or roughing, and protective wrapping of mechanical and/or electrical elements work as indicated in the Drawings and Specifications.

The District conducted a public bid process for the project. Bids were opened on June 16, 2015. Four contractors submitted a bid: Diamond Painting Co. KK \$133,644, OnPoint Construction \$149,884, CAM Painting, Inc. \$167,725, Fix Painting Company \$215,180.

Total bid is the sum of the base bid and unit pricing. The ~~apparent~~ lowest responsive responsible bidder is Diamond Painting Co. KK.

Determining the award is based on two components; the lump sum base bid and unit cost multiplied by quantities to be determined in the field. This benefits the District by locking in unit pricing to be used in negotiating future change orders. The contract award is only associated with the lump sum base bid: Diamond Painting Co. KK \$133,499, OnPoint Construction \$149,500, CAM Painting, Inc. \$167,000, Fix Painting Company \$214,000.

Recommendation:

Award the contract to the lowest responsive, responsible bidder: **Diamond Painting Co. KK.** ~~after the expiration of the bid protest period.~~

Fiscal Impact:

**\$133,499.** Funded from Fund 14.

\* **C.16 Facilities Use Agreement (FUA) for Caliber Beta Academy**

Comment:

Pursuant to Proposition 39, a school district is required to provide facilities to a charter school that is operating within the school district (has at least 80 units of in-district ADA) and that, by November 1 of the fiscal year preceding the year for which facilities are requested, submits a legally sufficient request for facilities.

On October 30, 2014, Caliber Beta Academy submitted a legally sufficient request for Proposition 39 facilities for the 2015-2016 school year.

On March 18, 2015, the Board approved the final offer to Caliber for space at Kennedy High School that is currently being used on an interim basis by Coronado Elementary School (the "Berk Avenue Site"). Since that time, the District and Caliber have been negotiating the terms of a Facilities Use Agreement for the 2015/2016 school year. The details of the space provided under the Facilities Use Agreement to Caliber are as follows:

- 24 classrooms currently being used by Coronado Elementary School, including 3 kindergarten rooms
- An additional kindergarten portable, with internal bathrooms, to be located where the shipping containers currently are located. It will be fenced into the current kindergarten yard, pending a review of the sewer lines.
- 6 additional portables (located in the 900 wing of Kennedy High School) with new opaque fencing installed between Kennedy High School and Caliber
- 4 offices with a workroom, and administration space that totals 3,840 SF
- Cafeteria and kitchen, totaling 2,400 SF, which can also be used as a multi-purpose room
- Faculty lounge of 800 SF
- 3 existing restrooms (boys, girls, and faculty), plus a new portable restroom with additional boys **and** girls **and** faculty restrooms. The portable restroom will likely be located adjacent to the "admin portables," pending sewer line placement considerations.
- A kindergarten playground
- A playground for grades 4-6
- Site size of 2.8 acres, with 1.8 acres of play area

- The building space totals approximately 39,840 SF, and the outdoor space totals 89,646 SF
- Use of two storage containers, an asphalt running track, outdoor basketball courts, outdoor volleyball courts, and 20 parking spaces for staff and visitors
- Use of athletic fields from 1:00 to 3:00 p.m. on school days subject to special events.

The District will coordinate communication between Caliber and the school resource officer (“SRO”) at Kennedy and is providing comparable technology to what was provided for the current school year to Caliber. In addition, the District is providing the majority of furniture that is already at the Berk Avenue Site, and Caliber may also use the furniture at the current Caliber site. District and Caliber to mutually agree on kitchen equipment remaining at the site.

Caliber will pay a facilities use fee of \$3.78/SF for the building space.

Recommendation:

Approve the Facilities Use Agreement for the 2015/16 school year.

Fiscal Impact:

The District must furnish, equip, and make the space available for occupancy by Caliber ten (10) working days prior to the charter school’s first day of instruction. The cost of this effort is approximately \$200,000 together, with 2015/16 portable leasing costs estimated at \$150,000. The District will charge Caliber a pro rata share of its facilities costs for the use of

West Contra Costa Unified School District  
1108 Bissell Avenue  
Richmond, California 94801  
Office of the Superintendent

**ITEM REQUIRING ATTENTION----BOARD OF EDUCATION**

**To:** Board of Education **Meeting Date:** June 24, 2015  
**From:** Lisa LeBlanc **Agenda Item:** CI C.12 Revised  
Associate Superintendent for Operations  
**Subject:** Ellerhorst Elementary School Exterior Repairs Award of Contract

**Background Information:**

Grossmann Design Group has prepared plans and specifications for the project. Scope of work includes: removal of existing metal enclosures at condensing units and patching of roofing areas where existing metal enclosures were removed; replacement of existing deteriorated wood fascia and installation of new sheet metal flashing at fascia; removal of existing and installation of new sealant and backer rod as well as painting of existing building exterior.

The District conducted a public bid process for the project. Bids were opened on June 17, 2015. Four contractors submitted a bid: OnPoint Construction \$246,000, Painting & Décor, Inc. \$261,250, AM Woo Construction \$325,500, ERA Construction (non-responsive). The basis of award is the sum of the base bid, an allowance and unit pricing. The ~~apparent~~ lowest responsive responsible bidder is OnPoint Construction.

The contract award is only associated with the sum of the base bid and allowance: OnPoint Construction \$241,500, Painting & Décor, Inc. \$251,500, AM Woo Construction \$315,500.

**Recommendation:**

Award the contract to the lowest responsive, responsible bidder: **OnPoint Construction.** ~~at the expiration of the bid protest period.~~

**Fiscal Impact: \$241,500.** Funded from Fund 14.

DISPOSITION BY BOARD OF EDUCATION

Motion by: \_\_\_\_\_ Seconded by: \_\_\_\_\_

Approved \_\_\_\_\_ Not Approved \_\_\_\_\_ Tabled \_\_\_\_\_

West Contra Costa Unified School District  
1108 Bissell Avenue  
Richmond, California 94801  
Office of the Superintendent

**ITEM REQUIRING ATTENTION----BOARD OF EDUCATION**

**To:** Board of Education **Meeting Date:** June 24, 2015  
**From:** Lisa LeBlanc **Agenda Item:** CI C.15 Revised  
Associate Superintendent for Operations  
**Subject:** Verde Elementary School Exterior Painting Award of Contract

**Background Information:**

HMC Architects has prepared plans and specifications for the project. Scope of work includes: selective demolition and surfaces preparation, including associated exterior repairs of cracks and other patching, surface sanding or roughing, and protective wrapping of mechanical and/or electrical elements work as indicated in the Drawings and Specifications.

The District conducted a public bid process for the project. Bids were opened on June 16, 2015. Four contractors submitted a bid: Diamond Painting Co. KK \$133,644; OnPoint Construction \$149,884, CAM Painting, Inc. \$167,725, Fix Painting Company \$215,180. Total bid is the sum of the base bid and unit pricing. The ~~apparent~~ lowest responsive responsible bidder is Diamond Painting Co. KK.

Determining the award is based on two components; the lump sum base bid and unit cost multiplied by quantities to be determined in the field. This benefits the District by locking in unit pricing to be used in negotiating future change orders. The contract award is only associated with the lump sum base bid: Diamond Painting Co. KK \$133,499, OnPoint Construction \$149,500, CAM Painting, Inc. \$167,000, Fix Painting Company \$214,000.

**Recommendation:**

Award the contract to the lowest responsive, responsible bidder: **Diamond Painting Co. KK.** ~~after the expiration of the bid protest period.~~

**Fiscal Impact: \$133,499.** Funded from Fund 14.

DISPOSITION BY BOARD OF EDUCATION

Motion by: \_\_\_\_\_ Seconded by: \_\_\_\_\_  
Approved \_\_\_\_\_ Not Approved \_\_\_\_\_ Tabled \_\_\_\_\_

West Contra Costa Unified School District  
1108 Bissell Avenue  
Richmond, California 94801  
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**ITEM REQUIRING ATTENTION----BOARD OF EDUCATION**

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**To:** Board of Education **Meeting Date:** June 24, 2015  
**From:** Lisa LeBlanc **Agenda Item:** CI C.16 Revised  
Associate Superintendent, Operations  
**Subject:** Facilities Use Agreement (FUA) for Caliber Beta Academy

**Background Information:**

Pursuant to Proposition 39, a school district is required to provide facilities to a charter school that is operating within the school district (has at least 80 units of in-district ADA) and that, by November 1 of the fiscal year preceding the year for which facilities are requested, submits a legally sufficient request for facilities. On October 30, 2014, Caliber Beta Academy submitted a legally sufficient request for Proposition 39 facilities for the 2015-2016 school year.

On March 18, 2015, the Board approved the final offer to Caliber for space at Kennedy High School that is currently being used on an interim basis by Coronado Elementary School (the "Berk Avenue Site"). Since that time, the District and Caliber have been negotiating the terms of a Facilities Use Agreement for the 2015/2016 school year. The details of the space provided under the Facilities Use Agreement to Caliber are as follows:

- 24 classrooms currently being used by Coronado Elementary School, including 3 kindergarten rooms
- An additional kindergarten portable, with internal bathrooms, to be located where the shipping containers currently are located. It will be fenced into the current kindergarten yard, pending a review of the sewer lines.
- 6 additional portables (located in the 900 wing of Kennedy High School) with new opaque fencing installed between Kennedy High School and Caliber
- 4 offices with a workroom, and administration space that totals 3,840 SF
- Cafeteria and kitchen, totaling 2,400 SF, which can also be used as a multi-purpose room
- Faculty lounge of 800 SF
- 3 existing restrooms (boys, girls, and faculty), plus a new portable restroom with additional boys **and** girls **and** faculty restrooms. The portable restroom will likely be located adjacent to the "admin portables," pending sewer line placement considerations.
- A kindergarten playground
- A playground for grades 4-6
- Site size of 2.8 acres, with 1.8 acres of play area
- The building space totals approximately 39,840 SF, and the outdoor space totals 89,646 SF
- Use of two storage containers, an asphalt running track, outdoor basketball courts, outdoor volleyball courts, and 20 parking spaces for staff and visitors
- Use of athletic fields from 1:00 to 3:00 p.m. on school days subject to special events.

The District will coordinate communication between Caliber and the school resource officer ("SRO") at Kennedy and is providing comparable technology to what was provided for the current school year to Caliber. In addition,

the District is providing the majority of furniture that is already at the Berk Avenue Site, and Caliber may also use the furniture at the current Caliber site. District and Caliber to mutually agree on kitchen equipment remaining at the site.

Caliber will pay a facilities use fee of \$3.78/SF for the building space.

**Recommendation:**

Approve the Facilities Use Agreement for the 2015/16 school year.

**Fiscal Impact:** The District must furnish, equip, and make the space available for occupancy by Caliber ten (10) working days prior to the charter school's first day of instruction. The cost of this effort is approximately \$200,000 together, with 2015/16 portable leasing costs estimated at \$150,000. The District will charge Caliber a pro rata share of its facilities costs for the use of the facilities at the Berk Avenue Site of \$3.78/SF, as permitted by California Code of Regulations, title 5, section 11969.7. The total payment by Caliber is estimated at \$150,595.

DISPOSITION BY BOARD OF EDUCATION

Motion by: \_\_\_\_\_

Seconded by: \_\_\_\_\_

Approved \_\_\_\_\_

Not Approved \_\_\_\_\_

Tabled \_\_\_\_\_

## FACILITIES USE AGREEMENT

This Facilities Use Agreement ("Agreement") is made by and between West Contra Costa Unified School District ("District") and Caliber Schools, a California non-profit public benefit corporation ("Non-Profit"), which operates Beta Academy, a charter school ("Charter School"). The Non-Profit and District are collectively referred to as the "Parties."

### RECITALS

- A. WHEREAS, the District's intent is to ensure that its facilities are shared equally with all of its students, including those students who attend charter schools housed in District facilities.
- B. WHEREAS, District is the owner of real property located at Kennedy High School, 4300 Cutting Boulevard, Richmond, California 94804 ("Site").
- C. WHEREAS, the Charter School is a charter school duly formed and approved by the County under the laws of the Charter Schools Act of 1992 (Education Code §§ 47600, et seq.) serving students in grades Kindergarten through Fourth Grade, and Sixth and Seventh Grades, in the 2015-2016 school year.
- D. WHEREAS, the Charter School desires to use certain District facilities located on the Site for its public charter school program.
- E. WHEREAS, the Parties intend this Agreement to satisfy their obligations under Education Code Section 47614 and Title 5 of the California Code of Regulations Section 11969, et seq., adopted by the State Board of Education ("Proposition 39"), which among other things require a written agreement regarding the allocating of facilities under Proposition 39, for the 2015-2016 school year.

### AGREEMENT

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

- 1. Recitals. The recitals set forth above are incorporated herein and made part of this Agreement.
- 2. Facilities. Use of the Facilities shall be for the purposes set forth in the Charter School's charter and on the terms and conditions set forth herein. The Charter School shall not have exclusive use of the Site. The District grants use of the facilities ("Facilities") located on the Site as described and/or depicted in Exhibits A and B, which are attached hereto and incorporated herein by reference, to the Charter School under the terms and conditions set forth in this Agreement.
- 3. Term. The term of this Agreement shall be from July 1, 2015, to July 7, 2016 ("Term"), unless terminated earlier as provided herein. The Charter School shall have full access to the Facilities no later than July 20, 2015. If reasonably possible, access prior to this date will be provided by the District so that the Charter School can finalize plans with its



vendors, including but not limited to access by July 7, 2015, to the kitchen and certain portables.

4. Facilities Use Fee. Each and every school year, Non-Profit shall pay District a Facilities Use Fee. Facilities Use Fees shall be paid out in equal installments each month throughout the Term. Beginning on July 1, 2015, payments shall be payable on or in advance on the first day of each month ("Due Date") in lawful money of the United States.

The calculation for the 2015-2016 school year, and terms of Facilities Use Fee payments, are further described with more particularity in Exhibit C, attached hereto and incorporated herein. The Facility Use Fee shall be based on a pro rata cost estimate per square foot for the Facilities provided. The dollar amount to be paid by Non-Profit, per square foot, for use of the Facilities during the Term will be calculated by the District pursuant to Title 5, California Code of Regulations, Section 11969.7.

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

The Parties agree that the Facilities Use Fee is in lieu of Non-Profit paying a pro rata share for in-district students and any actual costs for out-of-district students.

5. Over-Allocation. The District reserves the right to collect over-allocation and other applicable fees and reimbursements from the Charter School, pursuant to Title 5, California Code of Regulations, Section 11969.8. The Charter School's projected in-District Average Daily Attendance ("ADA") for the 2015-2016 school year, and upon which the Facilities are provided, is 568.1.
6. Dispute Resolution. The Parties agree to attempt to promptly resolve all disputes regarding this Agreement, including the alleged violation, misinterpretation, or misapplication of the Agreement, otherwise the Parties may seek to enforce their rights as allowed by applicable law.
7. Use.
  - (a) Public Charter School. The Facilities shall be used and occupied by the Charter School for the sole purpose of operating a California public charter school and for no other purpose without the prior written consent of the District. The District shall retain the responsibilities of a real property owner in connection with compliance with the Americans with Disabilities Act, the Fair Employment and Housing Act ("FEHA"), and the Field Act, as would be required if the Facilities were occupied by a school of the District, unless and otherwise stated in provision 14 (alterations and additions) to this Agreement below. The Charter School's enrollment must not exceed the safe and legal limit, as set by the Fire Marshal, for the classroom and total space it occupies.

- (b) Insurance Risk. The District shall maintain first party property insurance for the Facilities. The Charter School shall not do or permit anything to be done in or about the Facilities nor bring or keep anything therein which will in any way increase the existing insurance rate or affect any fire or other insurance upon the Facilities, or any of the contents of the Facilities (unless the District gives its prior approval and the Charter School pays any increased premium as a result of such use or acts), or cause a cancellation of any insurance policy covering the Facilities or any part thereof or any of its contents, nor shall the Charter School sell or permit to be kept, used, or sold in or about the Facilities any articles which may be prohibited by a standard form policy of fire insurance. The Charter School shall provide adequate and appropriate supervision for the Charter School students and employees using the Facilities.
- (c) Rights of the District. The Charter School shall not do or permit anything to be done in or about the Facilities that will in any way obstruct or interfere with the rights of the District or injure the District or use or allow the Facilities to be used for any unlawful purpose, nor shall the Charter School cause, maintain or permit any nuisance in or about the Facilities. The Charter School shall not commit or suffer to be committed any waste in or upon the Facilities.
- (d) Illegal Uses. The Charter School shall not use the Facilities or permit anything to be done in or about the Facilities that will in any way conflict with any applicable law, statute, ordinance or governmental rule, or regulation.
- (e) Civic Center Act. The Charter School agrees to comply with the provisions of the Civic Center Act (Education Code Section 38131, et seq.) in making use of the Facilities accessible to members of the community. The Parties understand that the Facilities are to be primarily used for school programs and activities and as such any use of the Facilities by members of the community shall not interfere with school activities. In order to ensure that there will not be interference with the Charter School's activities, the District will confer with the Charter School prior to scheduling use of the Site under the Civic Center Act. District Board Policy and Administrative Regulations related to the Civic Center Act shall control scheduling, use and collection of fees related to use of the Facilities by members of the public. Consistent with that policy and the regulations, the District shall be solely responsible for coordinating access to the Facilities under the Civic Center Act and shall require users to provide appropriate proof of insurance related to use of the Facilities and to indemnify and hold harmless the District and the Charter School for injury, risk of loss, or damage to property as a result of that access by members of the community. The District agrees to promptly clean and repair, if necessary, any portion of the Facilities used by members of the community immediately following such use. All requests for use of the Facilities made directly to the Charter School shall be forwarded to the District for coordination of use consistent with Board Policy and Administrative Regulations.
- (f) Alarms. The Charter School shall have access to activate burglar alarms and intruder alerts corresponding to the Facilities provided at the Site. The Charter School agrees that in the event that any of the Charter School's employees, directors, trustees, officers, agents, students, visitors, or contractors trigger a false alarm at the Site, the Charter School shall be responsible for costs incurred.

8. Furnishings and Equipment. The District shall provide, in accordance with the Proposition 39 regulations, all furnishings and equipment necessary to conduct classroom instruction and to provide for student services that directly support classroom instruction as found in the comparison group schools at the Premises. These furnishings and equipment shall remain the property of the District. The furnishings and equipment provided shall be equivalent to those furnishings and equipment provided in the comparison group of schools in accordance with 5 C.C.R. Section 11969.3, and based on a walk-through of the Facilities by the parties, the District's obligations to meet this requirement shall only be the following:

The Charter School will be responsible to provide their own primary and (if the Charter School, in its sole discretion, so chooses, secondary) internet bandwidth provider. The minimum point of entry for any bandwidth provider selected by the Charter School will be located in or adjacent to an MDF or IDF that is designated for Charter School use by District Staff (including, without limitation the MDF currently located in portable #02 or the IDF located in adminwing building #903). Connectivity from any MPOE to other IDFs on the site will be carried over District installed and maintained fiber. Connectivity from any IDF to individual rooms will be carried over District installed and maintained fiber or Ethernet cabling. The Charter School will be responsible to remove the district-owned access points and will return them to the District.

Bandwidth:

- The District will break the tie-in to the Kennedy network so the Charter School has its own network.

MDFs/IDFs:

- The District will leave all IDF's and the MDF in place for the Charter School's use.

Router/Switches:

- Current switches in the Charter School MDF/IDFs have sufficient capacity (throughput and ports) for the Charter School's needs, and the District will leave them in place. The District will replace the switches in the shared IDF with current models that have sufficient capacity for the planned drops.

Drops/Cabling:

- The District will install comparable drops in the new Kindergarten portable when it is delivered and will provide cabling to one of the IDFs.
- The District will provide an additional ceiling drop (total of 2) in the computer lab(s).
- The District will ensure that cabling for admin portables is separated in the shared IDF (i.e., dedicated switch for the Charter School) and clearly labeled.

WAPs:

- The Charter School will remove existing WAPs/mounts and replace with the Charter School-provided WAPs/mounts.

Other:

- The District will provide a network diagram showing the location of MDF/IDFs throughout the campus and how they will be re-wired to separate the current network from the Kennedy campus.

The Charter School shall have all other obligations regarding technology, including but not limited to the following:

Bandwidth:

- The Charter School shall secure new bandwidth connectivity to the current MDF.

Router/Switches:

- The Charter School will provide a router/firewall for the MDF.

WAP's:

- The Charter School will augment its current inventory of Meraki MR-26 WAP's with MR-32 WAP's.
- The Charter School will provide a map of which WAP's go in which portables.
- The Charter School will configure the WAP's once installation is complete.

The District and the Charter School shall develop a mutually agreeable inventory of furnishings and equipment that will be located at the Premises. District shall only be obligated to replace furnishings and equipment supplied by the District in accordance with District established schedules and practices. The Parties will meet and confer to determine:

1. The review and approval of the Charter School's own plans to modify the kitchen space; and
2. The furniture identified by the Charter School to be moved from the Charter School's housing for the 2014-2015 school year at the Stege campus to the Facilities to supplement the existing furnishing and equipment at the Facilities. The District will not be obligated to move the personal equipment of Caliber's staff.

The following kitchen equipment owned by the District will remain at the Site for use by the Charter School at the Site during the term of the Agreement, pending approval by the District:

- In the cafeteria:
  - 12 folding tables
  - 1 small table
  - 1 small desk
  - 1 rolling cabinet
  - 1 whiteboard
  - 1 wood podium
- In the food service room:
  - 4 serving stations
  - 1 freezer
  - 1 milk cooler
- In the kitchen:
  - 3 desks

- 1 chair
- 2 tables
- 1 rolling cart
- 1 beverage air cooler
- 1 arctic air freezer
- 2 two-door fridges
- 1 two-door oven
- 1 one-door fridge

9. Utilities. District shall furnish or cause to be furnished to the Premises necessary utilities. For purposes of the Agreement, utilities include electrical, natural gas, sewer, waste disposal/recycling and water services. The District's failure to furnish or cause to be furnished utilities when the failure is caused by (i) acts beyond the reasonable control of the District; (ii) strikes, lockouts, labor disturbances or labor disputes of any kind; (iii) any laws, rules, orders, ordinances, regulations, requirements or any other action by federal, state, county or municipal authority; or (iv) any other unavoidable delay, shall not cause the District to be in default of the Agreement and shall not result in any liability of the District.
10. Proposition 39/Conditions Reasonably Equivalent/Waiver.
- (a) The Charter School and Non-Profit acknowledge by execution of the Agreement that the Facilities provided by the Agreement are "reasonably equivalent," as that term is defined by Proposition 39. The Charter School and Non-Profit agree that this Agreement is a negotiated agreement, and that upon execution of this Agreement all obligations of the District to the Charter School and Non-Profit under Proposition 39 have been satisfied for the Term of this Agreement. The Charter School and Non-Profit waive their right to bring legal action for the 2015-2016 school year based on any claims arising out of or relating to alleged compliance or noncompliance with Education Code section 47614 and the Proposition 39 regulations. This waiver does not extend to the obligations set forth in this Agreement.
- (b) The Charter School and Non-Profit acknowledge and agree that neither the District nor any of its agents have made, and the District hereby disclaims, any representations or warranties, express or implied, concerning the premises, the physical or environmental condition of the premises or any other property beneath, adjacent to, or otherwise related to the premises.
11. Custodial Services. Custodial services shall be obtained and fully compensated by the Charter School. The District shall have no responsibility for such services.
12. Signage. The Charter School shall be allowed to place signage on the exterior of the Facilities. The District will keep its own signage exhibited at the Site, identifying the school as operated or formerly operated by the District. The District shall have final approval over the design, content and location of the Charter School's signage, but shall not unreasonably deny such design, content or location. The Charter School must remove the signage upon termination of this Agreement. The Charter School must restore the Facilities, following removal of the signage, to the condition existing prior to installation of the signage to District's reasonable satisfaction. All such signage shall be subject to compliance with all applicable laws at the Charter School's sole cost.

13. Operations and Maintenance.

Routine Repair and General Maintenance: Caliber shall be responsible for the routine repair and general maintenance of the Premises and any furnishing or equipment provided to the Charter School; *except* for the athletic fields, the intrusion alarm, and the fire alarm, for which the District will be responsible for routine repair and general maintenance. For purposes of the Agreement, "routine repair and general maintenance" shall mean the school facility component work performed on an annual basis each year to keep facilities in proper operating condition. The Charter School shall notify the District's appointed contact person whenever the Charter School performs repair services.

The Charter School will communicate with the District's appointed contact person whenever the Charter School requests maintenance and repair services for the athletic fields, intrusion alarm, or fire alarm. The District's repair and maintenance response will follow the same response protocols used for responses to repair and maintenance requests from a District operated school. The District's cost to provide repair at the facility shall be borne by the Charter School if the need for repair is caused by the intentional act or negligence of the Charter School, its employees, agents, or invitees.

Deferred Maintenance: District shall be responsible for the major maintenance of the Premises. For purposes of the Agreement, "major maintenance" includes, for example, the major repair or replacement of plumbing, heating, ventilation, air conditioning, electrical, roofing, and floor systems, exterior and interior painting, and any other items considered deferred maintenance under Education Code section 17582. The District shall only be obligated to perform deferred maintenance on the Premises on an equivalent basis as that performed at other comparable District school sites.

14. School Resource Officer. The District will assist communication between the Charter School and the school resource officer ("SRO") at Kennedy High School. The District will request the SRO to communicate directly with the Charter School's administration if lock downs or other campus safety emergencies occur. However, the District is not responsible to provide to the Charter School any day-to-day coordination or services of the SRO.

15. Alterations and Additions. The Charter School shall only make alterations, additions, or improvements ("Improvements") as defined by to the Facilities after obtaining the prior written consent of the District's Superintendent or his designee. Any Improvements to the Facilities made by the Charter School shall be paid for by the Charter School, and shall be contracted for and performed in accordance with all applicable building code standards, including Title 24 of the California Code of Regulations, the Field Act, Americans with Disabilities Act and the Fair Employment and Housing Act.

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

Upon written reasonable request of the District prior to the expiration or earlier termination of the Agreement, the Charter School will remove any and all improvements to the Facilities, at its own cost, that can be done without damage to the Facilities. In the

event of charter termination or closure of the Charter School, all property shall be disposed of in accordance with the provision of the approved the Charter School's petition. Unless the Parties agree otherwise in writing on an item by item basis, the Charter School maintains its ownership rights in any alterations, additions or improvements and may be allowed to remove at termination of this Agreement and restore the Facilities to the condition existing prior to alteration, addition or improvement. Notwithstanding the foregoing, any addition to the Facilities that the Charter School does not remove prior to vacating the Facilities, shall vest in the District.

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

17. Employees, Contractors and Independent Contractors. The Charter School and the District, their employees, agents, contractors and subcontractors shall comply with the requirements of Education Code Sections 45125.1 and 45125.2 related to access to the Facilities and protection of minor students.

18. Indemnity.

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

The Charter School shall further indemnify, hold harmless, and defend the District, its Board of Trustees, the members of its Board of Trustees, officers, employees and agents against and from any and all claims arising from any breach or default in the performance of any obligation on the Charter School's part to be performed under the terms of this Agreement, and from all costs, attorneys' fees, and liabilities incurred in or about the defense of any such claim or any action or proceeding brought thereon.

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

The District shall further indemnify, hold harmless, and defend the Charter School against and from any and all claims arising from any breach or default in the performance

of any obligation on the District's part to be performed under the terms of this Agreement, and from all costs, attorneys' fees, and liabilities incurred in or about the defense of any such claim or any action or proceeding brought thereon.

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

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

19. Insurance. The Charter School, at the Charter School's sole cost and expense, shall obtain and keep in full force and effect, beginning on the Commencement Date and continuing throughout the Term, the following insurance:

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

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



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

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

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

20. Damage to or Destruction of School Site.

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

(b) Partial Damage- Insured. If the Facilities are damaged by any casualty which is covered under fire and extended coverage insurance carried by District, then District may restore such damage provided insurance proceeds are available to pay eighty percent (80%) or more of the cost of restoration and provided such restoration can be completed within ninety (90) days after the commencement of the work in the opinion of a registered architect or engineer appointed by District. In such event this Agreement shall continue in full force and effect, except that the Charter School shall be entitled to proportionate reduction of use payments while such restoration takes place, such proportionate reduction to be based upon the extent to which the restoration efforts interfere with the Charter School's business in the Facilities. The District shall provide the Charter School alternative space in the District for any part of the Charter School program that is displaced by the partial damage and/or the repair work of the same. If the Charter School secures alternative space then there shall be no diminution in the use payments during the period of the restoration.

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

date of the damage. Immediately upon the effective date of the damage, the District must provide a reasonably equivalent school facility to the Charter School as soon as reasonable so as to avoid any interruption in the educational program of the Charter School.

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

- (d) The revocation or non-renewal of the Charter School's charter. Notwithstanding the foregoing, this Agreement shall not be terminated pursuant to this provision provided that the Charter School continues to operate in accordance with the terms of this Agreement and is diligently pursuing a statutory appeal of the revocation or nonrenewal of its charter.

In the event of any material default or breach by the Charter School, District may, but shall not be obligated to, terminate this Agreement and the Charter School's right to possession of the Facilities upon thirty (30) days written notice thereof to the Charter School if the default is not cured within the thirty (30) day period. If the nature of the default is such that the same cannot reasonably be cured within said thirty (30) day period, the Charter School shall not be in default if the Charter School shall within such thirty (30) day period commence such cure and thereafter, diligently prosecute the same to completion. In no event shall such period to cure exceed sixty (60) days. Upon termination, District shall retain the right to recover from the Charter School, without limitation, any amounts due under this Agreement or applicable law. Unpaid Facilities Use Fees shall bear interest from the date due at the maximum legal rate. In the event of termination by the District by reason of the Charter School's default or breach of this Agreement, the District shall not be obligated to provide facilities to the Charter School pursuant to Proposition 39 for the remainder of that school year.

- 27. Default by District. The District shall be in default of this Agreement if District fails to perform any material obligation required by this Agreement. In the event of any default by the District, the Charter School may terminate this Agreement upon thirty (30) days written notice thereof to the District if the District has failed to cure the default within thirty (30) days, unless the nature of the default is such that the same cannot reasonably be cured within said thirty (30) day period, in which event District shall not be in default (and Charter School may not terminate this Agreement) if District commences to cure such default within such thirty (30) day period and thereafter, diligently prosecutes the same to completion.

If the default concerns a failure by District to maintain or repair the Facilities as required by this Agreement (including but not limited to Section 13, above), in lieu of termination the Charter School may, after written notice to the District, elect to perform the maintenance or repair owed by the District and then withhold the cost of such maintenance or repair from one or more subsequent payments of the Facilities Use Fee; and such election waives the Charter School's right to terminate for said default. For any such withholding from a payment, the Charter School must, prior to the due date of the payment, submit documentation to the District of the costs incurred that are the basis of the withholding.

- 28. Miscellaneous.

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

to pay the particular charge so accepted, regardless of District's knowledge of such preceding default at the time of the acceptance of such charge.

- (b) Marginal Headings. The marginal headings and article titles to the articles of this Agreement are not a part of the Agreement and shall have no effect upon the construction or interpretation of any part hereof.
- (c) Successors and Assigns. The covenants and conditions herein contained, subject to the provisions as to assignment, apply and bind the heirs, successors, executors, administrators and assigns of the Parties hereto.
- (d) Amendment. No provision of this Agreement may be amended or modified except by an agreement in writing signed by the Parties hereto.
- (e) Construction. Each of the Parties acknowledges and agrees that this Agreement is to be construed as a whole according to its fair meaning and not in favor of nor against any of the Parties as draftsman or otherwise.
- (f) Venue. Any action or proceeding by any Party to enforce the terms of this Agreement shall be brought solely in the Superior Court of the State of California for the County of Contra Costa.
- (g) Applicable Law. This Agreement shall be governed by and interpreted under the laws of the State of California applicable to instruments, persons, transactions and subject matter that have legal contacts and relationships exclusively within the State of California.
- (h) Severability. If any provision or any part of this Agreement is for any reason held to be invalid, unenforceable or contrary to public policy, law, or statute and/or ordinance, the remainder of this Agreement shall not be affected thereby and shall remain valid and fully enforceable.
- (i) Prevailing Authority. In the event of a conflict between the law and the terms of this Agreement, the law shall prevail, and any such conflicting terms shall be severed from this Agreement and nullified. In the event of a conflict between the terms of the charter and the terms of this Agreement, the terms of this Agreement shall prevail and shall be deemed an amendment to the charter, replacing any conflicting terms therein. In the event of a conflict between the terms of the charter and any other agreement between the Charter School and the District, the terms of this Agreement shall prevail and shall be deemed an amendment to any other such agreement, replacing any conflicting terms therein.
- (j) No Admission. Except as expressly agreed herein, nothing contained herein shall constitute an admission of fact or law.
- (k) Binding Obligation. If and to the extent that the Charter School is a separate legal entity from the District, the Charter School expressly agrees that this Agreement is a binding obligation on the Charter School and the District agrees that this Agreement is a binding obligation on the District.

- (l) Prior Agreements. This Agreement contains all of the agreements of the Parties hereto with respect to any matter covered or mentioned in this Agreement, and no prior agreements or understanding pertaining to any such matters shall be effective for any purpose.
- (m) Subject to Approval by Governing Board. This Agreement shall become effective upon ratification by the District's Governing Board.
- (n) Notices. All notices and demands that may be or are to be required or permitted to be given by either Party to the other hereunder shall be in writing. All notices and demands by the District to Non-Profit or the Charter School shall be sent by United States Mail, postage prepaid, addressed to Non-Profit or the Charter School at the address set forth below. All notices and demands by the Charter School to the District shall be sent by United States Mail, postage prepaid, addressed to the District at the address set forth below.

To District:  
 West Contract Costa Unified School District  
 Attn: Lisa LeBlanc, Associate Superintendent, Operations  
 1108 Bissell Ave  
 Richmond, CA 94804  
 Facsimile: 510-231-2406

To Non-Profit or Charter School: Caliber Schools  
 Attn: Jennifer Moses, Chief Operating Officer  
 P.O. Box 5282  
 Richmond, CA 94805  
 Facsimile:

- (o) Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original of the Agreement. Signatures transmitted via facsimile or portable document format ("pdf") to other Parties to this Agreement shall be deemed equivalent to original signatures on counterparts.
- (p) Warranty of Authority. Each of the persons signing this Agreement represents and warrants that such person has been duly authorized to, sign this Agreement on behalf of the Party indicated, and each of the Parties by signing this Agreement warrants and represents that such Party is legally authorized and entitled to enter into this Agreement.

Non-Profit and Charter School

District

By: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
 [name]  
 Principal

\_\_\_\_\_  
 [name]  
 Superintendent

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved and ratified this \_\_\_\_ day of \_\_\_\_\_, 2015, by the Board of Education of the West Contra Costa School District by the following vote:

AYES:

NOES:

Abstentions:

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Secretary to the Board of Education

## EXHIBIT A

### Facilities to be Provided

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

- 24 classrooms currently being used by Coronado Elementary School for the 2014-2015 school year, including 3 kindergarten rooms. The kindergarten rooms will each have internal bathrooms.
- An additional kindergarten portable, with internal bathrooms, to be located north of the current kindergarten rooms where the shipping containers currently are located. It will be fenced into the current kindergarten yard, pending a review of the sewer lines.
- 6 additional portables (located in the 900 wing of Kennedy High School) with new opaque fencing installed between Kennedy High School and the Charter School.
- 4 offices with a workroom, and administration space that totals 3,840 square feet ("SF").
- Cafeteria and kitchen, totaling 2,400 SF, which can also be used as a multi-purpose room.
- Faculty lounge of 800 SF.
- 3 existing restrooms (boys, girls, and faculty), plus a new portable restroom with additional boys, ~~and girls, and faculty~~ restrooms. The portable restroom will be located based on sewer line placement considerations.
- A kindergarten playground.
- A playground for grades 4-6.
- The Facilities will be located on a site of 2.8 acres, with 1.8 acres of it being play area.
- The building space totals 39,840 SF, and the outdoor space totals 89,646 SF.
- Use of two storage containers, an asphalt running track, outdoor basketball courts, outdoor volleyball courts, and 20 parking spaces for staff and visitors.
- Use of the athletic fields of Kennedy High School campus immediately adjacent to the Site, between 1:00 and 3:00 p.m. on school days, unless needed for use by a Kennedy High School team. If the District needs use of the athletic fields during this time period for a special activity that arises, Caliber and the District shall meet and confer to develop alternate arrangements.

**EXHIBIT B**

**Site Map**



**EXHIBIT C**

**Facilities Use Fee**

For the period of July 1, 2015, through June 30, 2016, Charter School shall pay District a Facilities Use Fee of One Hundred Fifty Thousand Five Hundred Ninety-Five Dollars and Twenty Cents (\$150,595.20), based on a pro rata facilities cost estimate of Three Dollars and Seventy-Eight Cents (\$3.78) per square foot for the use of approximately Thirty-Nine Thousand Eight Hundred Forty (39,840) square feet of building space in the Facilities during this period. The Facilities Use Fee shall be paid out in twelve equal installments of Twelve Thousand Five Hundred Forty-Nine Dollars and Sixty Cents (\$12,549.60) each month throughout this period. Beginning on July 1, 2015, payments shall be payable on or in advance on the first day of each month ("Due Date"), without deduction, offset, prior notice or demand, in lawful money of the United States.

For the period of July 1 through 7, 2016, Charter School shall pay District a Facilities Use Fee of Two Thousand Eight Hundred Thirty-Three Dollars and Seventy-Eight Cents (\$2,833.78), based on a pro rata facilities cost estimate of Three Dollars and Seventy-Eight Cents (\$3.78) per square foot for the use of approximately Thirty-Nine Thousand Eight Hundred Forty (39,840) square feet of building space in the Facilities during this period. This Facilities Use Fee payment shall be made by Charter School on or before July 1, 2016.