

**FACILITIES USE AGREEMENT BETWEEN WISEBURN UNIFIED SCHOOL
DISTRICT AND DA VINCI SCHOOLS CONCERNING PROPOSITION 1D STATE
SCHOOL FACILITIES PROGRAM FUNDS**

This Facilities Use Agreement Between Wiseburn Unified School District And Da Vinci Schools Concerning Proposition 1D State School Facilities Program Funds (referred to herein as the "FUA" or "Agreement") is entered into on May 14, 2015 (the "Effective Date"), by and between Wiseburn Unified School District, a school district duly organized and validly existing under and by virtue of the laws of the State of California ("District"), and Da Vinci Schools, a California nonprofit public benefit corporation that operates charter schools, including Da Vinci Design, Da Vinci Science and Da Vinci Communications charter schools, (herein collectively referred to as "Da Vinci").

RECITALS

WHEREAS, Da Vinci Design, a charter school operated by Da Vinci Schools, applied to the State Allocation Board and the California School Finance Authority (individually or collectively referred to as the "State") for financing of the acquisition and construction of high school facilities ("High Schools Facility") on real property acquired by the District and located at 201 N. Douglas St., El Segundo, CA 90245, more particularly described in Exhibit "A," attached hereto and incorporated herein (the "School Site"); and

WHEREAS, the District shall provide the use of the School Site to Da Vinci for development and use of the High Schools Facility in the operation of Da Vinci Design and its other charter school programs; and

WHEREAS, the High Schools Facility shall, for the purposes of this PUA, and for the application of the Education Code section 17078.52, be defined as and limited to the design and construction of the project ("Project") as described with more particularity in Exhibit "B", "Application for Charter School Preliminary Apportionment School Facility Program SAB 50-09, Application No. 54/76869-00-001" (the "Application"), attached hereto and incorporated herein; and

WHEREAS, the Office of Public School Construction has notified Da Vinci that it is eligible for a charter school preliminary apportionment of \$52.7 million under the School Facilities Program; and

WHEREAS, the Charter Schools Facilities Program defines both the District and Da Vinci as "eligible applicants" to apply for and receive State financing for the Project, and Da Vinci and the District now desire to take the necessary steps to convert the Application to name the District as the applicant, as permitted under Education Code section 17078.53(b); and

WHEREAS, the parties also desire that the District continue to hold title to the School Site and serve as Da Vinci's fiscal agent to receive State and other financing for the Project, provided that Da Vinci will assume primary responsibility for the risks and responsibilities of ownership of the School Site upon completion of the Project. District will have the authority for approval of all contracts, contract modifications and fund disbursements related to the Project

and provide quarterly reports to Da Vinci Schools on the progress of the High Schools Facility project; and

WHEREAS, in addition to the Project, the District intends to use local bonds and other funds and parcel tax revenues (supplementing Proposition 1D funds) to construct additional facilities, including parking, gymnasium and playing fields ("Recreational Facilities") at the School Site to be used, managed and operated by Da Vinci, and desires to grant Da Vinci a 40-year, lease to use the entire campus (excluding pool complex) for the operation of its charter school-related programs, and manage all facilities (excluding pool complex) for benefit of Da Vinci and the Wiseburn community, based on the terms and conditions described herein; and

WHEREAS, the District also intends to construct, maintain and operate swimming pool facilities on the School Site in conjunction with the community, to be used in cooperation with Da Vinci for the benefit of the District, Da Vinci and the community; and

WHEREAS, Da Vinci currently uses facilities owned by the District and located at 13500 Aviation Blvd., Hawthorne, CA 90250 and 12501 S. Isis Ave., Hawthorne, CA 90250, ("Existing Schools", described in Exhibit "C", attached hereto and incorporated herein), for the operation of its charter school programs; and

WHEREAS, until move-in to the completed High Schools Facility by Da Vinci Design, Da Vinci Communications and Da Vinci Science, the parties intend for Da Vinci Schools to continue to use the Existing School Sites under the terms and conditions set forth herein: and

WHEREAS, the District and Da Vinci now desire to enter into this FUA for the design and construction of the Project and use of the School Site, subject to the terms and conditions contained in this FUA; and

WHEREAS, the parties intend that this FUA shall operate in conjunction with the Charter School Facilities Program Memorandum of Understanding by and among the State, District and Da Vinci ("State MOU") attached hereto as Exhibit "D" and hereby incorporated by reference; and

WHEREAS, the Parties intend that this FUA constitutes full and complete satisfaction of the District's obligation to provide facilities to Da Vinci Design, Da Vinci Communications, and Da Vinci Science charter schools under Education Code section 47614 and the Proposition 39 regulations (CCR, Title 5, Section 11969.9) or any successor law or regulation for the term of the FUA.

NOW, THEREFORE, for and in consideration of the promises and the mutual covenants hereinafter contained, the parties hereby agree as follows:

ARTICLE 1 USE OF THE SCHOOL SITE

1.1 **Use of the School Site.** Pursuant to California Education Code section 17078.62, the District shall make the School Site and High Schools Facility available to Da Vinci for the operation of charter school programs, subject to the terms and conditions set forth in this FUA.

Prior to commencing use of the High Schools Facility, the District will obtain a valid certificate of occupancy or equivalent issued by the California Division of the State Architect ("DSA").

1.2 **Design and Construction of High Schools Facility.**

1.2.1 **Substitution of District as Applicant.** As soon as is practicable after execution of this FUA, Da Vinci and the District shall take the necessary steps to convert the Application to name the District as the applicant for the Project apportionment under the School Facilities Program, as permitted under Education Code section 17078.53(b).

1.2.2 **Responsibility for Construction of Project.** The District shall serve as the fiscal agent for Da Vinci to receive State and other financing for the Project on behalf of Da Vinci, and shall fund all design, construction and improvements on the High Schools Facility, as well as pay for any and all costs related to infrastructure upgrades in accordance with District and Da Vinci-approved building and improvement plans, as well as all applicable laws, rules and regulations. As the fiscal agent for Da Vinci, the District shall consult with Da Vinci regarding any contracts, contract modifications, fund disbursements or other decisions related to the Project.

1.2.3 **Alterations and Improvements.** Subject to the terms of this FUA, and following completion of the Project, Da Vinci shall have the right to make additions, alterations, changes or improvements to the High Schools Facility that are not part of the Project, in, on or to the School Site, and shall pay, prior to delinquency, for all such work done by it or upon its order. Da Vinci may use such improvements, including fixtures, as collateral for lending purposes. Da Vinci shall make, at its own expense, any and all necessary repairs to, or replacement of, any equipment, structures or other physical improvements placed by it upon the School Site in order to comply with any and all applicable regulations, laws or ordinances of the State, including maintenance. All work shall be performed in compliance with Education Code Section 17280 *et seq.* ("Field Act") and subject to DSA approval, as applicable.

1.2.4 **District/DSA Review and Approval.**

1.2.4.1 District acknowledges and agrees that the DSA is the agency that has the formal project review and approval function for the construction of the Project. The parties acknowledge DSA shall receive and approve the District's and Da Vinci's plans and specifications for the construction of the High Schools Facility funded as part of the Project and any upgrades or revisions, as applicable. To the extent other agencies may approve Project related improvements in the future, the parties agree that such alternate submissions are acceptable as long as the structure remains Field Act compliant.

1.2.4.2 Da Vinci and District shall require all contractors and subcontractors to maintain contractor's insurance and payment and performance bonds for the duration of the Project. All contractors shall be certified by California Department of Industrial Relations ("DIR") for the Project.

1.2.4.3 The District shall, with Project funds, ensure that all workers on the Project, as well as any construction project at the School Site, shall be paid prevailing wage rates as those rates are set in accordance with Labor Code Section 1770 *et seq.*

1.2.5 Government Approvals. The District, with Project funds, shall obtain all licenses and permits required to perform the work related to the Project and shall comply with all applicable laws affecting the work.

1.3 Installation of Charter School's Equipment. Da Vinci may at any time, and from time to time, in its sole discretion and at its own expense, install or permit to be installed other items of equipment in or upon the School Site. All such items, excluding fixtures, shall remain the sole property of Da Vinci and may be removed or modified by Da Vinci at any time, provided that Da Vinci shall repair and restore any and all damage to the School Site resulting from the installation, modification, or removal of any such items.

1.4 Working Group. District and Da Vinci shall form a working group to create maintenance schedules, priority lists and budgets; coordinate on applications for future grants and funding; and address building alterations desired by either party and deal with any disagreements or adjustments to the above ("Working Group"). The Working Group shall include an equal number of members from the District and from Da Vinci, and shall meet regularly, or as requested by either party.

1.5 District's Disclaimer of Warranties. The District is not aware of any defect in or condition of the School Site that would prevent its use for Da Vinci's purpose or for the Project. 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 School Site that calls into question the appropriateness or sufficiency of the premises for their intended purpose. Da Vinci acknowledges that neither the District nor District's agents have made any representation or warranty as to the suitability of the Premises for the Project or to the conduct of Da Vinci's business. Any agreements, warranties or representations not expressly contained herein shall in no way bind either District or Da Vinci, and District and Da Vinci expressly waive all claims for damages by reason of any statement, representation, warranty, promise or agreement, if any, not contained in this FUA.

1.6 License for Use of the Recreational Facilities. In addition to the Project, the District may use its own bond funds (not Proposition 1D funds), parcel tax revenues or other funds to finance and construct Recreational Facilities and swimming pool facilities on the School Site. The District hereby grants Da Vinci a non-transferable license to use and be responsible for the use of the Recreational Facilities in any manner in connection with the operation of Da Vinci's charter school programs ("License"), and to operate community programs in

collaboration with District, municipal partners or others. Da Vinci shall have the ability to sub-license use of the Recreation Facilities. Any sub-license to use the Recreational Facilities shall be subordinate to this License and shall not interfere with Da Vinci's school use of the Recreational Facilities, which shall take precedence over other uses. District shall retain primary responsibility for the financing, construction and operation of the swimming pool facilities, and shall cooperate with Da Vinci in the use of such facilities for high school purposes.

- 1.6.1 The parties agree that nothing in the License Agreement or this FUA shall give Da Vinci any right, title or interest in said Recreational Facilities other than the right to control the use of said Recreational Facilities in accordance with the License and this FUA.
- 1.6.2 In exchange for and in consideration of the License, Da Vinci shall be responsible for management of the use of the Recreational Facilities by any other leagues, schools, organizations or municipalities, in the same manner as use of such facilities would be allowed under Education Code section 38131 *et seq.* ("Civic Center Act"). Such management may include the collection of fees, procurement of insurance, payment of utilities and maintenance of the Recreational Facilities. The District shall not seek rent, payment and/or other consideration in exchange for Da Vinci's use of the Recreational Facilities. Revenues from such activities in the Recreational Facilities shall be first used by Da Vinci to offset the cost of high school sports programs utilizing such facilities.
- 1.6.3 The parties agree to undertake and perform any and all actions necessary, and deliver any and all documents required, for the full accomplishment of the License, including but not limited to providing documents and/or other evidence required to use and/ or manage the Recreational Facilities.
- 1.6.4 The parties agree to refrain from taking any action, in any form, that would frustrate, impede, compromise, delay or otherwise hinder Da Vinci's or the District's use of the Recreational Facilities.
- 1.6.5 This License shall commence upon the execution of this FUA by both parties and the construction of any Recreational Facilities, and shall continue in full force and effect for the Term of this FUA.

ARTICLE 2 GOVERNANCE

2.1 **Governance.** Governance is included in this FUA because it is inseparably linked to the length of the Term of the FUA.

2.2 The Da Vinci Board of Directors shall be comprised of seven members. Each member is elected by the Da Vinci Board and confirmed by the WUSD Board; except as noted in section 2.4. Each board member shall serve a term of three years, except as noted in section 2.4. The terms of the board members will run in staggered years, with a class of three members

ending in one year, a class of two ending in the subsequent year, and a class of two members ending in the next subsequent year. For purposes of clarity, this means that every year either two or three terms conclude their previous three-year term and begin their new three-year term cycle.

2.3 Members can be elected to an unlimited number of terms.

2.4 Two of the seven members of the Da Vinci Board shall also be current and concurrent members of the WUSD Board, appointed by the WUSD board by WUSD Board majority vote, to serve on the Da Vinci Board, and will be confirmed by board election at the next regularly scheduled Da Vinci Board meeting by the Da Vinci Board of Directors. If at any time there are fewer than two current WUSD members on the Da Vinci Board, and there is a vacancy on the Da Vinci Board, the Da Vinci Board will notify the WUSD Board of such vacancy or vacancies. The WUSD Board has the option of appointing one of its current Board Members then in good standing to serve on the Da Vinci Board, up to a maximum of two members, when vacancies arise. The process for WUSD to appoint shall be the WUSD Board selecting its prospective Da Vinci Board representatives, presenting those candidates to the Da Vinci Board for Da Vinci Board election, and the Da Vinci Board electing those candidates. Such election will not be unreasonably withheld by the Da Vinci Board. Under no circumstances will there ever be more than two WUSD Board Members on the Da Vinci Board. Whenever a vacancy on the Da Vinci Board occurs, for the WUSD Board Representative seats, the WUSD Board must appoint a sitting WUSD Board member to serve within 30 days of said vacancy. The WUSD Board shall adopt a Board Policy at a future board meeting establishing such positions and process for appointments; so as to ensure that representation by the WUSD Board on the Da Vinci Board is always maintained. If the WUSD Board chooses not to appoint a current member of the WUSD Board for confirmation within 30 days of notification of vacancy and eligibility by the Da Vinci Board, the Da Vinci Board may nominate and elect a non-WUSD Board member, however the Da Vinci Board must maintain three Wiseburn Unified School District residents. Once a future vacancy on the Da Vinci Board occurs, the option for WUSD Board appointment reopens. At any time that a WUSD Board Members resigns, is removed, voluntarily leaves, involuntarily leaves, or otherwise is no longer a current member of the WUSD Board, that person shall automatically and immediately also be removed from the Da Vinci Board, be it by resignation, dismissal, or other action.

2.5 In addition to the maximum of two WUSD Board Members that may be serving on the Da Vinci Board, one additional Da Vinci Board member, at minimum, shall be a continual resident of the Wiseburn Unified School District. If at any time there are not a minimum of three current Wiseburn Unified School District residents on the Da Vinci Board, the next Da Vinci Board vacancy will be filled with a Wiseburn resident.

2.6 The process for electing new Da Vinci Board Members who are not the WUSD Board appointees shall be, first, nomination by the Da Vinci Board or a nominating committee empowered by the Da Vinci Board. Second, confirmation of said nomination to be considered and performed by the WUSD Board. Such confirmation will not be unreasonably withheld. If such confirmation is not considered or explicitly denied within 30 days of Da Vinci nomination, the right of the WUSD to confirm that board member will expire and no longer apply for the candidate under consideration. Once a Da Vinci nominee or board member has been confirmed

by the WUSD Board, or becomes a Da Vinci Board member because the WUSD Board did not consider or did not explicitly deny confirmation, that Da Vinci Board Member will never be subject to or require WUSD Board confirmation again during his or her continuous tenure on the Da Vinci board. Once confirmed, or once the available confirmation window of 30 days has expired, that Da Vinci Board Member or nominee will be eligible to be elected as a Da Vinci Board Member for an unlimited number of consecutive terms. Only when the Da Vinci Board has formally elected or re-elected a new or existing board member will that member be a member of the Da Vinci Board of Directors.

2.7 For every instance where the WUSD Board denies five consecutive Da Vinci Board member nominations, Da Vinci can then elect one Da Vinci Board member without WUSD confirmation.

2.8 If the number of Da Vinci Board members comprising the Da Vinci Board is ever expanded or contracted, the WUSD Board will be consulted, and the terms of this section reconsidered, subject to mutual agreement of the WUSD and Da Vinci Boards of Trustees and Directors.

ARTICLE 3

TERM, TERMINATION AND OPTION TO PURCHASE

3.1 **Term.** The term of this FUA shall commence on the Effective Date and shall continue for a term of forty years ("Term"), with options for renewal. The 40-year term contains an evergreen clause. The term automatically extends by an additional 5 years total each time the charters are renewed, subject to each Da Vinci charter school complying with the terms of this Agreement, its Charter and all applicable laws and regulations subject to Da Vinci's rights to cure any such non-compliance in accordance with the termination procedures and timelines, and meeting the performance criteria described in section 3.5, Exhibit E and in Section 11.1 of this Agreement.

3.2 **Lease of the High Schools Facility.** The High Schools Facility will serve as the school site for Da Vinci Design Charter High School, Da Vinci Communications and Da Vinci Science (together, Da Vinci Schools). The District shall lease to Da Vinci use of the School Site for Da Vinci Schools and related and supporting programs as Da Vinci may operate, in exchange for rent in the amount of \$1 per year, and payment as outlined in Section 6.2 herein, subject to: (a) the District's right to sublease a portion of the building at High Schools Property, as described in section 3.3, and (b) the District's right to operate the swimming pool facilities, as described herein. A map of the planned High Schools Facility with the District's and Da Vinci's uses marked and delineated is attached hereto and incorporated herein as Exhibit F.

3.3 **Sublease of High Schools Facility.** It is the intent of the parties that Da Vinci shall operate charter schools occupying the first, second, third and fourth floors of the building at High Schools Property. Approximately 9,000 square feet of the first floor will be used by Da Vinci for various programs supporting the charter schools. District shall have the right to sublease approximately 15,436 square feet of first floor space for administrative purposes,

including the space for District Board meetings, at rent of \$1 per year, plus a monthly amount equal to the pro rata share of utilities, insurance and operating expenses incurred by Da Vinci on an annual basis (i.e., a ratio computed based upon the amount of square footage allocated to District use to the total square footage in the building), as set forth in the floor plan attached hereto.

3.4 **Ownership of the High Schools Facility.** District shall hold legal title to the School Site. However, Da Vinci will assume primary responsibility for risks of ownership of the High Schools Facility, including obtaining and maintaining liability insurance for the High Schools Facility in accordance with Article 10 of this FUA, payment of all utilities for the High Schools Facility in accordance with Article 6 of this FUA, and keeping the School Site free from any liens related to Da Vinci's operations in accordance with Section 7.4 of this FUA.

3.5 **Early Termination.** As long as Da Vinci is complying with the terms of this Agreement, the Charter of any school occupying the high school facilities and all applicable laws and regulations allowing for Da Vinci's (and its charters') rights to cure any such non-compliance in accordance with the procedures and timelines, and meeting the performance criteria described in Exhibit E and in Section 11.1 of this Agreement, this agreement will not be terminated. The Agreement may only be terminated if Da Vinci is not complying with the terms of this Agreement, and/or not complying with its Charter and/or not complying with all applicable laws and regulations and/or failing to meet the performance criteria described in Exhibit E, subject to the one-year cure periods set forth in Exhibit E and in Section 11.1 of this Agreement. Both District and Da Vinci Schools agree that good/great Da Vinci Schools, should never be homeless. Da Vinci will provide a five-year notice if it chooses to vacate the High Schools Facility and terminate the 40-year lease agreement, as to all of its schools. In the event of termination of the Agreement for non-cause, the District will comply with Education Code section 47614 and the Proposition 39 regulations (CCR, Title 5, Section 11969.9) or any successor law or regulation regarding any provision of facilities for Da Vinci Design, Da Vinci Communications, and Da Vinci Science charter schools. In the event that Da Vinci Schools is terminated for cause (non-performance according to the above established criteria), Da Vinci waives any priority right to the high school facility as referenced in Article 4.2 C (4) of the Three-Party Agreement (Charter School Facilities Program Memorandum of Understanding) and any right under Proposition 39 regulations or any successor law or regulation.

3.6 **Amending the FUA.** The FUA will be revisited and reviewed every ten years or as necessary by an ad hoc subcommittee consisting of an equal number of members from each board and staff leadership. The terms of the current agreement can be amended only by a majority vote of the Da Vinci Board of Trustees and a majority vote of the District Board of Trustees.

ARTICLE 4 USE OF EXISTING SCHOOLS

4.1 **Current Use.** Da Vinci currently uses the Existing School Facilities owned by the District and located at 13500 Aviation Blvd., Hawthorne, CA 90250 and 12501 S. Isis Ave.,

Hawthorne, CA 90250, for the operation of its charter school programs. Until move-in to the High Schools Facility by all Da Vinci charter high schools, the parties intend for Da Vinci to continue to use the Existing School Facilities under the same terms and conditions as present, except as follows:

- 4.1.1 Commencing July 1, 2015, Da Vinci Schools will pay a 1% of Da Vinci's annual State operating revenue oversight fee in perpetuity, for all four charter schools. Da Vinci will also pay 1% of Da Vinci's annual State operating revenue for rent on the high schools for 2015-16 and 2016-17, or until the High Schools Property is occupied. When Da Vinci occupies the High Schools Property, this same 1% of Da Vinci's annual State operating revenue for rent will go into a deferred maintenance account that will be administered by Da Vinci, with a cap of \$2.5 million on this account.
- 4.1.2 Commencing July 1, 2015, Da Vinci Innovation Academy ("DVIA") will continue to pay 2% of its annual State operating revenue while located at 13500/13530 Aviation Boulevard. Upon moving into 12501 S. Isis, DVIA will continue to pay District 2% of DVIA's annual State operating revenue for rent, to be set aside for deferred maintenance at the Sepulveda site.
- 4.1.3 Commencing July 1, 2015, the cost for Back Office Services for Da Vinci that are provided by District will be reduced from 1.5% to 1% of Da Vinci's annual State operating revenue with a standard of acceptable service established for District to continue providing these services, as determined by Da Vinci and the District.

ARTICLE 5

REPRESENTATIONS AND WARRANTIES OF CHARTER SCHOOL; REPRESENTATIONS AND WARRANTIES OF THE DISTRICT

5.1 **Representations and Warranties of Charter School.** Da Vinci represents and warrants for the benefit of the District and its assignees as follows:

- 5.1.1 **Valid Existence.** Da Vinci is a nonprofit public benefit corporation duly organized and validly existing under the laws of the State of California.
- 5.1.2 **Authority to Enter into FUA.** Da Vinci is authorized under its organizational documents and the laws of the State of California to enter into this FUA and perform all of its obligations hereunder.
- 5.1.3 **Due Authorization.** Da Vinci has been duly authorized to execute and deliver this FUA under the terms and provisions of a resolution of Da Vinci approving the form and authorizing the execution of this FUA.
- 5.1.4 **Enforceability of FUA.** Da Vinci represents and warrants that all requirements have been met and procedures have occurred in order to ensure the enforceability of this FUA (except as such enforceability may

be limited by bankruptcy, insolvency, or other laws affecting creditors' rights generally and by the application of equitable principles) and Da Vinci further represents and warrants that this FUA is a valid and binding obligation of Da Vinci, enforceable in accordance with its terms, except as such enforceability may be limited by the bankruptcy, insolvency or other laws affecting creditors' rights generally and by the application of equitable principles.

5.1.5 Limitation on Use of School Site. During the term of this FUA, the High Schools Facility and School Site will be used by Da Vinci for the purpose of performing those activities and services consistent with the operation of a charter school program, the Civic Center Act, and consistent with the permissible scope of Da Vinci's organizational documents.

5.1.6 Essential Project. Da Vinci represents and warrants that the Project is essential to the fulfillment of its role as a provider of educational services through a charter school program.

5.2 **Representations and Warranties of the District.** The District hereby represents and warrants to Da Vinci as follows:

5.2.1 Valid Existence. The District is a school district duly organized and validly existing under the laws of the State of California.

5.2.2 Power to Enter into FUA. The District is authorized under the laws of the State of California to enter into this FUA and perform all of its obligations hereunder.

5.2.3 Due Authorization. The District has been duly authorized to execute and deliver this FUA under the terms and provisions of a resolution of the Board of Trustees of the District approving the form and authorizing the execution of this FUA.

5.2.4 Enforceability of FUA. District represents and warrants that all requirements have been met and procedures have occurred in order to ensure the enforceability of this FUA (except as such enforceability may be limited by bankruptcy, insolvency, or other laws affecting creditors' rights generally and by the application of equitable principles) and the District further represents and warrants that this FUA is a valid and binding obligation of the District, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency or other laws affecting creditors' rights generally and by the application of equitable principles.

ARTICLE 6 PAYMENTS

6.1 **Payments by the District.** Pursuant to the State MOU, District has agreed to provide its fifty percent (50%) share of the Local Matching Share obligation from general Obligation Bond funds as required by the State Allocation Board (the "Payments") on behalf of Da Vinci Design and Da Vinci in consideration for the State funding of the Project. The parties to this FUA hereby acknowledge and agree that the District shall replace Da Vinci as the applicant in the "Application for Charter School Preliminary Apportionment School Facility Program SAB 50-09", as permitted under Education Code section 17078.53(b) and shall be liable to the State for the Payments. The parties agree that the terms of California Education Code section 17078.62 apply only to the Project.

6.2 **Oversight and Deferred Maintenance.** As provided in Article 4, commencing July 1, 2015, Da Vinci shall pay the District a general oversight fee of 1% of the annual State operating revenue of each of its charter schools pursuant to Education Code section 47613, and shall not be required to pay the maximum amount authorized by that statute based on the unique circumstance that the Da Vinci schools serve as the District's high schools. However, for the term of this FUA, Da Vinci shall also allocate in its budget 1% of the annual State operating revenue of each of its charter schools that use the High Schools Facility for deferred maintenance of the High Schools Facility. Da Vinci will allocate 2% of its annual budget for routine maintenance. The District and Da Vinci will jointly prioritize major maintenance ("deferred maintenance") of the High Schools Facility from this fund. Unless otherwise agreed, Da Vinci will undertake or contract for the performance of any deferred maintenance. The parties will cooperate to amend Da Vinci's charters as necessary to reflect this section. This 1% for deferred maintenance will be administered by Da Vinci with a cap of \$2.5 million on this account. This "sinking fund" will be established to address the long term deferred maintenance costs of the high school campus. Expenditures from this fund would include items such as HVAC, roofing, synthetic turf replacement, parking lot resurfacing, etc. Routine maintenance and cosmetic improvements will not be addressed through this funding source. When the "sinking fund" account is fully funded at \$2,500,000, Da Vinci will cease to pay into this sinking fund, unless the Sinking Fund is reduced to less than \$2,500,000, in which case the contributions will continue until the \$2,500,000 is fully funded again.

District and Da Vinci will seek future funding as appropriate, including when the High Schools Property is eligible and in need of modernization through State funding and/or a General Obligation Bond.

Da Vinci will use its own personnel or hire specialists to operate and maintain the floors 1, 2, 3 and 4 of the building at the High Schools Property (Da Vinci is responsible for routine maintenance and repairs for the building just as District is responsible for its own school buildings).

District will be responsible for costs associated with operations, utilities and maintenance of District Offices and Boardroom, and any common space use on the first floor for professional development or community events. District and Da Vinci will communicate early and often about the use of spaces.

The Working Group, established pursuant to Section 1.4 above, shall address oversight and deferred maintenance issues, as needed.

6.3 **Fees, Charges, Operations and Maintenance Expenses.** Da Vinci shall pay all fees and public charges of whatever nature assessed against the High Schools Facility, including, but not limited to, the payment of all taxes, and cost associated with telephone, water, sewer, gas, heat, electricity, garbage disposal, trash disposal, and all other maintenance, operations, services and utilities (herein called the "Additional Payments"). Unless otherwise agreed, Da Vinci will undertake or contract for the performance of all maintenance, operations and services on the School Site (including the theater, gymnasium, grounds and the parking lot), except for the swimming pool facilities, which shall be the District's sole cost and responsibility. Da Vinci shall invoice the District monthly for a prorated fair share of fees and public charges for the portion of the High Schools Facility used by the District, which the District shall pay to Da Vinci within 30 days of receipt of invoice. The parties to this FUA hereby acknowledge and agree that except as otherwise provided herein, the District is not liable for the Additional Payments (except as provided in California Education Code section 17078.62(b)(4), which section requires the District to notify the California School Finance Authority and take possession of the High Schools Facility and make the High Schools Facility available for continued use as a public school facility before the District is liable to the State), and that the District is not a guarantor or warrantor of the Additional Payments. The Working Group, established pursuant to Section 1.4 above, shall address fees, charges, operations and maintenance expenses issues, as needed.

ARTICLE 7 DA VINCI'S OBLIGATIONS

7.1 **Licensing; Accreditation.** Da Vinci shall, at its own cost and expense, maintain all accreditations, licenses, permits and other governmental approvals necessary for the operation of the School Site. However, nothing in this paragraph shall relieve District from its obligations with respect to swimming pool facilities.

7.2 **Maintenance of the School Site by Da Vinci.** Da Vinci shall be responsible for all maintenance at the School Site not defined as "deferred maintenance," including but not limited to those items of major repair or replacement listed in Education Code section 17582, excluding the swimming pool facilities. The District and Da Vinci will jointly prioritize deferred maintenance of the High Schools Facility from the joint fund described in Section 5.2 herein.

7.3 Taxes and Other Governmental Charges; Utility Charges.

7.3.1 **Taxes and Other Governmental Charges on the School Site.** The parties to this FUA contemplate that the High Schools Facility and School Site will be used for the public and nonprofit public benefit related purposes of Da Vinci and/or District purposes, and therefore, that the High Schools Facility and School Site will be exempt from all taxes presently assessed and levied with respect to property. In the event that the High Schools Facility is found to be subject to taxation in any form, Da Vinci will pay during the term of this FUA, as the same respectively become due, all taxes and governmental charges of any kind whatsoever that may at any

time be lawfully assessed or levied against or with respect to the High Schools Facility, and any equipment or other property acquired by Da Vinci in substitution for, as a renewal or replacement of, or a modification, improvement or addition to the High Schools Facility.

- 7.3.2 FUA-Related Taxes Imposed on Da Vinci. Da Vinci shall also pay directly or pay as Additional Payments hereunder such amounts, if any, in each year as shall be required by the District for the payment of all license and registration fees and all taxes (including, without limitation, income, excise, license, franchise, capital stock, recording, sales, use, value-added, property, occupational, excess profits and stamp taxes), levies, imposts, duties, charges, withholdings, assessments, and governmental charges of any nature whatsoever, together with any additions to tax, penalties, fines or interest thereon, including, without limitation, penalties, fines, or interest arising out of any delay or failure by Da Vinci to pay any of the foregoing, hereinafter levied or imposed against the District with respect to the High Schools Facility and/or this FUA by any governmental authority.
- 7.3.3 Utility Charges. Da Vinci shall be responsible for any utility hook-up and connection fees and costs. In addition, Da Vinci shall pay or cause to be paid all gas, water, steam, electricity, heat, power, air conditioning, telephone, utility, and other charges incurred in the operation, maintenance, use, occupancy, and upkeep of the High Schools Facility.
- 7.3.4 Assessments. Da Vinci shall pay, prior to delinquency, all lawful taxes, assessments, or charges which at any time may be levied against the High Schools Facility.
- 7.3.5 Notification. Pursuant to Section 107.6 of the California Revenue and Taxation Code, District hereby notifies Da Vinci that: (i) any property interest obtained by Da Vinci pursuant to the FUA may be subject to property taxation; and (ii) Da Vinci may be subject to the payment of property taxes levied on any property interest obtained by Da Vinci.
- 7.3.6 Cooperation. Both parties agree to reasonably cooperate with the other party in obtaining property tax exemptions for the High Schools Site and Existing Schools, as necessary.

7.4 Indemnity for Liens on School Site or High Schools Facility. In the event Da Vinci shall at any time during the term of this FUA cause any alterations, additions, improvements, renovations, modifications, expansions, or any repair, reconstruction or rehabilitation or other work to be done or performed, or materials to be supplied, in or upon the High Schools Facility or School Site (collectively and generally referred to as "Future Work"), Da Vinci shall pay, when due, all sums of money that may become due for, or purporting to be for, any labor, services, materials, supplies, or equipment furnished or alleged to have been furnished to or for Da Vinci in, upon or about the High Schools Facility or School Site for future

work and shall keep the High Schools Facility and School Site free of any and all mechanics' or materialmen's liens or other liens against the High Schools Facility or School Site other than those liens, if any, already in place as of the date hereof. In the event any such lien attaches to or is filed against the High Schools Facility or School Site, Da Vinci shall cause each such lien to be fully discharged and released at the time the performance of any obligation secured by any such lien matures or becomes due, except that if Da Vinci desires to contest any such lien it may do so in good faith. If any such lien is reduced to final judgment and such judgment or such process as may be issued for the enforcement thereof is not promptly stayed, or if so stayed and said stay thereafter expires, Da Vinci shall forthwith pay (or cause to be paid) and discharge such judgment. Da Vinci agrees to and shall, to the maximum extent permitted by law, indemnify and hold the District, its governing board, agents, successors and assigns, harmless from and against, and defend each of them against, any claim, demand, loss, damage, liability or expense (including attorney's fees) as a result of any such lien or claim of lien against the High Schools Facility or School Site resulting from said future work.

7.5 Environmental Covenants.

7.5.1 Compliance with Laws; No Hazardous Substances. Da Vinci will comply with all Applicable Environmental Laws with respect to the School Site and High Schools Facility and will not use, store, generate, treat, transport, or dispose of any Hazardous Substance thereon or in a manner that would cause any Hazardous Substance to later flow, migrate, leak, leach, or otherwise come to rest on or in the School Site or High Schools Facility in violation of said Applicable Environmental Laws. In the event Da Vinci breaches this provision, Da Vinci shall indemnify the District for any injury or loss associated therewith.

7.5.2 Hazardous Substance; Applicable Environmental Laws. For purposes of this FUA,

7.5.2.1 "Hazardous Substance" means any substance that shall, at any time, be listed as "hazardous" or "toxic" in any Applicable Environmental Law or that has been or shall be determined at any time by any agency or court to be a hazardous or toxic substance regulated under Applicable Environmental Laws; and also means, without limitation, raw materials, building components, the products of any manufacturing, or other activities on the Facilities, wastes, petroleum, and source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (42 USC Sections 3011 *et seq.*).

7.5.2.2 "Applicable Environmental Laws" means and shall include, but shall not be limited to, the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 USC Sections 9601 *et seq.*; the Resource Conservation and Recovery Act ("RCRA"), 42 USC Sections 6901 *et seq.*; the Federal Water Pollution Control Act, 33 USC Sections 1251 *et seq.*; the Clean Air

Act, 42 USC Sections 7401 *et seq.*; the California Hazardous Waste Control Law ("HWCL"), California Health & Safety Code Sections 25100 *et seq.*; the Hazardous Substance Account Act ("HSAA"), California Health & Safety Code Sections 25300 *et seq.*; the Porter-Cologne Water Quality Control Act (the "Porter-Cologne Act"), California Water Code Sections 1300 *et seq.*; the Air Resources Act, California Health & Safety Code Sections 3900 *et seq.*; the Safe Drinking Water & Toxic Enforcement Act, California Health & Safety Code Sections 25249.5 *et seq.*; and the regulations under each thereof; and any other local, state, and/or federal laws or regulations, whether currently in existence or hereafter enacted, that govern: (i) the existence, cleanup, and/or remedy of contamination on property; (ii) the protection of the environment from spilled, deposited, or otherwise emplaced contamination; (iii) the control of hazardous wastes; or (iv) the use, generation, transport, treatment, removal, or recovery of Hazardous Substances, including building materials.

- 7.5.3 Notification. Da Vinci will transmit copies of all notices, orders, or statements received from any governmental entity concerning violations or asserted violations of Applicable Environmental Laws with respect to the School Site or High Schools Facility and any operations conducted thereon or any conditions existing thereon to the District and the State, and Da Vinci will notify the District and the State in writing immediately of any release, discharge, spill, or deposit of any Hazardous Substance that has occurred or is occurring that in any way affects or threatens to affect the High Schools Facility or School Site, or the people, structures, or other property thereon, provided that no such notification shall create any liability or obligation on the part of the District or the State.
- 7.5.4 Access for Inspection. Da Vinci will permit the State and the District, its successors, assigns, agents, or any experts designated by the State and/or the District to have full access to the High Schools Facility and School Site with prior written notice to Da Vinci or the school principal during reasonable business hours for purposes of such independent investigation of compliance with all Applicable Environmental Laws, provided that the District and the State have no obligation to do so, or any liability for any failure to do so, or any liability should it do so.
- 7.5.5 Compliance with California Environmental Quality Act. Except with respect to the swimming pool facilities, Da Vinci shall assume all costs and responsibility for compliance with the terms of California Public Resources Code section 21000 *et seq.* (California Environmental Quality Act) that result from its use, occupancy, modification or repair of the High Schools Facility or School Site and shall indemnify, defend and hold harmless the District against all costs, expenses, and liability for doing so.

7.5.6 Release of all Claims and Demands. Da Vinci hereby releases the District, its governing board, employees and agents (collectively, the “released parties”), from any and all claims, demands, debts, liabilities, and causes of actions of whatever kind or nature which Da Vinci or any of its employees or agents may have, claim to have, or which may hereafter accrue against the released parties or any of them, arising out of or relating to or in any way connected with Hazardous Substances presently in, on or under, or now or hereafter emanating from or migrating onto or under the School Site. In connection with such release, Da Vinci hereby waives any and all right conferred upon it by the provisions of section 1542 of the California Civil Code, which reads as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

7.6 Assignment and Subleasing by Charter School. Except as to the License for Recreational/First Floor Facilities described in Section 1.6, this FUA shall not be mortgaged, pledged, assigned, sublet, encumbered, or transferred by Da Vinci by voluntary act or by operation of law or otherwise, except with the prior written consent of the District, which consent shall not be unreasonably withheld. No such mortgage, pledge, assignment, sublease or transfer shall in any event affect or reduce the obligation of Da Vinci to pay the expenses and Additional Payments required hereunder. Nothing in this FUA is intended to negate Da Vinci’s ability to partner with any other entity for purposes related to Da Vinci’s charitable purposes, including the use of the first floor of the building on the High Schools Property for auxiliary functions.

7.7 Civic Center Act. Although Da Vinci shall have primary and the exclusive use of the School Site for school purposes, Da Vinci agrees to make facilities available in the same manner they would be available pursuant to the Civic Center Act (Education Code section 38131 *et seq.*) in making use of the non-classroom facilities and grounds accessible to members of the community. District shall have primary responsibility for scheduling use of its exclusive-use first floor space.

7.8 Future Work. Da Vinci shall be solely responsible for securing the permits, approvals and other entitlements for all Future Work, as it is for the High Schools Facility under the Charter School Facilities Program.

7.9 Enrollment Preference. Da Vinci will maintain enrollment preference for District students as described in Da Vinci’s charters. Wiseburn residents will be provided a guaranteed seat at one of the three Da Vinci high schools, but not necessarily their first choice.

ARTICLE 8 DISTRICT'S OBLIGATIONS

8.1 **Title to the School Site and High Schools Facility.** The District will at all times protect and defend, at its own cost and expense except as described in Section 7.4, the title to the High Schools Facility and School Site from and against all claims, liens, and legal processes of creditors, and keep the High Schools Facility and School Site and the title free and clear of all such claims, liens and processes except for the liens created or expressly permitted by the terms of the Charter School Facilities Program.

ARTICLE 9 INDEMNIFICATION

9.1 **Liability of the District.** The District and its governing board, officers, agents, and employees shall not be liable to Da Vinci, to the State, or to any other party whomsoever for any death, injury, or damage that may result to any person or property by or from any cause whatsoever in, on, or about the School Site, except with respect to District's exclusive use space on the first floor of the building at High Schools Property and the swimming pool facilities managed by District.

9.2 **Indemnification of the District.** Da Vinci shall, at its sole cost and expense with counsel acceptable to the District and, to the full extent then permitted by law, indemnify, protect, hold harmless, save, and keep harmless the District, its assignees, its governing board, officers, employees, and agents, from and against any and all liability, obligations, losses, claims, and damages whatsoever, regardless of the expenses in connection therewith, including, without limitation, reasonable counsel fees and expenses, penalties and interest arising out of or as the result of Da Vinci's obligations under this FUA, provided, however, that Da Vinci shall not have any obligation to indemnify, hold harmless or 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, resulting from or arising out of the negligence or malfeasance of the District, its trustees, officers, employees and agents or any person or entity not subject to Da Vinci's control and supervision. In case any action or proceeding is brought, made or initiated against the District relating to any matter covered by Da Vinci's indemnification obligation, Da Vinci shall, at its sole cost and expense, resist or defend such claim, action, or proceeding by counsel approved by the District. Notwithstanding the foregoing, the District may retain its own counsel to defend or assist in defending any claim, action, or proceeding, and Da Vinci shall pay the reasonable fees and disbursements of such counsel.

Da Vinci's obligation to indemnify the District may not be construed or interpreted as in any way restricting, limiting, or modifying Da Vinci's insurance or other obligations under this FUA, and is independent of Da Vinci's insurance and other obligations. Da Vinci's compliance with the insurance requirements and other obligations under this FUA shall not in any way restrict, limit or modify Da Vinci's indemnification obligations under this FUA.

The indemnification arising under this section shall continue in full force and effect notwithstanding the full payment of all obligations owed to the State under this FUA and the

Funding Agreement, and the termination of this FUA for any reason. Da Vinci and the District mutually agrees to promptly give notice to each other of any claim or liability hereby indemnified against following either's learning thereof.

9.3 **Indemnification of Da Vinci.** District shall, at its sole cost and expense with counsel acceptable to Da Vinci and, to the full extent then permitted by law, indemnify, protect, hold harmless, save, and keep harmless Da Vinci, its assignees, its governing board, officers, employees, and agents, from and against any and all liability, obligations, losses, claims, and damages whatsoever, regardless of the expenses in connection therewith, including, without limitation, reasonable counsel fees and expenses, penalties and interest arising out of or as the result of any claim arising out of the District's obligations under this FUA, provided, however, that the District shall not have any obligation to indemnify, hold harmless or defend Da Vinci, 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 on the Site after District delivers possession of the Site to Da Vinci, resulting from or arising out of the negligence or malfeasance of Da Vinci, its trustees, officers, employees and agents or any person or entity not subject to the District's control and supervision. In case any action or proceeding is brought, made or initiated against Da Vinci relating to any matter covered by District's indemnification obligation, District shall, at its sole cost and expense, resist or defend such claim, action, or proceeding by counsel approved by Da Vinci. Notwithstanding the foregoing, Da Vinci may retain its own counsel to defend or assist in defending any claim, action, or proceeding, and District shall pay the reasonable fees and disbursements of such counsel.

The indemnification arising under this section shall continue in full force and effect notwithstanding the full payment of all obligations owed to the State under this FUA and the Funding Agreement, and the termination of this FUA for any reason. Da Vinci and the District mutually agree to promptly give notice to each other of any claim or liability hereby indemnified against following either's learning thereof.

ARTICLE 10 INSURANCE

10.1 **Insurance Coverage.** Da Vinci shall maintain all insurance coverage described herein. Any future procurement of earthquake insurance or creation of earthquake fund will be addressed between the Parties.

10.2 Fire and Extended Coverage Insurance.

10.2.1 **Coverage.** Da Vinci shall procure or cause to be procured and maintain or cause to be maintained, throughout the term of this FUA, upon completion of the High School Facility insurance against loss or damage to any structures constituting any and all parts of the High Schools Facility by fire and lightning, with extended coverage insurance, vandalism and malicious mischief insurance, sprinkler system leakage, and plate glass insurance. Said extended coverage insurance shall, as nearly as commercially reasonable, cover loss or damage by explosion, windstorm,

riot, aircraft, vehicle damage, smoke, and such other hazards as are normally covered by such insurance. The insurance required by this Section may be maintained as part of or in conjunction with any other insurance maintained by Da Vinci. Full payment of proceeds of such insurance up to the policy limit shall not be contingent on the degree of damage sustained at other facilities owned or leased by Da Vinci.

10.2.2 Amount. Such insurance shall be in an amount equal to the replacement cost (without deduction for depreciation) of all structures constituting any part of the High Schools Facility, excluding the cost of excavations, of grading and filling, and of the land (except that such insurance may be subject to deductible clauses for any one loss of not to exceed \$50,000). The policy must explicitly waive any co-insurance penalty.

10.2.3 Repair or Replacement of High Schools Facility. In the event of any damage to or destruction of any part of the High Schools Facility caused by the perils covered by such insurance, Da Vinci, except as hereinafter provided, shall cause the proceeds of such insurance to be utilized for the repair, reconstruction, or replacement of the damaged or destroyed item or items to at least the same good order, repair, and condition as they were in prior to the damage or destruction, insofar as the same may be accomplished by the use of said proceeds.

10.2.4 Federal Disaster Relief. Da Vinci shall promptly apply for Federal disaster aid or State of California disaster aid in the event that the High Schools Facility is damaged or destroyed as a result of an earthquake occurring at any time. Any proceeds received as a result of such disaster aid shall be used to repair, reconstruct, restore, or replace the damaged or destroyed portions of the High Schools Facility, with any excess proceeds being returned to Da Vinci.

10.2.5 Property Insurance. District shall maintain, for the duration of this FUA, all-risk real property coverage adequate to cover the replacement cost of all buildings on the School Site and the Existing Facilities which Da Vinci charter schools are occupying. Da Vinci shall be solely responsible for obtaining adequate personal property or contents insurance for Da Vinci's personal property located on the School Site and at the Existing Facilities. In addition, Da Vinci is solely responsible for insuring its building improvements. District shall be solely responsible for obtaining adequate personal property or contents insurance for District's personal property located on the School Site and Existing Facilities.

10.3 Public Liability and Property Damage Coverage.

10.3.1 Coverage: General & Excess Liability. Da Vinci, at its expense, shall procure and maintain throughout the term of this FUA General Liability coverage with a minimum per occurrence limit of \$10,000,000 and the

deductible/self-insurance retention shall not exceed \$50,000. The coverage shall name as additional insured/additional covered party the District, its elected or appointed officials, employees, agents and volunteers. The policy or policies shall provide that this insurance shall be primary with respect to any liability or claimed liability arising out of the performance or activities by Da Vinci under this FUA or Da Vinci's use of the School Site and Existing Facilities, and that any insurance procured by the District, its elected or appointed officials, employees, agents and volunteers shall be excess and shall not be called upon to contribute until the limits of the insurance provided hereunder shall be exhausted.

10.3.2 Automobile Insurance. Da Vinci shall maintain automobile liability insurance, including non-owned and hired coverage with a minimum per accident limit of \$10,000,000 for any injuries to persons (including death therefrom) and property damage in connection with Da Vinci's activities under this FUA.

10.3.3 Workers' Compensation Insurance. Da Vinci is to procure and maintain, for the duration of this FUA, Workers' Compensation coverage against claims for injuries to Da Vinci's employees in accordance with such insurance as required by the State of California Labor Code and Employers Liability coverage. Da Vinci shall maintain workers' compensation coverage covering all Da Vinci employees working on the Project and at the School Site in the amounts as required by law. Such insurance may be maintained by Da Vinci as part of or in conjunction with any other insurance maintained by Da Vinci.

10.4 General Provisions.

10.4.1 Form of Policies. All coverage contracts required by this FUA (except for workers compensation coverage) shall name both the District and the State as additional insureds. All policies of insurance required by this Article shall provide that all proceeds thereunder shall be payable to the State and the District pursuant to a lender's loss payable endorsement substantially in accordance with the form approved by the Insurance Services Office and the California Bankers Association. The State and the District shall collect, adjust, and receive all moneys that may become due and payable under any such policies.

10.4.2 Payment of Premiums. Da Vinci shall pay when due the premiums for all insurance policies required by this FUA, and shall promptly furnish evidence of such payments in the form of a certificate of insurance to the District and the State.

10.4.3 Evidence of Insurance. Da Vinci will deliver to the District and the State in the month of August in each year a Statement of Da Vinci certifying that such policies satisfy the requirements of this FUA, setting forth the

insurance policies then in force pursuant to this Article, the names of the insurers that have issued the policies, the amounts thereof, and the property and risks covered thereby. If so requested in writing by the District or the State, Da Vinci shall also deliver to the District or the State certificates or duplicate originals or certified copies of each insurance policy described in Da Vinci's officer's certificate. Da Vinci and/or Da Vinci's insurer shall notify District of any non-renewal, cancellation, or reduction in required limits of liability or amounts of insurance immediately.

10.4.4 Reserves Against Deductibles. Da Vinci shall provide adequate reserves to fund the amount of any deductible allowed under this Article.

10.4.5 Cooperation. In the event Da Vinci shall fail to maintain the full insurance coverage required by this FUA or shall fail to keep the High Schools Facility or School Site in good repair and operating condition, the District may (but shall be under no obligation to) purchase the required policies of insurance and pay the premiums on the same or may make such repairs or replacements as are necessary and provide for payment thereof; and Da Vinci agrees to reimburse the District all amounts so advanced within thirty (30) days of a written request therefore.

10.4.6 Notice. Da Vinci shall immediately notify the District and the State, in writing, if any damage occurs or any injury or loss is sustained to all or part of the High Schools Facility, or any material action or proceeding relating to any damage, injury, or loss thereon is commenced. The District and the State may, but shall not be obligated to, in its own name appear in or prosecute any action or proceeding to enforce any cause of action based on warranty, or for damage, injury or loss to all or part of the High Schools Facility, and may make any compromise or settlement of any action or proceeding; provided, however, that no compromise or settlement that materially affects Da Vinci shall be entered into or agreed to without Da Vinci's prior written consent, which consent shall not be unreasonably withheld.

10.5 Proof of Insurance. Da Vinci shall furnish the District, upon request, with original certificates and amendatory endorsements effecting coverage required by this FUA, including, but not limited to additional insured language set forth above. All certificates and endorsements are to be received and approved by the District before commencement of any activities under this FUA. However, failure to do so shall not operate as a waiver of these insurance requirements. The District reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by this FUA at any time.

ARTICLE 11 DEFAULT AND REMEDIES

11.1 **Events of Default and Remedies.** In the event the District believes that Da Vinci is not in compliance with any law or regulation material to Da Vinci's performance of the terms and conditions of this FUA, District may give written notice to Da Vinci, which shall specify in such detail as may be known, the nature of the non-compliance and which may suggest steps constituting cure. Da Vinci shall have a reasonable period to correct or take steps to prevent recurrence of any material non-compliance, not to exceed one year. Da Vinci shall provide the District a written response to any notice given under this paragraph. After receipt of such response or expiration of the cure period, the District shall hold a noticed public hearing regarding the alleged default, and provide Da Vinci an opportunity to be heard at such hearing prior to any declaration of default. Following such hearing, District shall issue written findings supporting its determination that the default has been satisfactorily cured, or may issue conditions to be met to effectuate a cure, or may declare Da Vinci in default as to one or more matters. A declaration of default may apply solely to a single Da Vinci charter school, or to more than one. In the event a single charter school is in default, this FUA shall not be terminated as to any other Da Vinci school.

It is further the intent of the parties that these provisions shall be interpreted to relate to compliance with the terms of the FUA and are not intended to supersede or supplant any revocation proceedings prescribed by the California Charter Schools Act and applicable regulations as to the status of any charter.

ARTICLE 12 DAMAGE AND DESTRUCTION OF SITE

12.1 **Partial Damage.** If the High Schools Facility or School Site is damaged by any casualty which is covered by applicable insurance, and Da Vinci still has access to at least sixty percent (60%) of the usable classroom space, then the High Schools Facility or School Site shall be restored provided insurance proceeds are available to pay for the cost of restoration, and provided such restoration can be completed within one hundred eighty (180) days after the commencement of the work in the opinion of a registered architect or engineer approved by District. In such event, this FUA shall continue in full force and effect. If feasible, the District and Da Vinci will work together to provide temporary housing on the High Schools Facility or School Site, or another school site that is near to the High Schools Facility or School Site for any part of Da Vinci program that is displaced by the partial damage and/or the repair work of the same.

12.2 **Total Destruction.** If the High Schools Facility or School Site is totally destroyed (defined as the destruction of more than forty percent (40%) of the usable classroom space), or the High Schools Facility or School Site cannot be restored as required herein, notwithstanding the availability of insurance proceeds, then this FUA may be terminated by mutual consent, effective as of the date of the damage. Any insurance proceeds payable for the

High School s Facility, received by Da Vinci, District, or any additional insured must be used toward restoration of the High Schools Facility or School Site, and/or alternative housing for Da Vinci's school programs. Immediately upon the effective date of the damage, the District will comply with Proposition 39 and provide a school facility to Da Vinci as soon as possible so as to avoid any interruption in the educational program of Da Vinci, with the understanding that if the cause of the destruction is a natural disaster, or similar, which affects other District sites, it may not be feasible to provide facilities immediately.

12.3 Condemnation. If all or any part of the High Schools Facility or School Site shall be taken or appropriated for public or quasi-public use by right of eminent domain, with or without litigation, then Da Vinci shall have the right at its option exercisable within thirty (30) days of receipt of notice of such taking to terminate this FUA as of the date possession is taken by the condemning authority, provided, however, that before Da Vinci may terminate this FUA by reason of taking or appropriation as provided hereinabove, such taking or appropriation shall be of such an extent and nature as to impede or impair Da Vinci's use of more than fifty percent (50%) of the classroom space at the High Schools Facility or School Site. Da Vinci does not waive any award to which it might be entitled which may be made in such taking or condemnation (specifically excluding any claim arising out of a claim in right, title, or interest to the High Schools Facility or School Site, or any fixtures, improvements or appurtenances thereto), together with any and all rights of Da Vinci now or hereafter arising in or to the same or any part thereof except that nothing in this provision shall create any obligation on the part of the District to pursue any such claim on behalf of Da Vinci. No temporary taking (defined as a taking of less than one hundred eighty (180) days of the High Schools Facility or School Site and/or of Da Vinci's rights therein or under this FUA) shall terminate this FUA.

ARTICLE 13 DISPUTE RESOLUTION

13.1 Dispute Resolution. Only as to the dispute relates to Prop 1D rehabilitation, disputes between Da Vinci and the District regarding the alleged violation, misinterpretation, or misapplication of this FUA shall be resolved using the dispute resolution process identified below. The party initiating the dispute resolution process shall prepare and send to the other party a notice of dispute that shall include the following information: (1) the name, addresses and phone numbers of designated representatives of the party; (2) a statement of the facts of the dispute, including information regarding the parties' attempts to resolve the dispute; (3) the specific sections of the FUA that are in dispute; and (4) the specific resolution sought by the party. Within five (5) days from receipt of the notice of dispute, the representatives from Da Vinci shall meet with representatives from the District in an informal setting to try to resolve the dispute.

If the informal meeting fails to resolve the dispute, the party initiating the dispute resolution process shall notify the other party (the responding party) in writing that it intends to proceed to mediation of the dispute and shall request the American Arbitration Association to appoint a mediator within seven (7) days to assist the parties in resolving the dispute. The initiating party shall request appointment of a mediator who is available to meet as soon as possible but not later than thirty (30) days after receipt of the request for appointment. If the American Arbitration Association is unavailable to appoint a mediator in a timely fashion, then the parties shall agree

upon a mediator. The party initiating the dispute shall forward a copy of the notice of the dispute to the appointed mediator. The responding party shall file a written response with the mediator and serve a copy on the initiating party within seven (7) days of the first scheduled mediation. The mediation procedure shall be entirely informal in nature; however, copies of non-privileged exhibits, or exhibits which are not otherwise protected by any right, upon which either party bases its case shall be shared with the other party in advance of the mediation. The relevant facts should be elicited in a narrative fashion to the extent possible, rather than through examination and cross examination of witnesses. The rules of evidence will not apply and no record of the proceedings will be made. If an agreement is reached, the agreement shall be reduced to writing and shall be signed by the District and Da Vinci.

This dispute resolution procedure shall not apply to any request for equitable or injunctive relief prior to the mediation to preserve the status quo pending the completion of that process. Except for such an action to obtain equitable or injunctive relief, neither party may commence a civil action with respect to the matters submitted to mediation until after the completion of the initial mediation session, or forty-five (45) days after the date of filing the written request for mediation, whichever occurs first. Mediation may continue after the commencement of a civil action, if the parties so desire.

ARTICLE 14 PROVISIONS OF GENERAL APPLICABILITY

14.1 **Effective Date.** This agreement becomes effective upon the approval of and execution by the respective Boards as identified on Page 1 of this FUA.

14.2 **Incorporation of Recitals.** The recitals set forth above, and all defined terms set forth in such recitals and in the introductory paragraph preceding the recitals, are hereby incorporated into this FUA as if set forth in full.

14.3 **Notices.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, to:

District:	Wiseburn Unified School District 13530 Aviation Boulevard Hawthorne, CA 90250 Attn: Superintendent
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Da Vinci:	Da Vinci Schools, Inc.
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Attn: Chief Executive Officer

The District and Da Vinci may, by notice given hereunder, designate any further or different address to which subsequent notices shall be sent.

14.4 **Successors and Assigns.** Whenever in this FUA either the District or Da Vinci is named or referred to, such reference shall be deemed to include the successors or assigns thereof,

and all the covenants and agreements in this FUA contained by or on behalf of the District or Da Vinci shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

14.5 **Effect of Headings.** The headings or titles of the several Articles and Sections hereof shall be solely for convenience of reference and shall not affect the meaning, construction, or effect of this FUA.

14.6 **Validity and Severability.** If any one or more of the provisions contained in this FUA shall for any reason be held to be invalid, illegal, or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this FUA and such invalidity, illegality, or unenforceability shall not affect any other provision of this FUA, and this FUA shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein. The District and Da Vinci hereby declare that they would have adopted this FUA and each and every other section, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, paragraphs, sentences, clauses, or phrases of this FUA may be held illegal, invalid, or unenforceable.

14.7 **Attorneys' Fees.** If suit is brought by either party to this FUA to enforce any of its terms, each party shall bear their own attorney's fees and costs.

14.8 **Entire Agreement, Waivers and Amendments.** This FUA supersedes all negotiations and previous agreements between the parties with respect to all or part of the terms and conditions of this FUA. All waivers of the provisions of this FUA must be in writing and signed by an appropriate representative of the party to be charged. The waiver by either party of any breach, term, covenant or condition contained in this FUA shall not constitute a waiver of any subsequent term, covenant or condition contained herein. Any amendment or modification to this FUA must be in writing and executed by all of the parties hereto.

14.9 **Interpretation; Governing Law.** This FUA shall be construed according to its fair meaning and as if prepared by both parties hereto. This FUA shall be governed by and construed in accordance with the laws of the State of California.

14.10 **Execution in Counterparts.** This FUA may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

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IN WITNESS WHEREOF, the District and Da Vinci have caused this FUA to be executed by their duly authorized officers, all as of the date first above written.

THE DISTRICT:

WISEBURN UNIFIED SCHOOL DISTRICT

By:

Tom Plonstone

Date:

5/13/15

Title:

Superintendent

DA VINCI:

DA VINCI SCHOOLS

By:

Mark [Signature]

Date:

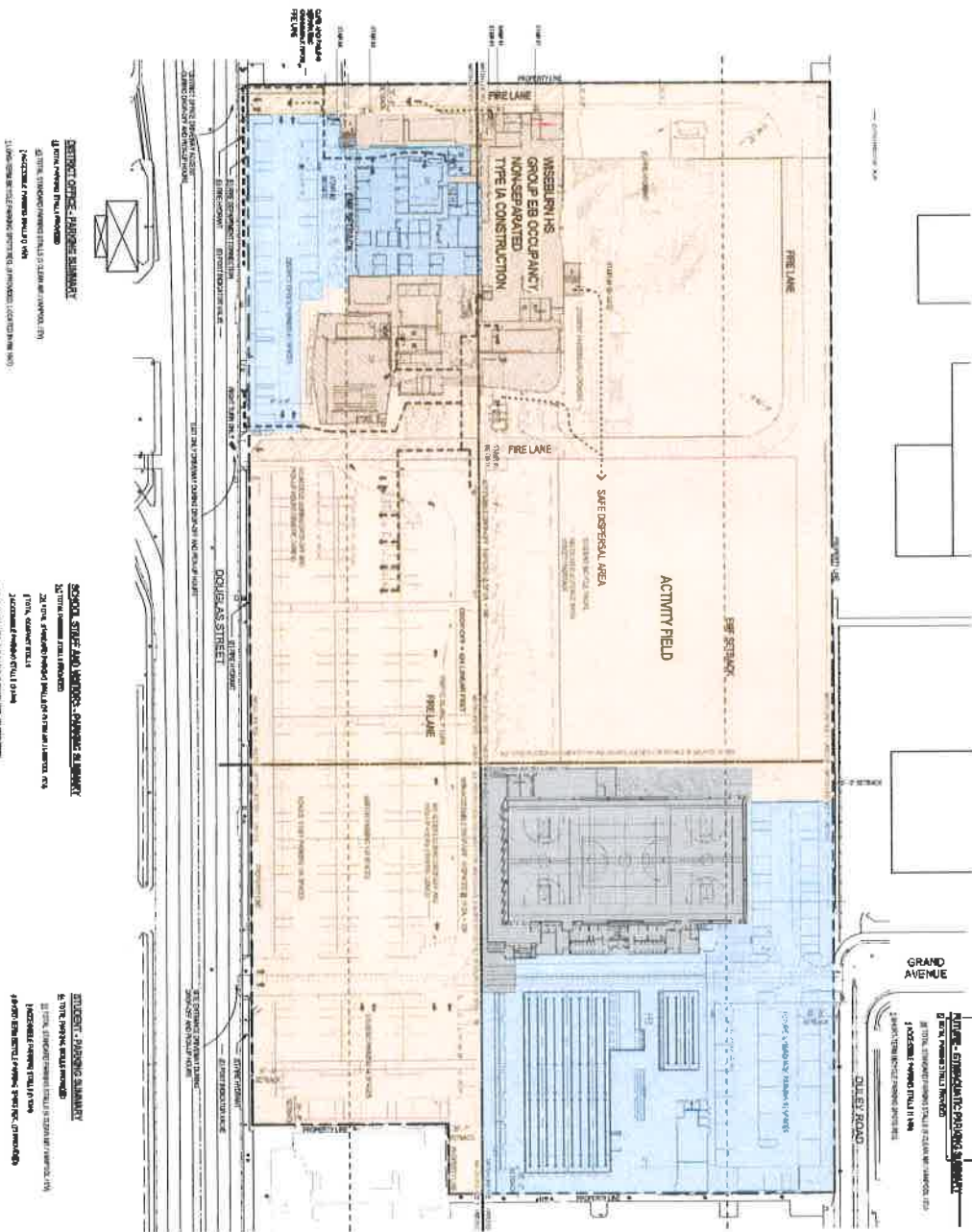
5-13-15

Title:

CEO

EXHIBIT A

SITE PLAN



SHEET NOTES

[illegible]

WISEBURN HIGH SCHOOL
231 N. DOWGLAS STREET
EL SEGUNDO, CA 90245

Consider

100% 2.5 1.5 0.5
0.5 1.5 2.5 0.5
0.5 1.5 2.5 0.5
100% 2.5 1.5 0.5

LEGEND

- [illegible]

DATA SOURCES & COORDINATOR:

10/24/97

EXHIBIT B

STATE OF CALIFORNIA

APPLICATION FOR CHARTER SCHOOL PRELIMINARY APPORTIONMENT SCHOOL FACILITY PROGRAM

SAB 50-09 (REV 12/11)

STATE ALLOCATION BOARD
OFFICE OF PUBLIC SCHOOL CONSTRUCTION

Page 1 of 6

GENERAL INSTRUCTIONS

This form is used to request a preliminary apportionment for the new construction or rehabilitation of charter school facilities. This form may be submitted by either a charter school directly or by a school district on behalf of a charter school, provided the school is within the geographical boundaries of the district. The apportionment will be a reservation of funds for the project to allow time to receive the necessary approvals from other State entities and shall be converted to a Final Charter School Apportionment based on Sections 1859.165 through 1859.166.1.

The charter school must assign a Project Tracking Number (PTN) to this project. The same PTN is used by the OPSC, the Division of the State Architect (DSA) and the California Department of Education (CDE) for all project applications submitted to those agencies, which assist those agencies to track a particular project through out the entire state application review process. If a PTN has already been assigned to this project by prior submittal of the plans and specifications to either the DSA or the CDE for approval, use that PTN for this application submittal. If no PTN has been previously assigned for this project, a PTN may be obtained from the Office of Public School Construction (OPSC) Web site at www.dgs.ca.gov/opsc "RT. Number Generator." (Obtain from school district.)

Prior to submitting this form, the Board must determine or adjust the appropriate district's eligibility for new construction funding on the Form SAB 50-03. If the district has a pending reorganization election that will result in the loss of eligibility for the proposed project, the district may not file this application until the Board has adjusted the district's new construction baseline eligibility as required in Section 1859.51. This may be accomplished by completion of Form SAB 50-01, Form SAB 50-02, and Form SAB 50-03. The following documents must be submitted with this form (as appropriate):

For new construction and rehabilitation projects,

- Form SAB 50-01, Form SAB 50-02 and Form SAB 50-03 (if not previously submitted by the school district).
- Verification of the charter school's notification to the school district of its intent to apply for State funding pursuant to Education Code Section 17078.53(b) for a charter applying on its own behalf.
- A narrative describing the proposed project. Include the estimated general scope of the project intended, estimated opening date of the school, the Charter School General Location, if the project will include new construction or rehabilitation of existing facilities, and if the facilities are of permanent or portable construction.

For new construction projects,

- If the charter school is applying for a Preliminary Apportionment on its own behalf, a school board resolution certifying to the number of the district's unhoused pupils, pursuant to Section 1859.162.1(a) that the project will house, the supporting documentation used to generate this number and the school board meeting minutes that recorded the approval of the certification.
- For school districts applying on behalf of a charter school, certification, signed by the district representative, and supporting documentation that states the number of the district's unhoused pupils that will be housed in the charter school project.

- An estimated recommended site size letter from the CDE.
- An Appraisal or Preliminary Appraisal of the property, or documentation supporting the Median Cost of the property, if requesting site acquisition funds. See Section 1859.163.2(a).
- Supporting documentation for relocation expenses and Department of Toxic Substances Control (DTSC) costs, if requesting amounts other than the 15 percent standard allowance. See Section 1859.163.2(b).
- A cost estimate for site development using the historical data of School Facility Program projects within the district or adjacent school districts within the General Location, if requesting amounts other than the standard allowance of \$70,000 per acre. See Section 1859.163.1(a)(3).

For purposes of determining an amount for site acquisition pursuant to Section 1859.164.2(b), the following documents must be submitted with this form (as appropriate):

- Contingent site approval letter from the CDE.
- Preliminary appraisal of property.

For rehabilitation projects,

- For a charter school submitting a Preliminary Apportionment for rehabilitation on its own behalf, an agreement between the school district and the charter school for use of the facilities to be rehabilitated. The agreement must have been discussed and approved at a school district board meeting.
- A drawing of the school site that identifies all classrooms and subsidiary facilities and specifies the square footage and age of each building that will be included in the project.

Requests for new construction or rehabilitation funding are available only to charter schools that have current financial soundness status from the California School Finance Authority. Charter schools may apply for a separate amount for the design and for the new construction site acquisition on the same project. Charter schools may apply for a separate amount for the design of the project by submittal of Form SAB 50-05.

For a complete list of the application submittal guidelines, consult the OPSC Web site at www.dgs.ca.gov/opsc.

If the charter school or district is requesting a Preliminary Apportionment after the initial baseline eligibility was approved by the Board and the district's current California Basic Education Data System (CBEDS) enrollment reporting year is later than the enrollment reporting year used to determine the district's baseline eligibility or adjusted eligibility, the district must complete a new Form SAB 50-01, based on the current year CBEDS enrollment data, and submit it to the OPSC with this form. The district must also update its eligibility by separation of Special Day Class from regular K-12 grade level pupils by submitting a revised Form SAB 50-02 and Form SAB 50-03, if it has not already done so. A Small School District with 2,500 or less enrollment as defined in Section 1859.2 will have its eligibility adjusted as provided in Section 1859.51(j).

APPLICATION FOR CHARTER SCHOOL PRELIMINARY APPORTIONMENT SCHOOL FACILITY PROGRAM

SAB 50-09 (REV 12/11)

SPECIFIC INSTRUCTIONS

A preliminary application may be submitted by either a school district on behalf of a charter school or a charter school on its own behalf if the charter school has notified both the superintendent and the governing board of its intent to do so in writing at least 30 days prior to submission of the preliminary application. See Education Code Section 17078.53 (b)(1) and (2). The notice shall be submitted to the school district in writing in such a way that allows for verification of the received date. The notice shall also include a request for a school district certification pursuant to Section 1859.162.1(a), a request for an update in the district's enrollment pursuant to Section 1859.162.1(b) and must indicate to the school district the number of pupils the charter school intends to apply for. Please indicate method of filing by checking appropriate box. If the school district's eligibility is filed on a HSAA basis, the proposed project shall be constructed within the boundaries of that attendance area for which the eligibility is adjusted pursuant to Section 1859.162.2.

Prior to submitting a request for a preliminary apportionment the appropriate chartering entity must have either approved a charter petition or a material revision to a charter for the school in which the application references.

1. Type of Application

Check the appropriate box that indicates the type of request the Charter School is applying for with this form. If the Charter School is requesting a determination of eligible site acquisition costs from a Preliminary Charter School Apportionment previously approved by the Board, complete boxes 2, 3, 4 and the site acquisition data in 5b.

2. Type of Project

- Select the type of project that best represents this application request.
- Enter the name of the school district where the charter school is physically located.

3. Number of Classrooms/Useable Acres

Enter the:

- Estimated number of classrooms in the proposed project.
- Existing Useable Acres (if addition to existing site).
- Estimated Proposed Useable Acres to be acquired for the project.

The estimated Proposed Useable Acres shall be obtained from CDE prior to application submittal.

4. Additional Project Information—New Construction Only

- Enter the estimated number of pupils, by grade level, that will attend the charter school.
- Enter the number of the school district's unhoused pupils to be housed in the charter school pursuant to Section 1859.162.1(a) or 1859.162.2(b).
- Is this request an addition to an existing site? Yes or No. If yes, enter school name.

5. Increase in Preliminary Apportionment—New Construction Only

Complete the appropriate Sections if the district is requesting an increase in the Preliminary Apportionment for the items listed. Refer to Sections 1859.163.1 and 1859.163.2.

- Check the box if the district request additional funding due to multilevel construction. See Section 1859.163.1(a)(2).
- Site Acquisition:

- Enter 50 percent of the appraised value or the preliminary appraised value or the Median Cost of the property. See Section 1859.163.2(a). If the purchase price of the site is being determined using the median cost of the Charter School General Location enter the nearest street intersection to the charter school site.
- To determine an allowance for relocation cost and DTSC cost, the charter school may request 15 percent of the property value determined above or specific or historic values of these costs. See Section 1859.163.2(b). If specific or historic values are reported, the charter school must submit appropriate documentation to support the amount reported.
- Enter 50 percent of the amount allowable for hazardous material/waste removal and/or remediation for the site acquired. This amount may not exceed the limit set in Section 1859.163.2(d).

- To determine an allowance for site development, the charter school may request \$70,000 per proposed Usable Acres or a specific or historic value of the estimated costs. See Section 1859.163.1(a)(3). If specific or historic estimated costs are used, the district must submit appropriate cost estimate of the proposed work conforming to Section 1859.76.

In addition, check the box if the district is requesting General Site Development pursuant to Section 1859.163.1.

- Check the box if the proposed project is eligible for an increase due to geographic location. See Section 1859.163.1(a)(7).
- Check the box if this request is for a small size project. See Section 1859.163.1(a)(5).
- Check the box if the proposed project qualifies for an urban location allowance. See Section 1859.163.1(a)(6).

6. Additional Project Information—Rehabilitation Only

Enter the square footage of the non-toilet area and toilet area contained in the rehabilitation project.

7. Increase in Preliminary Apportionment—Rehabilitation Only

- Check the box if the proposed project is eligible for an increase due to geographic location. See Section 1859.163.1(a)(7).
- Check the box if this request is for a small size project. See Section 1859.163.1(a)(5).
- Check the box if the proposed project qualifies for an urban location allowance. See Section 1859.163.1(a)(6).
- Check the box if the rehabilitation project includes new two-stop elevator(s). Elevator(s) are allowed only if required by the DSA. Attach copy of the DSA letter that requires that the elevator(s) be included in the project for access compliance.
- Enter the number of additional stops on new DSA required elevator(s) beyond two.

8. Project Progress Dates

Complete this section:

- Enter the date(s) the construction contract(s) was awarded for this project(s). If a construction contract has not been executed, enter N/A. (If the space provided is not sufficient for all applicable contract dates, please list all dates on a separate attachment to this form.)
- Enter the issue date for the Notice to Proceed for the construction phase of the project, or enter N/A if a Notice to Proceed has not been issued.

**APPLICATION FOR CHARTER SCHOOL PRELIMINARY APPORTIONMENT
SCHOOL FACILITY PROGRAM**

SAB 50-09 (REV 12/11)

- c. If a construction contract was awarded prior to January 1, 2012, check the appropriate box to indicate if you have initiated and enforced a Labor Compliance Program (LCP) approved by the Department of Industrial Relations (DIR) pursuant to Labor Code Section 1771.7 for this project.

9. Prevailing Wage Monitoring and Enforcement Costs

If the construction contract(s) for this project was or will be awarded on or after January 1, 2012, check the appropriate box to indicate which of the following methods will be used to meet the requirement for prevailing wage monitoring and enforcement pursuant to Labor Code Section 1771.3:

- The DIR Compliance Monitoring Unit (CMU)
- A DIR-approved internal LCP
- A collective bargaining agreement that meets the criteria set forth in Labor Code Section 1771.3(b)(3).

10. Priority Order

Enter the priority order of this application in relation to other applications for Preliminary Charter School Apportionment submitted on the same date by the same applicant within the same school district.

11. Charter School Information

The information requested in (d) below can be obtained from the Charter School Information Listing posted on the OPSC's Web site.

- a. Enter the charter school enrollment currently being served by the applicant for the purpose of calculating if the Charter School is Small, Medium, or Large. See Section 1859.2.
- b. Indicate if the charter school operates as not for profit. If yes, must comply with the definition of Non-Profit Entity in Section 1859.2.
- c. Enter the locale code of the charter school as identified in the definitions for "Rural," "Suburban," or "Urban." See Section 1859.2.
- d. To determine if the charter school is low income, enter the percentage of pupils at the charter school identified as being eligible for the Free/Reduced Lunch Program. See Section 1859.2 and 1859.164.1(a).
- e. If the charter school has submitted an additional application for this project under the requirements of Section 1859.162.1, enter the application number for that project.

12. Certification

The authorized representative for the charter school, or the school district representative on behalf of the charter school must complete this certification section.

- Part A – The authorized representative for the charter school, must complete this section if filing on its own behalf; or,
- Part B – The authorized school district representative must sign and date if filing on behalf of the charter school.

- | | | | |
|---|--|--|--|
| 1. Type of Application—Check Only One
<input type="checkbox"/> New Construction Preliminary Charter School Apportionment
<input checked="" type="checkbox"/> Site Acquisition Costs [Section 1859.164.2(b)]
<input type="checkbox"/> Rehabilitation Preliminary Charter School Apportionment | | (2) Relocation/DTSC Cost:
<input checked="" type="checkbox"/> 15 percent
<input type="checkbox"/> 50 percent of specific or historical cost: \$ _____
(3) Hazardous material clean-up: \$ _____ | |
| 2. Type of Project
a. <input type="checkbox"/> Elementary School
<input type="checkbox"/> Middle School
<input checked="" type="checkbox"/> High School
b. Name of school district where the charter school project will be physically located: <u>Wiseburn Unified School District</u> | | c. Site Development
<input checked="" type="checkbox"/> \$70,000 per proposed useable acre
<input type="checkbox"/> 50 percent of specific or historical cost: \$ _____
<input checked="" type="checkbox"/> General Site
d. <input type="checkbox"/> Geographic Percent Factor: _____ %
e. <input type="checkbox"/> Small Size Project
f. <input checked="" type="checkbox"/> Urban Allowance | |
| 3. Number of Classrooms/Useable Acres
Number of Classrooms: _____ 48
Existing Acres (Useable): _____ 0.00
Proposed Acres (Useable): _____ 13.52 | | 6. Additional Project Information—Rehabilitation Only
Square Footage of Project: _____
Non-Toilets Facilities (sq. ft.): _____
Toilet Facilities (sq. ft.): _____ | |
| 4. Additional Project Information—New Construction Only
a. Project Capacity
K-6 _____
7-8 _____
9-12 _____ 1,296
Non-Severe _____
Severe _____
b. School District's Unhoused Pupils to be housed in the Charter School
K-6 _____
7-8 _____
9-12 _____ 1,242
Non-Severe _____
Severe _____
c. Addition to existing site? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
If yes, enter school name: _____ | | 7. Increase in Preliminary Apportionment—Rehabilitation Only
a. <input type="checkbox"/> Geographic Percent Factor: _____ %
b. <input type="checkbox"/> Small Size Project
c. <input type="checkbox"/> Urban/Security/Impacted Site
d. <input type="checkbox"/> Number of 2-Stop Elevators: _____
e. <input type="checkbox"/> Number of Additional Stops: _____ | |
| 5. Increase in Preliminary Apportionment—New Construction Only
a. <input checked="" type="checkbox"/> Multilevel Construction
b. Site Acquisition:
(1) 50 percent appraised value or median cost: \$ _____ 16,200,000.00
Enter the nearest street intersection to the Charter School General Location if determined by median cost: _____ | | 8. Project Progress Dates
a. Construction Contract(s) awarded on: _____ TBD
(If the space provided is not sufficient for all applicable contract dates, please list all dates on a separate attachment to this form.)
b. Notice to Proceed issued on: _____ TBD
c. If the Construction Contract was awarded prior to January 1, 2012, have you initiated and enforced an LCP approved by the DIR pursuant to Labor Code Section 1771.7 for this project? <input type="checkbox"/> Yes <input type="checkbox"/> No | |
| | | 9. Prevailing Wage Monitoring and Enforcement Costs:
If the Construction Contract(s) was or will be awarded on or after January 1, 2012, please indicate which method will be used to meet the prevailing wage monitoring requirements, pursuant to LC Section 1771.3:
<input checked="" type="checkbox"/> DIR CMU Administered
<input type="checkbox"/> DIR Approved District LCP
<input type="checkbox"/> Collective bargaining agreement, pursuant to Labor Code Section 1771.3(b)(3) | |

APPLICATION FOR CHARTER SCHOOL PRELIMINARY APPORTIONMENT**SCHOOL FACILITY PROGRAM**

SAB 50-09 (REV 12/11)

10. Priority Order

_____ 1

11. Charter School Information

- a. Current charter school enrollment: _____ 567
- b. Is charter school not for profit? ☒ Yes ☐ No
- c. Enter locale code of charter school: _____ Suburban 21
- d. Free/Reduced Lunch: _____ 98 %
- e. Additional Application Number: _____ # _____

12. Certification

I certify that the information reported on this form is true and correct and that:

- ☐ I am an authorized representative of the charter school designated by the governing board or equivalent authority of the charter school and have notified both the Superintendent and the governing board of the school district in writing, at least 30 days prior to the date of this application, of our intent to submit a preliminary application (complete Part A below); or,
- ☒ I am an authorized school district representative submitting this application on behalf of a charter school pursuant to Education Code Section 17078.53 (c)(1) (complete Part B below). If this box is checked the following certifications shall apply to the school district.
- A resolution or other appropriate documentation supporting this application under Article 12, Chapter 12.5, Part 10, Division 1, Title 2, commencing with Section 17078.50, et. seq., of the Education Code was adopted by the School District's Governing Board or the governing board or other equivalent authority of the charter school on, _____ 03/29/2014 _____; and,
 - Prior to submitting this application the charter school and school district have considered existing facilities in accordance with Education Code Section 17078.53(e); and,
 - For a charter school applying for a rehabilitation Preliminary Apportionment on its own behalf, the charter school and school district have entered into an agreement to rehabilitate school district existing facilities and the agreement has been discussed and approved at a regularly scheduled school board meeting; and,
 - For a charter school applying for a new construction Preliminary Apportionment on its own behalf, the charter school and school district have complied with Section 1859.162.1 pertaining to the certification of the number of unhoused students the project will house; and,
 - The charter school has or will establish a "Restricted Maintenance Account" for exclusive purpose of providing ongoing and major maintenance of school buildings and has developed an ongoing and major maintenance plan that complies with and is implemented under the provisions of Education Code Section 17070.75 and 17070.77 (Refer to Sections 1859.100 through 1859.102); and,
 - The charter school has or will consider the feasibility of the joint use of land and facilities with other governmental agencies in order to minimize school facility costs; and,
 - The charter school will comply with all laws pertaining to the construction of its school building; and,
 - All contracts entered for the service of any architect, structural engineer or other design professional for any work under the project have been obtained pursuant to a competitive process that is consistent with the requirements of Chapter 10 (commencing with Section 4525) of Division 5, of Title 1, of the Government Code; and,
 - The charter school has or will comply with the Public Contract Code regarding all laws governing the use of force account labor; and,
 - This charter school has or will comply with Education Code Section 17076.11 regarding at least a 3 percent expenditure goal for disabled veteran business enterprises; and,
 - The charter school understands that the lack of substantial progress toward increasing the pupil capacity of its facilities within the timelines prescribed for a Preliminary Charter School Apportionment shall be cause for rescission of the Preliminary Charter School Apportionment; and,
 - The charter school acknowledges this request may be subject to the material inaccuracy penalty provisions in Section 1859.104.1; and

APPLICATION FOR CHARTER SCHOOL PRELIMINARY APPORTIONMENT SCHOOL FACILITY PROGRAM

SAB 50-09 (REV 12/11)

- All school facilities purchased or newly constructed under the project for use by pupils who are individuals with exceptional needs, as defined in Education Code Section 56026, shall be designed and located on the school site so as to maximum interaction between those individuals with exceptional needs and other pupils as appropriate to the needs of both; and,
- If the Preliminary Charter School Apportionment is requested for the construction of school facilities on leased land, the charter school has or will execute a lease agreement for the leased property that meets the requirements of Section 1859.22; and,
- The charter school understands that when the Preliminary Charter School Apportionment is converted to a Final Charter School Apportionment, the funding available for the Final Charter School Apportionment is subject to the provisions of Section 1859.167; and,
- The statements set forth in this application and supporting documents are true and correct to the best of my knowledge and belief; and,
- This form is an exact duplicate (verbatim) of the form provided by the OPSC. In the event a conflict should exist, then the language in the OPSC form will prevail; and,
- The charter school has initiated and enforced an LCP that has been approved by the DIR, pursuant to Labor Code Section 1771.7, if the project is funded from Propositions 47 or 55 and the notice to Proceed for the construction phase of the project is issued on or after April 1, 2003, and before January 1, 2012; and,
- The district will contract with the DIR for prevailing wage monitoring and enforcement, pursuant to Labor Code section 1771.3(a), if the construction contract is awarded on or after January 1, 2012 and the district has not obtained a waiver for the requirement, pursuant to Labor Code Section 1771.3(b). The district understands that if it fails to meet this requirement, it will be required to repay all state bond funds received including interest; and,
- Beginning with the 2005/2006 fiscal year, the district has complied with Education Code Section 17070.75(e) by establishing a facilities inspection system to ensure that each of its schools is maintained in good repair.

Part A. Charter School Filing on Its Own Behalf

NAME OF REPRESENTATIVE		TITLE
ADDRESS		
TELEPHONE	FAX NUMBER	E-MAIL
SIGNATURE OF AUTHORIZED CHARTER SCHOOL REPRESENTATIVE		DATE

Part B. School District Filing on Behalf of Charter School


SIGNATURE OF AUTHORIZED DISTRICT REPRESENTATIVE 	DATE 5/12/15
--	-----------------

EXHIBIT C

Da Vinci Schools Current Use of Facilities Owned By the District

Da Vinci Science Charter High School currently uses 24 classrooms at the Old Dana Middle School Campus located at 13500 Aviation Blvd. in Hawthorne, California, 90250. The site was built in 1927. The campus also includes a small auditorium/multiple purpose room, a library that has been converted into an Innovation Lab and green space.

Da Vinci Design Charter High School currently uses 25 classrooms at the Old Sepulveda Elementary School Campus located at 12501 S. Isis Ave, Hawthorne, California, 90250. The site was built in 1956 on an 8 acre campus that also includes a gymnasium and 4 tennis courts. The campus also includes an athletic field and green spaces.

Da Vinci Communications Charter High School currently uses 7 classrooms on the Old Sepulveda Elementary School Campus located at 12501 S. Isis Ave. in Hawthorne, California, 90250. Da Vinci Communications shares this facility with Da Vinci Science and currently has a freshman and sophomore class.

EXHIBIT D
(Charter School Facilities Program MOU)

Exhibit E: Da Vinci High Schools Scorecard for Lease Renewal

5/4/15 (Version 6)

Item	Criteria/Notes	Scoring	Maximum Points
1	WASC Accreditation Failure to cure accreditation default in allowed period means Da Vinci is in "Default" with WUSD.	Accreditation = 20 points No Accreditation = 0 points	20
2	Financial Health An Unqualified Audit Report.	Unqualified Opinion = 20 Qualified Opinion = 10 Adverse Opinion = 0	20
3	Net Promoter Score "Would you recommend Da Vinci (name of high school) to a friend or family member?" 0 – 10 point rating scale	> 40 = 15 points 30 - 39 = 12 points 20 - 29 = 10 points 11 - 19 = 5 points < 10 = 0 points	15
4	LCAP Process Da Vinci High Schools develop an annual Local Control Accountability Plan that provides transparency and stakeholder participation for the process of identifying budget goals/priorities and prudent use of resources.	Completed Annual LCAP Process - 15 Points Incomplete LCAP Process - 0 Points	15
5	"School Excellence" 1. A-G above 90% (3) 2. Four-year college acceptance rate: > 67% = 3; > 60% = 2; > 55% = 1; < 55% = 0 (3) 3. SBAC (EAP) = TBD (3) 4. State Accountability Score (Similar School Ranking) = TBD (3) 5. Attendance rate: > 95% = 3; > 90% = 2; > 88% = 1; < 88% = 0 (3) <i>* Student achievement by subgroups is our most important factor in measuring Da Vinci achievement.</i>	TBD: 15 ↓ TBD: 0	15
6	Wiseburn Resident Enrollment If Resident Dana graduate enrollment rate declines below 65% combined for all three high schools, WUSD and Da Vinci to form joint committee to explore why more Resident Dana graduates are not attending Da Vinci.	> 65% = 15 points 60 - 64 = 12 points 55 - 59 = 10 points 50 - 54 = 5 points 0 - 49 = 0 points	15

Maximum Possible: 100
Da Vinci Minimum: 70

Notes:

1. Loss of WASC accreditation puts Da Vinci in immediate default.
2. 3 year average of less than "70" points puts Da Vinci in default.
3. Any default with WUSD must be cured by Da Vinci within 1 year.
4. Measurements to be done annually for criteria 2-6.
5. The Scorecard will be reviewed on an annual basis and may be amended, if necessary. This would help to ensure that the criteria do not become outdated over time.