

FACILITIES USE AGREEMENT

This Facilities Use Agreement (“Agreement”) is made by and between the Winship-Robbins Elementary School (“District”) and Feather River Charter School, a California non-profit public benefit corporation (“Non-Profit”), which operates Feather River Charter School (the “Charter School”). The Non-Profit and District are collectively referred to as the “Parties.”

RECITALS

- A. WHEREAS, District is the owner of certain real property located at 4505 S. Meridian Road, Meridian, California (the “Site”).
- B. WHEREAS, the Charter School is duly formed and authorized by the District under the laws of the Charter Schools Act of 1992 (Ed. Code, §§ 47600, *et seq.*) The Charter School serves students in grades K-12.
- C. WHEREAS, the District desires to provide Charter School with certain District facilities during the term of its charter petition, through June 30, 2026, pursuant to this Agreement.

AGREEMENT

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

- 1. Recitals. The recitals set forth above are incorporated herein and made part of this Agreement.
- 2. Facilities. Use of the Facilities shall be for the purposes set forth in Section 5.1, and on the terms and conditions set forth herein. The District grants, in the form of a license, use to the Charter School of the Site facilities identified in Exhibit A attached to this Agreement and incorporated herein by reference (the “Facilities”) under the terms and conditions set forth in this Agreement.
- 3. Term. The term of this Agreement shall be from July 1, 2022, to June 30, 2026 (“Term”), unless earlier terminated as provided herein.
- 4. Rent-Free Facilities. For the Term, the District will not charge the Charter School a fee for use of the Facilities. Because the District is providing the Charter School with rent-free facilities, the District is entitled, in accordance with Education Code section 47613, subdivision (b), and as contemplated by Section 8(a) of the Operational Memorandum of Understanding (“Operational MOU”) entered into between the Parties, to three percent (3%) of all of the Charter School’s revenues, including the funding allocated through the Local Control Funding Formula, the Base grant and any Supplemental and Concentrated grants (“Oversight Fee”), which amount the Parties agree represents the actual cost of the

modification or alteration of the Facilities after the effective date of this Agreement, in which case the Charter School, at its sole cost and expense, will make any and all alterations, improvements, additions and/or repairs to the Facilities necessary to ensure such compliance with applicable law. The Charter School's enrollment must not exceed the safe and legal limit, as set by the Fire Marshal, for the classroom and total space it occupies.

- 5.6 *Civic Center Act.* The Charter School agrees to comply with the provisions of the Civic Center Act (Ed. Code, § 38131, *et seq.*) in making use of the Facilities accessible to members of the community. The Parties understand that the Facilities are to be primarily used for school programs and activities and as such any use of the Facilities by members of the community shall not interfere with school activities at any time. District Board Policy and Administrative Regulations related to the Civic Center Act shall control scheduling, use and collection of fees related to use of the Facilities by members of the public. Consistent with that policy and the regulations, the District shall be solely responsible for coordinating access to the Facilities under the Civic Center Act and shall require users to provide appropriate proof of insurance related to use of the Facilities and to indemnify and hold harmless the District and Charter School for injury, risk of loss, or damage to property as a result of that access by members of the community. The District agrees to promptly clean and repair, if necessary, any portion of the Facilities used by members of the community immediately following such use. All requests for use of the Facilities made directly to the Charter School shall be forwarded to the District for coordination of use consistent with board policy and administrative regulations. The District agrees to coordinate with the Charter School regarding public access to the space occupied by the Charter School. If the Charter School has scheduled uses for the space, the Charter School shall have priority use of the space over members of the public on the same terms as the District has priority use of space that is occupied by the District.
- 5.7 *Alarms.* The Charter School shall have access to activate burglar alarms and intruder alerts, if any, corresponding to the Facilities provided at the Site (“Alarms”), and shall be responsible for responding to Alarms. The Charter School agrees that in the event that any of Charter School’s employees, directors, trustees, officers, agents, students, visitors, or contractors, trigger a false Alarm at the Site, the Charter School shall be responsible for costs incurred.
- 5.8 *Security.* The Charter School shall be responsible for securing the Facilities, including all of the equipment and furnishings contained therein, in manner that reasonably prevents or deters the theft or destruction of District property. Such reasonable measures may include but are not limited to locking doors, locking windows, setting Alarms, keeping valuable materials out of public view or restricting access to the Facilities.

The responsibility to maintain the security of the Facilities under this subparagraph shall not be interpreted as the District’s authorization of the alteration of the Facilities. If Charter School desires to make alterations or improvements to the Facilities as a result of its obligation to maintain the security of the Facilities or its contents, then Charter School must follow the procedures stated in Section 13 (“Alterations and Additions”) prior to

beyond the scope of maintenance provided at other District schools, in which case the Charter School shall directly reimburse the District for such major facilities maintenance costs. "Major facilities maintenance" includes all non-routine maintenance, replacement and repair services, including major maintenance and replacement of the roof, mechanical systems (heat, ventilation, air conditioning, electrical, plumbing), and other major maintenance and upgrades and any projects identified during the term of this Agreement that the District deems eligible to be included in its deferred maintenance plan established pursuant to Education Code section 17582, at a level comparable with other District schools, and includes all such major facilities maintenance for which the District normally utilizes funding from the State or local facilities bond proceeds, developer fees, redevelopment agency revenue, and other non-operational sources not provided to the Charter School. To the extent that in any fiscal year the District's necessary major facilities maintenance costs for the Facilities are not funded by the State or other non-operational sources or are underfunded, during that fiscal year the District shall undertake major facilities maintenance at the Facilities only to the extent and on the same level that the District undertakes such maintenance at its other facilities.

10. Routine Maintenance and Custodial Services. The District shall provide a custodian for the Facilities eight (8) hours a week to provide interior and exterior routine maintenance and custodial services. When determined necessary by the District, or as requested by the Charter School, the weekly custodial and maintenance assignment may exceed eight (8) hours. The Charter School will be responsible for the salary and benefits of the District-supplied custodian, and the cost of the cleaning supplies, tools, and materials used by the custodian. District will invoice Charter School quarterly for all such expenses, and Charter School will pay said invoice within thirty (30) days of receipt.
11. Alterations and Additions. The Charter School shall add no fixtures, as that term is defined in Civil Code section 660 ("Fixtures"), to the Facilities or any part thereof without obtaining the prior written consent of the District's Superintendent or designee. Any such Fixtures at the Facilities requested by the Charter School shall be paid for by the Charter School, and shall be contracted for and performed in accordance with all applicable law. The District may impose as a condition to the aforesaid consent such requirements as the District may deem necessary in its sole discretion, including without limitation, the manner in which the work is done, a right of approval of the contractor by whom the work is to be performed, and the times during which it is to be accomplished. Title to all Fixtures shall vest in the District or, at the District's request, any or all Fixtures shall be removed from the Facilities by the Charter School upon the expiration or earlier termination of this Agreement.

Any Improvements to the Facilities made by the Charter School shall be paid for by the Charter School, and shall be contracted for and performed in accordance with all applicable building code standards, including Title 24 of the California Code of Regulations, the Field Act, Americans with Disabilities Act and the Fair Employment and Housing Act.

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

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

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

15. Insurance. In addition to all such insurance coverage required pursuant to the terms of the Operational Memorandum of Understanding ("MOU") entered into by and between the Parties, the Charter School shall, at all times during the term of this Agreement, and at its own cost and expense, procure and continue in force the following insurance coverage: Bodily Injury and Property Damage Liability insurance with a combined single limit for bodily injury and property damage of not less than One Million Dollars (\$1,000,000) per occurrence and Five Million Dollars (\$5,000,000) annual aggregate combined single limit ("CSL"). Such minimum limits of policies shall in no event limit the liability of the Charter School hereunder. Such insurance shall name the District as an additional insured. The Charter School may satisfy the insurance coverage requirements in this Agreement through participation in the California Charter School Association's Joint Powers Authority ("CCSAJPA") insurance program, provided that the limits of coverage provided through CCSAJPA must be equal to or great in its coverage than the coverage required in this Agreement. Insurance, unless obtained through CCSAJPA, shall be with companies having a rating of not less than A- in "Best's Insurance Guide". The Charter School shall furnish from the insurer or cause the insurer to furnish certificates of coverage to the District. No such policy shall be cancelable or subject to reduction of coverage or other modification or cancellation except after thirty (30) days prior written notice to the District by the insurer and with the consent of the District thereto.

In the event of property damage or personal injury caused by the Charter School, its officers, employees or agents, all such policies, including but not limited to coverage obtained through CCSAJPA, shall be considered primary policies not contributing with and not in excess of the coverage that the District must carry. In the event property damage or personal injury is caused by the District, its officers, employees or agents, or any unaffiliated third party, the Charter School policies shall be secondary and in excess

avoid any interruption in the educational program of the Charter School.

17. Liens and Encumbrances. Charter School shall keep the Facilities free from any liens or encumbrances arising out of any work performed, materials furnished or obligations incurred by or on behalf of Charter School. Notwithstanding anything stated herein to the contrary, if the Charter School fails to promptly release and remove any such lien or encumbrance, District, at its sole option, may immediately (but shall not be obligated to) take all action necessary to release and remove such lien or encumbrance, without any duty to investigate the validity thereof, and all sums, costs and expenses, including reasonable attorneys' fees and costs, incurred by District in connection with such lien or encumbrance shall be immediately due and payable by Charter School.
18. Holding Over. Charter School shall not remain in possession of the Facilities or any part thereof after the expiration of this Agreement or after termination thereof without the express written consent of District. Notwithstanding the foregoing, if the Charter School holds over, the Charter School shall pay the District the monthly fair market value for use of the Facilities, which amount shall be calculated and assessed at the time of the holdover, plus all other charges payable required by this Agreement. Any holdover by Charter School requires the Charter School to comply with all terms of this Agreement. A holdover by the Charter School shall not trigger any additional term. The District shall have the right to remove the Charter School at any time after the expiration of the Term or termination of this Agreement.
19. Assignment and Sublicensing. The Charter School may not assign its rights under this Agreement or sublicense any portion of the Facilities without the prior written consent of the District.
20. Rules, Regulations and Law. The Charter School and the Charter School's agents, employees, students, visitors and invitees shall observe and comply fully and faithfully with all reasonable and nondiscriminatory policies, rules, and regulations adopted by the District for the care, protection, cleanliness, and operation of the Facilities, and the Facilities' furnishings and equipment, and shall comply with all applicable laws. The District will provide the Charter School with copies of the relevant written custodial and maintenance policies. The District will provide any such written policies that are amended during the term of the Agreement.
21. Default by Charter School or Non-Profit. The occurrence of any one or more of the following events shall constitute a default and material breach of this Agreement by Charter School or the Non-Profit:
 - a. The failure by Non-Profit to utilize the Facilities for the sole purpose of operating the Charter School, and activities reasonably related thereto.
 - b. The failure by Charter School to make timely payments required under this Agreement.

24. Amendment. No provision of this Agreement may be amended or modified except by an agreement in writing signed by the Parties hereto.
25. Construction. Each of the Parties acknowledges and agrees that this Agreement is to be construed as a whole according to its fair meaning and not in favor of nor against any of the Parties as draftsman or otherwise.
26. Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California applicable to instruments, persons, transactions and subject matter which have legal contacts and relationships exclusively within the State of California. Any action or proceeding seeking any relief under or with respect to this Agreement shall be brought solely in the Superior Court of the State of California for Sutter County, subject to any motion for transfer of venue.
27. Severability. If any provision or any part of this Agreement is for any reason held to be invalid, unenforceable or contrary to public policy, law, or statute and/or ordinance, the remainder of this Agreement shall not be affected thereby and shall remain valid and fully enforceable.
28. Prevailing Authority. In the event of a conflict between the law and the terms of this Agreement, the law shall prevail, and any such conflicting terms shall be severed from this Agreement and nullified. In the event of a conflict between the terms of the Charter and the terms of this Agreement, the terms of this Agreement shall prevail. The Parties shall meet and confer to determine how to correct any conflicts so this Agreement complies with the Charter.
29. No Admission. Except as expressly agreed herein, nothing contained herein shall constitute an admission of fact or law.
30. Binding Obligation. The Non-Profit expressly agrees that this Agreement is a binding obligation on the Non-Profit and the Charter School and the District agrees that this Agreement is a binding obligation on the District.
31. Prior Agreements. This Agreement contains all of the agreements of the Parties hereto with respect to any matter covered or mentioned in this Agreement, and no prior agreements or understanding pertaining to any such matters shall be effective for any purpose.
32. Subject to Approval by Governing Board. This Agreement shall become effective upon ratification by the District's Governing Board.
33. Notices. All notices and demands that may be or are to be required or permitted to be given by either Party to the other hereunder shall be in writing. All notices and demands by the District to the Non-Profit or the Charter School shall be sent by United States Mail, postage prepaid, addressed to the Non-Profit or the Charter School at the address

NOES: 0

Abstentions: _____

Mona Sakwandi
Secretary to the Board of Trustees

Exhibit B

Inventory

See Google Form