

FACILITIES USE AGREEMENT
Alpine Union School District / Literacy First Charter Schools

THIS FACILITIES USE AGREEMENT ("Agreement") is made by and between the Alpine Union School District, a public school district organized and existing under the laws of the State of California ("District"), and Literacy First Charter Schools, a California nonprofit corporation operating the Liberty Charter High School. Literacy First Charter Schools and Liberty Charter High School are collectively referred to as the "Charter School." The District and Charter School are each individually referred to as a "Party" and collectively referred to as the "Parties."

RECITALS

WHEREAS, the Charter School has a current, active charter and operates under the authorization of the San Diego County Board of Education.

WHEREAS, the District is the owner of certain real property located at 1850 Alpine Boulevard in Alpine, California 91901, which is more commonly known as the former Alpine Elementary School (the "Site").

WHEREAS, the Charter School seeks to use the Site, and to share use of other District facilities ("Shared Use Facilities"), to operate its high school program, also known as Liberty Charter High School, for students who are enrolled in the ninth through twelfth grades. Thus, no students other than those who are enrolled in ninth through twelfth grade will be served at this Site.

WHEREAS, the Charter School has alternative school facilities to support its instructional programs for students in transitional kindergarten through eighth grade ("TK-8"), such that no TK-8 programs of the Charter School will use the Site or the Shared Use Facilities.

WHEREAS, the District has no obligation under Education Code section 47614 and its implementing Title 5 regulations ("Proposition 39") to make school facilities available for use by the Charter School's high school program, but nevertheless desires to make the Site and Shared Use Facilities available for the Charter School's use as further detailed in this Agreement.

WHEREAS, the District's Board of Trustees has determined that the Charter School's use of the Site and Shared Use Facilities (1) will not interfere with the District's educational programs or activities of the District or any school or class conducted on the Site or Shared Use Facilities, (2) unduly disrupt the residents in the surrounding community, or (3) jeopardize the safety of students at the Site or Shared Use Facilities.

WHEREAS, the Parties desire through this Agreement to set forth the terms and conditions pursuant to which the Charter School will occupy and use the Site and other District facilities for its instructional program.

NOW, THEREFORE, in consideration of the covenants and agreements set forth to be kept and performed by the Charter School, the Parties agree as follows:

1. **TERM.** The initial term of this Agreement shall begin on the Effective Date, as defined below, and shall expire on June 30, 2027 ("Term"), subject to the options to extend set forth in Section 1.b. The Charter School will be given access to the Site by no later than February 14, 2021.

a. **Early Termination.**

- i. Cessation of Operations. In the event the Charter School ceases to operate for any reason during the Term, including any extension(s), including but not limited to voluntary closure, insolvency, nonrenewal of its charter, or revocation, this Agreement shall terminate, except for those sections surviving termination, and the Charter School shall immediately surrender possession of the Site and any Shared Use Facilities to the District; provided, however, that if any nonrenewal or revocation of the Charter School's charter (following the exhaustion of any appeals processes) is effective as of a specified date (e.g., the end of the then-current school year), the Charter School shall surrender possession of the Site and Shared Use Facilities no later than thirty (30) days after the effective date of such event.
- ii. County Board Action on Material Revision The Parties understand, acknowledge, and agree that the Charter School's occupation and use of the Site and Shared Use Facilities for the operation of Liberty Charter High School is subject to, and conditioned upon, the San Diego County Board of Education's ("County Board") approval of a request by the Charter School to materially revise its charter to change the location for its operation of Liberty Charter High School to the Site. Should the Charter School not receive formal approval by the County Board of its material revision request, this Agreement shall automatically terminate, except for those provisions surviving termination, and the Charter School shall surrender the Site and Shared Use Facilities immediately. The Charter School shall be solely responsible for all fees, costs, and expenses that have been incurred, or will need to be expended, to return the Site to its original condition at the time the Charter School took possession, unless the District, in its sole discretion, elects to accept any Improvements made by the Charter School to the Site. In such an event, title to, and possession of, any Improvements, as that term is defined in Section 9 below, that are constructed at the Site shall also be surrendered to the District, consistent with the terms set forth in Section 9. Any Improvements that are in progress shall be completed in accordance with the requirements in Section 9 and to the District's

reasonable satisfaction, and the Charter School shall be solely responsible for all fees, costs, and expenses associated therewith.

iii. Grade Level Restrictions on Use of Site and Shared Use Facilities. The Charter School's use of the Site and Shared Use Facilities shall be solely for Charter School students enrolled in the ninth through twelfth grades. Under no circumstances shall the Charter School use the Site or Shared Use Facilities for any programs, activities, events, or other uses for preschool-age children or students in transitional kindergarten through eighth grade. Should the Charter School fail to abide by this requirement, the District may terminate this Agreement and the Charter School shall surrender the Site and Shared Use Facilities as of the date specified by the District in writing.

b. **Option to Extend the Term.** The Charter School shall have three (3) five (5) year options to extend the Term of this Agreement. The Charter School may exercise one or both options to extend by giving the District written notice at least one hundred twenty (120) days prior to the expiration of the then-current Term, provided that the Charter School is not in default under Section 14 of this Agreement. Should the Charter School exercise one or both options to extend, all terms of this Agreement shall remain in full force and effect, unless the Parties mutually agree in writing to amend this Agreement.

c. **Possession of and Title to Property.** Upon the expiration or earlier termination of this Agreement, possession of the Site, including all Improvements made thereon, shall automatically revert to the District. As titleholder to the Site, with the exception of those furnishings and equipment designated as the Charter School's personal property, the District reserves the right at the termination of this Agreement to recoup the full rights and benefits of such ownership, including, but not limited to, use of such Site for District programs and services.

2. **SITE.**

a. **Allocation of Space.** The Charter School acknowledges that a leasehold interest in the Site or the Shared Use Facilities is not being provided to the Charter School by the District. Subject to the terms and conditions of this Agreement, the District hereby grants to Charter School use of District facilities as follows:

i. Exclusive Use Space. The Charter School's right to exclusively use the Site, as more fully described and depicted in Exhibit 1, attached hereto and incorporated herein by reference, shall be coterminous with the Term of this Agreement, including any options to extend the Term as set forth in Section 1.b. above.

- ii. District Option to Request Temporary Use of Site If Available. Nothing herein shall prohibit or otherwise restrict the District's right to request use of all or a portion of the Site for District-sponsored or District-supported programs or activities when not scheduled for use by the Charter School or an authorized Civic Center Act user, as set forth in Section 2.b. below. The Charter School agrees to make reasonable efforts to accommodate the District's request when the Site is not scheduled for use on the requested date(s) and time(s). The District shall be responsible for providing all appropriate custodial and grounds maintenance services during and/or immediately following its scheduled use of the Site to maintain the space in a clean and orderly condition.
- iii. Charter School Use of Shared Use Facilities. The Charter School may, at its election, share use of the gymnasium and outdoor field space, consisting of all playing fields, at the District's Joan MacQueen Middle School site, located at 2001 Tavern Road, Alpine, California 91901 ("JMMS"). The designated shared use space at JMMS is more fully described and depicted in Exhibit 2, attached hereto and incorporated herein by reference. In addition, the Charter School may, at its election, share use of playing field located at 1323 Administration Way, Alpine, CA 91901. The Parties may identify additional District facilities that may be shared by the Charter School during the Term, including any extension(s), provided that such facilities are described in an addendum to this Agreement that is approved by the Parties' respective governing boards. Any future shared use facilities, together with the shared use locations detailed in this subsection ii, shall be collectively referred to herein as the "Shared Use Facilities."
- (1) Should the Charter School desire to use any portion of the Shared Use Facilities for its high school programs and activities, the Parties shall develop and agree upon a shared use schedule which shall specify the time allocation for such shared use by the District and the Charter School. A copy of each year's shared use schedule shall be included as Exhibit 3 to this Agreement and incorporated herein by reference. If the Charter School desires to use any of the Shared Use Facilities for events or other functions outside of its designated time on the shared use schedule, the District will make reasonable efforts to accommodate the Charter School's request so long as there are no District-sponsored or District-supported programs, events, activities, or other uses (e.g., Civic Center Act facilities requests, reserved use by Alpine sports leagues, etc.) for use of the space during the requested time period.

- (2) The Charter School shall be responsible for providing all appropriate custodial and grounds maintenance services during and/or immediately following its scheduled use of the Shared Use Facilities to maintain the space in a clean and orderly condition.
- (3) Any physical changes to the Shared Use Facilities must conform to the requirements of this Agreement regarding repairs, modifications, and improvements. The Charter School shall also be responsible for any costs for damage caused to the Shared Use Facilities in connection with or as a result of the Charter School's use. The District shall assess the damage and shall, in its sole discretion, decide whether it will submit an insurance claim to cover the costs of the repairs or restoration. Should the District submit a claim for damage that is covered by its insurance, the Charter School shall be responsible for paying the deductible. Alternatively, if the District decides not to submit a claim to insurance, the Charter School shall be responsible for the actual costs of the repairs or restoration. Payment from the Charter School shall be due within thirty (30) days of issuance of the invoice from the District.

b. **Civic Center Act Use of Site.** Charter School agrees to comply with the provisions of the Civic Center Act (Education Code sections 38131 *et seq.*) in making use of the Site accessible to members of the community. For purposes of Civic Center Act compliance, with respect to the Site only, the Charter School's governing board shall hold the same powers and obligations applicable to the District's Board of Trustees under the Civic Center Act. The District shall forward all Civic Center Act requests it receives for use of the Site to the Charter School. As of July 1, 2022, all proceeds derived from the use of the Site pursuant to the Civic Center Act shall be the property of the Charter School.

c. **No Obligation to Provide Proposition 39 Facilities to Charter School.** The Charter School acknowledges, understands, and agrees that the District has no obligation to provide the Charter School with use of District facilities under Proposition 39, and that this Agreement shall not be subject to the requirements set forth in Education Code section 47614 or its implementing Title 5 Regulations, sections 11969 *et seq.*

3. **FACILITIES USE FEE.**

a. **Facilities Use Fee.** Beginning on July 1, 2022, the District will charge the Charter School a flat fee of forty-two thousand dollars (\$42,000.00) per month for the Term of the Agreement, including any extension(s), in exchange for the Charter School's occupancy and use of the Site and any Shared Use Facilities ("Facilities

Use Fee"). This amount was negotiated and agreed upon by the respective Parties as a fair and reasonable fee for use of the Site and Shared Use Facilities. Payment of the Facilities Use Fee shall be made by the Charter School on or before the first of the month during the Term, including any extension(s). The Charter School shall pay the required monthly payments promptly to the District, without deduction, setoff, prior notice, or demand. Payment shall be issued to the attention of the District's Chief Business Officer at the District Office, located at 2001 Tavern Road, Alpine, California 91901. This fee does not include Site-specific costs which the Charter School must include in its own budget, including, but not limited to, the cost of computers, computer labs, laptop carts, server equipment, utilities, internet service, phone service, audio-visual equipment, custodial service, and campus security. Such costs shall be the sole responsibility of the Charter School.

- b. **Annual Adjustment of Facilities Use Fee.** Beginning on July 1, 2023, the amount of the Facilities Use Fee shall be increased by 2.5% on the first of July for each year of the Term of this Agreement, including any extension(s).
- c. **Late Payments.** Late payment by the Charter School to the District will cause the District to incur costs not contemplated by this Agreement, the exact amount of which will be difficult and impracticable to ascertain. Therefore, if any installment due from Charter School is not received by the District within ten (10) calendar days of the date such payment is due, the Charter School shall pay to the District an additional sum of ten percent (10%) of the overdue installment amount as a late charge. The Parties agree that this late charge represents a fair and reasonable estimate of the costs that the District will incur by reason of late payment by the Charter School.
- d. **Security Deposit.** No security deposit is required at this time.

4. **USE.**

- a. **Operations.** The Charter School shall comply with District policies, regulations, and practices regarding the operation of the Site, including any District-owned furnishings and equipment present on the Site as of the Effective Date of the Agreement.
- b. **Permitted Use.** The Site shall be used and occupied by the Charter School for the sole purpose of operating the Charter School and related educational activities (including after school and enrichment programs and athletics) and for no other purpose without the prior written consent of the District. The Charter School shall not carry on or house any programs or activities on the Site for students who are not currently enrolled in the Charter School without the prior written approval of the District.

- c. **Supervision of Students, Staff, and Other Invitees.** At all times during its use of the Site and Facilities, the Charter School shall ensure appropriate supervision for all students, staff, parents/guardians, and other invitees. The Charter School agrees to promptly provide to the District any written complaints received from community members concerning any matters related to the Charter School's use of the Site and/or Shared Use Facilities.
- d. **Prohibited Uses.**
- i. No Increase in Insurance. The Charter School shall not do or permit to be done anything which will invalidate or increase the cost of any fire, extended coverage or any other insurance policy covering the Site, or which will make such insurance coverage unavailable on commercially reasonable terms and conditions, and the Charter School shall comply with all rules, orders, regulations and requirements of the insurers of the Site. Should the Charter School initiate any use which increases insurance premiums, the Charter School shall pay for such increases.
- ii. Compliance with Law. The Charter School shall not use the Site or permit anything to be done in or about the Site that will in any way conflict with any applicable law, statute, ordinance or governmental rule, or regulation or requirement of duly constituted public authorities now in force or which may hereafter be enacted or promulgated. The Charter School, at its expense, shall comply with all applicable laws, regulations, rules and orders with respect to any repairs, alterations, improvements, or modifications it makes to the Site, including but not limited to compliance with the Americans with Disabilities Act, local building codes, CEQA, and federal, state and local laws relating to hazardous materials, health, safety, noise, environmental protection, waste disposal, water and air quality. Should any discharge, leakage, spillage, emission, or pollution of any type occur upon or from the Site resulting from the Charter School's use and occupancy thereof, the Charter School shall immediately notify the District and state/local agencies, as appropriate, and at its sole expense, shall be obligated to clean all the property affected to the reasonable satisfaction of the District and any governmental agencies having jurisdiction over the Site. If the Charter School fails to take steps to clean the Site or otherwise fails to comply with any requirements regarding the clean-up or amelioration of any discharge, leakage, spillage, emission, or pollution of any type resulting from the Charter School's use and occupancy thereof, the District reserves the right to take over the clean-up and to take all necessary steps to recoup any and all costs associated therewith from the Charter School, which takeover shall not occur unreasonably.

- iii. No Nuisance or Waste. The Charter School shall not use or allow the Site to be used for any unlawful purpose, nor shall the Charter School cause, maintain, or permit any nuisance or waste in, on, or about the Site.

- 5. **FURNISHINGS AND EQUIPMENT AT THE SITE.** Except as otherwise agreed by the Parties, the Charter School, at its sole cost and expense, shall install, furnish, maintain, and replace all furnishings and equipment exclusively used by the Charter School. The District shall have no ownership of such furnishings or equipment. The Charter agrees to remove all personal property from the Site, including the furnishings and equipment located thereon, upon the expiration or early termination of this Agreement.
- 6. **TECHNOLOGY/TELECOMMUNICATIONS.** The Charter School shall be solely responsible for providing any and all technology/telecommunications equipment and services at the Site. This includes, but is not limited to, any wiring for telephone and computer data connectivity including servers, routers, and switches. Any alterations or work necessary for the installation of any fixtures or equipment shall be subject to the requirements set forth in Section 9 below. All work shall be performed by the Charter School at the Charter School's sole expense.
- 7. **UTILITIES.**
 - a. **Responsibility for Cost.** The Charter School shall be solely responsible for the cost of all utilities used or consumed by the Charter School during the Term, including, but not limited to, electricity, water, gas, waste disposal, Internet/Wi-Fi, telephone systems, data lines and related equipment. The Charter School assumes sole responsibility for upkeep and maintenance of all telephone systems, data lines, and related equipment, software, and hardware it utilizes.
 - b. **Utilities Paid for Directly.** The Site is separately metered and the District shall transfer all utilities and services at the Site into the name of the Charter School. The Charter School shall pay for those utilities directly to the supplier of such utility or service prior to delinquency.
 - c. **Solar Generation Fee.** The Site currently includes a District-owned and funded solar photovoltaic system that offsets all or a portion of the electricity usage costs, depending on the time of year. In addition to any electricity costs for the Site that are charged to the Charter School by the utility provider, the Charter School shall pay the District a sum of two thousand five hundred dollars (\$2,500.00) per month as consideration for the reduced electricity usage costs at the Site resulting from the solar generation. The monthly Solar Generation Fee shall be due to the District on the first of the month, beginning on July 1, 2022. Such payments shall be made by the Charter School without deduction, setoff, prior notice, or demand. Payment shall be issued to the attention of the District's Chief Business Officer at the District Office, located at 2001 Tavern

Road, Alpine, California 91901. Should the solar photovoltaic system become non-functional for any reason not due to the negligence of the Charter School, its officers, employees, students, agents, representatives, contractors, or visitors, the District will suspend the Charter School's obligation to pay the Solar Generation Fee until such time as the system becomes functional and is generating energy at the same or similar capacity. The Charter School shall be solely responsible for all electricity usage and costs charged by the utility provider during the period of time in which the system is non-functional. Should efforts at repair or restoration of the system prove futile or unsuccessful, or should the District elect not to initiate repairs or restoration of the system, no further Solar Generation Fee shall be due to the District, and the Charter School shall be responsible for all electricity usage and costs charged by the utility provider.

8. **DAMAGE, DESTRUCTION; MAINTENANCE AND REPAIRS; ALTERATIONS, ADDITIONS, AND IMPROVEMENTS.**

- a. **Condition of Property.** The District is not aware of any defect in or condition of the Site that would prevent its use for the Charter School's purposes. The District has not received any notice of violation of statute, ordinance, regulation, order or holding from any state or federal agency with jurisdiction over the Site that calls into question the appropriateness or sufficiency of the Site for its intended purpose. The Charter School acknowledges that the District is providing it with use of the Site AS-IS without any warranties, representations, or guarantees from on behalf of the District, except such express warranties and representations contained in this Agreement. The District shall not conduct any additional maintenance, repairs, or cleaning of the Site, except for the removal of existing furniture, equipment, and supplies currently housed on the Site.
- b. **Damage.** The Charter School shall be financially responsible for any damage or destruction to the Site regardless of the reason or cause for the damage or destruction. Upon discovery of any damage or destruction to the Site, the Charter School shall immediately notify the District. The Charter School shall be responsible for repairing any damage to the Site, regardless of the reason or cause of the damage. The Charter School shall restore and return the Site in a condition substantially similar to, or better than, the condition of the Site as of the Effective Date of the Agreement, reasonable wear and tear excepted, and except as otherwise agreed to in writing by the Parties.
- c. **Security.** The Charter School acknowledges that standard security measures for the Site may not be sufficient for protection of damage or losses caused by criminal acts of third parties. The District shall not be liable for such damage or losses. To the extent the Charter School desires protection against such criminal

acts, the Charter School shall, at its own cost, obtain insurance coverage for its personal property stored on the Site.

- d. **Maintenance, Repairs, and Operations.** Maintenance and Operations ("M&O") are broadly and generally defined as maintaining, repairing, and operating buildings (including the classrooms therein) and grounds efficiently on a regular basis, in a manner that promotes learning in a safe, clean, and healthy environment. The routine maintenance and minor repairs at the Site are the responsibility of the Charter School. Projects that would have been eligible to be included in the District deferred maintenance plan established pursuant to Education Code section 17582 shall be the responsibility of the Charter School. The Charter School shall provide its own landscaping and grounds maintenance and custodial services, and the Charter School shall comply with all District policies and practices for maintenance of its facilities and grounds. If the District and Charter School are not able to agree on an appropriate standard of maintenance for the Site pursuant to this Section, the District and Charter School shall meet to agree upon a standard that ensures the Site is being maintained in a good working condition.

- e. **Major Repairs/Maintenance.** The Charter School shall be responsible for major repairs and maintenance of the Site. For purposes of this section, major maintenance projects are those that are significant in scope and may involve a public works bid. Major repairs and maintenance include the significant repair or replacement of plumbing, heating, ventilation, air conditioning, electrical, roofing, and flooring systems, exterior and interior painting, and any other items considered deferred maintenance under Education Code section 17582. The Charter School shall notify the District Superintendent immediately of any damage or defect in or on the Site that may require major repair and/or maintenance, and the Charter School shall repair and/or maintain any damage or defect that presents an immediate and imminent threat to the health and safety of students, staff and visitors. The District shall not be responsible for any injury, harm, or loss to persons or property resulting from any defects, damage, or conditions in or on the Site, including any Improvements constructed thereon.

- f. **Allowance for Major Repairs.** Should any major repairs at the Site be deemed necessary by the Parties during the initial Term of the Agreement (excluding any extensions), the District will provide an allowance to the Charter School which shall not exceed the equivalent of two months of Facilities Use Fee payments calculated based on the original Facilities Use Fee amount of \$42,000.00, with a total maximum allowance of \$84,000.00 ("Allowance") during the Term of the Agreement. The Allowance shall not be subject to the annual adjustment set forth in Section 3.b. above. The Parties agree to meet and confer within a reasonable period of time following the discovery of the major repair item to

determine the type and extent of repairs needed, if any. If the major repair item poses an immediate health or safety issue for students, staff, or visitors at the Site, the Parties shall not be required to meet and confer prior to the Charter School implementing any necessary actions to correct or remedy the issue. The Charter School shall provide an itemization of costs and any supporting documentation required by the District to substantiate the repair costs. Following receipt of satisfactory evidence of the repair costs, the District will authorize the use of all or a portion of the Allowance to the Charter School, based on the amount approved by the District, which amount shall be offset from one or more of the monthly Facilities Use Fee payments. For illustration purposes only, if the District-approved costs of the major repair project at the Site were \$70,000.00, the Charter School would be authorized to withhold the next due Facilities Use Fee payment of \$42,000.00 to the District, and then \$28,000.00 from the following monthly Facilities Use payment. In addition, the Charter School would have a remaining credit of \$14,000.00 that could be used to offset future major repair costs at the Site during the initial Term. There shall be no carryover of any portion of the Allowance for major repairs to the Site following the expiration of the initial Term on June 30, 2027.

9. **ALTERATIONS, ADDITIONS, AND IMPROVEMENTS.**

- a. **Requirements.** The Charter School shall not make, construct, or install any alterations, additions, or improvements, including but not limited to murals, science laboratories, or lockers (collectively, the "Improvements") to the Site or any part thereof without obtaining the prior written approval of the District, and, if required, the Division of the State Architect or any local enforcement agencies having jurisdiction over the Site. If requested by the District, the Charter School shall deliver any preliminary construction plans, specifications, drawings, certifications, and/or CEQA documentation for the District's review and approval. The Charter School shall follow all competitive bidding requirements applicable to charter schools or use a competitive bidding process for any Improvements to the Site. Contractors retained by the Charter School with respect to the construction or installation of any authorized Improvements shall be fully licensed and bonded as required by law and must maintain levels of casualty, liability and workers' compensation insurance and performance and payment bonds consistent with District construction requirements. The construction or installation of any authorized Improvements shall be performed in a sound and workmanlike manner, in compliance with all laws applicable to the Charter School, including building codes, and prevailing wage laws where applicable. The District shall have a continuing right at all times during the period that Improvements are being constructed or installed to enter the Site and to inspect the work, provided that such entries and inspections do not unreasonably interfere with the progress of the construction or interrupt

instruction to students. The Charter School, with the prior written approval of the District, shall be allowed to establish signage in a manner that is customary and equivalent to what other District school sites have established.

- b. **Conditions.** The District may impose as a condition to the aforesaid consent such requirements as the District may deem necessary in its reasonable discretion, including the manner in which the work is done; a right of approval of the contractor performing the work; the times during which it is to be accomplished; and the requirement that upon written request of the District at the time it provides approval for the Improvements, the Charter School will remove any and all Improvements requested by the District, and all movable partitions, counters, personal property, equipment, fixtures, and furniture at the expiration or earlier termination of the Agreement.
- c. **Improvements in Progress.** The Charter School desires to begin making Improvements to the Site following the Effective Date of this Agreement so that the Site will be ready for instruction by the start of the 2022-2023 school year. If the Charter School does not receive formal approval by the County Board to operate the Liberty Charter High School at the Site, the Charter School will be responsible for completing any Improvements that are in progress and performing any cleanup measures necessary to bring the Site back to a safe, clean, and operable condition. Should the District seek removal of the Improvements and restoration of the Site to its condition as of the Effective Date of this Agreement, the Charter School shall promptly take action to restore the Site at its sole cost and expense.
- d. **Property of District.** The Charter School agrees that full legal ownership and title to the Improvements, to the extent such Improvements can be classified as real property or fixtures to the Site, shall remain on the Site and shall vest in the District upon expiration or early termination of the Agreement.
- e. **Personal Property.** All articles of personal property and all business and trade fixtures, machinery and equipment, cabinetwork, furniture, and movable partitions owned by the Charter School or installed by the Charter School at the Charter School's expense at the Site shall be and remain the property of the Charter School and may be removed by the Charter School at any time during the Term.

10. **ENTRY BY THE DISTRICT.**

- a. **General Entry.** The District reserves the right to enter the Site for inspection or to supply any service to be provided by the District to the Charter School. In furtherance of any alterations, improvements or repair, the District may erect scaffolding and other necessary structures where reasonably required by the

character of the work to be performed, always providing the entrance to the Site shall not be blocked, and further providing that the business of the Charter School shall not be unreasonably interfered with. The District may enter the Site with 48 hours' advance notice to Charter School, except in the case of an emergency, where no prior notice is required. The District and Charter School agree to cooperate so that disruption to the educational program of the Charter School is minimized. The Charter School hereby waives any claim for damages for any injury or inconvenience to or interference with the Charter School's business, any loss of occupancy or quiet enjoyment of the Site during such activities. For each of the aforesaid purposes, the District shall at all times have and retain a key with which to unlock all of the doors located on the Site, excluding the Charter School's vaults and safes, and the District shall have the right to use any and all means which the District may deem proper to open said doors in an emergency to obtain entry to the Site. Entry to the Site obtained by the District under this section shall not be construed or deemed to be a forcible or unlawful entry into or a detainer of the Site, or an eviction of the Charter School from the Site or any portion thereof.

- b. **Inspections.** The District shall conduct a facilities inspection of the Site on at least an annual basis and will provide at least forty-eight (48) hours advance notice to the Charter School of the date of inspection. Following the inspection, the District will provide a written list or summary of any items in need of repair and/or maintenance and the corresponding time period for completion. The Charter School shall thereafter take all necessary measures to promptly address and correct all repair and/or maintenance items identified by the District. Should the Charter School fail to timely correct the repair and/or maintenance items identified by the District, the District may perform such repairs and/or maintenance and invoice the costs of such labor and materials to the Charter School for payment.

11. INDEMNITY.

- a. **Charter School's Indemnification.** The Charter School shall, to the fullest extent permitted by law, indemnify, hold harmless, and defend the District, its trustees, officers, employees, representatives, and agents from and against any and all claims, demands, actions, suits, losses, liability, penalties, charges, expenses, and costs (including attorney and expert witness fees) for any injury, death, or damage to any person or property arising out of or related to (1) the Charter School's obligations under this Agreement, (2) employment-related claims or labor disputes involving the Charter School or its contractors or agents, (3) the construction, repair, maintenance, alteration, use, occupancy, or enjoyment of the Site and/or Shared Use Facilities, (3) the Charter School's operations and other acts and/or omissions arising from and/or relating to the Charter School's

use of the Site and/or Shared Use Facilities, (4) the occupancy and/or use of the Site and/or Shared Use Facilities by the Charter School, or (5) the conduct of any activity, work, or other things done, permitted or suffered by the Charter School in or about the Site and/or Shared Use Facilities, excepting only those claims, demands, actions, suits, losses, liability, penalties, expenses, and costs caused by the negligence or intentional acts of the District, its employees, agents, officers, invitees, and visitors as they relate to the Site and/or Shared Use Facilities. If any action or proceeding is brought against the District by reason of such claim (regardless of whether a claim is filed), the Charter School, upon notice from District, shall defend the same at the Charter School's expense. The Charter School shall give prompt written notice to the District Superintendent in case of casualty or accidents in or on the Site. This section shall survive termination of this Agreement.

- b. **District's Indemnification.** The District shall, to the fullest extent permitted by law, indemnify, hold harmless, and defend the Charter School, its directors, officers, employees, representatives, and agents from and against any and all claims, demands, actions, suits, losses, liability, penalties, charges, expenses, and costs for any injury, death, or damage to any person or property arising out of or related to obligations of the District under this Agreement as they relate to the Site or arising from any activity, work, or other things done, permitted or suffered by the District in or about the Site, excepting those claims, demands, actions, suits, losses, liability, penalties, expenses, and costs caused by the negligence or intentional acts of the Charter School, its employees, agents, officers, invitees, and visitors as they relate to the Site. This section shall survive termination of this Agreement.

12. **INSURANCE.**

- a. **Property and Liability.** The Charter School's governing board shall ensure that the Charter School retains appropriate property and liability insurance coverage. During the Term, including any extension(s), the Charter School shall obtain and keep in effect liability coverage as follows:
 - i. General Liability. Commercial general liability insurance, on an occurrence basis, insuring the Charter School and the Charter School's employees, independent contractors, agents, and volunteers against all bodily injury, property damage, personal injury and other covered loss arising out of the use, occupancy, improvement and maintenance of the Site. Such insurance shall be in an amount not less than \$5,000,000.00 per occurrence and \$10,000,000.00 general aggregate. Such coverage shall include but shall not be limited to broad form contractual liability, products and completed operations liability, independent contractors' liability, abuse and molestation liability, public officials' errors and

omissions liability, educators' legal liability, employment practices liability, cyber liability, and cross liability protection. The District, its Board of Trustees, and their officers, employees, volunteers, and agents shall be named as additional insureds by endorsement. The limits of such insurance may be met by any combination of general liability insurance and following form excess or umbrella liability insurance policies.

- ii. Workers' Compensation. Workers' compensation and Employers' Liability insurance satisfying statutory requirements, which includes Employers' Liability coverage with limits of not less than \$1,000,000.00 per accident or occupational illness. Said coverage's insurers shall waive rights of subrogation with respect to the District, its Board of Trustees, and their officers, and employees.
- iii. Professional Liability. Professional Liability (Errors and Omissions) Insurance (including employment practices coverage) with limits not less than \$5,000,000 each occurrence. Policy form language to include Educator's legal liability coverage.
- iv. Property Insurance.
 - (1) "Special perils" form real property insurance covering the Site, including improvements, betterments, and loss of rents or loss of income providing protection against any covered peril included for an amount not less than the replacement cost of the Site, including any improvements thereto. Said policies shall contain a "Replacement Cost" endorsement and shall include deductible amounts acceptable to the District. Said policies shall name the District as additional insured and loss payee, as its interests may appear.
 - (2) "Special perils" form personal property insurance covering the Charter School's personal property on the Site against any peril included in the classification of "Special Form" for an amount not less than 100% of the replacement cost.

The amount of such insurance may be reviewed and revised only by mutual agreement of the Parties. The District shall be named as additional insured on all of the Charter School's insurance policies. A copy of all required insurance policies evidencing the District named as an additional insured shall be provided to the District prior to the Charter School's occupancy of the Site or ten (10) business days after the Effective Date of this Agreement, whichever occurs sooner.

- b. The District will maintain its current levels of insurance on the structures on the Site. The District shall not be responsible for insuring any of the Charter School's personal property or persons (including without limitation students or members of staff). However, the Charter School's insurance shall be primary for claims for damage to the Site and physical structures. The Parties understand and agree that any insurance maintained by the District for the Site shall, at all times, be secondary, and no defense shall be tendered nor amount paid under any District policy unless and until the Charter School's policy limits have been exceeded.
- c. **Insurance Policies.** The aforementioned minimum limits of policies shall in no event limit the liability of the Charter School hereunder. If any of the insurance required by this Section 12 is supplied by one or more commercial insurers, such insurance is to be placed with insurers authorized and licensed to conduct business in the State of California with a current financial responsibility rating of A (Excellent) or better and a current financial size category (FSC) of V (capital surplus and conditional surplus funds of greater than \$10 million) or greater as reported by A.M. Best Company or equivalent, or a joint powers authority. No such policy shall be cancelable or subject to reduction of coverage or other modification or cancellation except after thirty (30) calendar days prior written notice to the District by the insurer, or, if the insurer refuses to provide such notice to additional insureds, by the Charter School. The Charter School shall, at least twenty (20) calendar days prior to the expiration of such policies, furnish the District with renewals or binders. The Charter School agrees that if the Charter School does not take out and maintain such insurance, then the District may (but shall not be required to) procure said insurance on the Charter School's behalf and charge the Charter School the premiums and may recover reasonable administrative costs for procuring such insurance. The Charter School shall have the right to provide such insurance coverage pursuant to blanket policies obtained by the Charter School, provided such blanket policies expressly afford coverage to the Site and to the Charter School, as required by this Agreement.
- d. **Waiver of Subrogation.** The District and Charter School each hereby waive any and all rights of recovery against the other or against the officers, employees, agents, and representatives of the other, on account of loss or damage occasioned to such waiving party or its property or the property of others under its control to the extent that such loss or damage is insured against under any fire and extended coverage insurance policy which either may have in force at the time of such loss or damage. The Charter School shall, upon obtaining the policies of insurance required under this Agreement, give notice to the insurance carrier or carriers that the foregoing mutual waiver of subrogation is contained in this Agreement.

- e. **No Limitation of Liability.** The insurance required herein, and any insurance carried by the District, shall not be deemed to limit the Charter School's liability related to performance under this Agreement. The procuring of insurance shall not be construed as a limitation on liability or as full performance of the indemnification and hold harmless provisions of this Agreement.
13. **ASSIGNMENT AND SUBLETTING.** The Charter School may not assign its rights or sublet any portion of the Site without the prior written consent of the District.
14. **DEFAULT AND REMEDIES.**
- a. **Default by the Charter School.** The occurrence of any of the following shall constitute a material default and breach of this Agreement by the Charter School:
 - i. Any failure by the Charter School to make payments required to be paid hereunder, where such failure continues for forty-five (45) calendar days after written notice by the District to the Charter School.
 - ii. A failure by the Charter School to observe and perform any other provision of this Agreement to be observed or performed by the Charter School, where such failure continues for thirty (30) calendar days after written notice thereof by the District to the Charter School; unless, however, the nature of the default is such that the same cannot reasonably be cured within said 30-day period. The Charter School shall not be deemed to be in default if the Charter School shall within such period commences such cure and thereafter diligently prosecutes the same to completion.
 - iii. The making by the Charter School of any general assignment or general arrangement for the benefit of creditors; the filing by or against the Charter School a petition to have the Charter School adjudged bankrupt or of a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against the Charter School, the same is dismissed within sixty (60) calendar days); the appointment of a trustee or receiver to take possession of substantially all of the Charter School's assets located at the Site or of the Charter School's interests in this Agreement, where possession is not restored to the Charter School within thirty (30) calendar days; or the attachment execution or other judicial seizure of substantially all of the Charter School's assets located at the Site or of the Charter School's interest in this Agreement, where such seizure is not discharged within thirty (30) calendar days.

- iv. Revocation of the Charter School's charter by the County Board or cessation of the Charter School's program for any reason. However, if the Charter School pursues an appeal of a revocation of its charter by the County Board, the Charter School shall not be in default under this section until the Charter School has exhausted its available statutory or other legal appeal rights.
 - v. The failure by the Charter School to utilize the Site for the sole purpose of operating a charter school as authorized by this Agreement and the Charter School's charter where such failure continues for five (5) calendar days after written notice by the District to the Charter School.
- b. **Remedies.** If the Charter School commits any such material default or breach, then the District may, at any time thereafter without limiting the District in the exercise of any right or remedy at law or in equity which the District may have by reason of such default or breach:
- i. Maintain this Agreement in full force and effect and recover use payments and other monetary charges as they become due, without terminating the Charter School's right to possession irrespective of whether the Charter School shall have abandoned the Site.
 - ii. Terminate the Charter School's right to possession by any lawful means, in which case this Agreement shall terminate and the Charter School shall immediately surrender possession of the Site to the District. In such event the District shall be entitled to recover from the Charter School all damages incurred by the District by reason of the Charter School's default.
 - iii. No remedy conferred or reserved to the District is intended to be exclusive and every remedy shall be cumulative and in addition to every other remedy given under this Agreement or existing at law or in equity. No delay or omission to exercise any right or power accruing upon any event of default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. The District is entitled to exercise any remedy reserved to it and without giving notice other than such notice as is required under the Agreement. All remedies reserved to the District shall survive the termination of the Agreement.
- c. **Default by the District.** The District shall not be in default unless the District fails to perform obligations required of the District within a reasonable time, but in no event later than thirty (30) calendar days after written notice by the Charter

School to the District specifying wherein the District has failed to perform such obligations; provided however, that if the nature of the District's obligation is such that more than 30 days are required for performance, then the District shall not be in default if the District commences performance within such 30-day period and thereafter diligently prosecutes the same to completion. In the event of default by the District, the Charter School may pursue all remedies available by law.

15. **FOOD SERVICES LICENSE.** The Charter School shall be solely responsible for requesting and securing from the County of San Diego a food facility license for nutrition services at the Site.
16. **ADMISSION OF FORMER DISTRICT STUDENTS TO CHARTER SCHOOL.** The Charter School agrees to use its best efforts, consistent with the admissions preferences described in its approved charter and the laws and regulations applicable to public charter schools in California, to enroll outgoing eighth grade Alpine Union School District students who desire to attend the Charter School beginning in ninth grade. The District understands that such enrollment is contingent upon any capacity limitations of the Charter School as set forth in its charter and/or any agreements with the County Board, as its charter authorizer, in serving its high school student population.
17. **MISCELLANEOUS.**
 - a. **Captions.** The captions of the paragraphs of this Agreement are for convenience only and shall not be deemed to be relevant in resolving any question of interpretation or construction of any section of this Agreement.
 - b. **Attachments.** Attachments, exhibits, addenda and schedules initialed by the Parties are deemed by attachment to constitute part of this Agreement and are incorporated herein.
 - c. **Amendments.** This Agreement may only be amended in writing that specifically indicates its intent to modify and/or amend this Agreement. All amendments shall only be effective if executed by the Parties and approved by the Parties' respective governing boards.
 - d. **Entire Agreement.** This Agreement, along with any exhibits and other attachments, constitutes the entire agreement between the District and the Charter School relative to the Site. The Parties agree that all prior or contemporaneous oral agreements between and among themselves and their agents or representatives relative to the Site are merged in or revoked by this Agreement.

- e. **Severability.** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, then the remainder of this Agreement shall not be affected and the remaining terms and provisions of this Agreement shall remain enforceable to the fullest extent permitted by law.
- f. **Time of the Essence.** Time is of the essence with respect to the performance of every provision of this Agreement in which time of performance is a factor, except as to the conditions relating to the delivery of possession of the Site to the Charter School.
- g. **Binding Effect, Choice of Law, Venue.** The Parties agree that all provisions of this Agreement are to be construed as both covenants and conditions. Subject to any provisions restricting assignment or subletting by the Charter School, all of the provisions of this Agreement shall bind and inure to the benefit of the Parties and their respective heirs, legal representatives, successors, and assigns. The laws of the State of California shall govern this Agreement. Venue shall lie only in the County of San Diego.
- h. **Waiver.** No covenant, term, or condition or the breach thereof shall be deemed waived, except by written consent of the Party against whom the waiver is claimed, and any waiver or the breach of any covenant, term, or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition. Acceptance by the District of any performance by the Charter School after the time the same shall have become due shall not constitute a waiver by the District of the breach or default of any covenant, term or conditions unless otherwise expressly agreed to by the District in writing.
- i. **Holding Over.** The Charter School is prohibited from remaining in possession of all or any part of the Site after the expiration of the Term.
- j. **Force Majeure.** Neither Party shall be liable for non-performance due to a Force Majeure event; provided, however, that the non-performing Party notifies the other Party and resumes performance as soon as reasonably possible. "Force Majeure" means any act or event that prevents or delays the affected Party from performing its obligations in accordance with this Agreement, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party and such Party has been unable to overcome such act or event with the exercise of due diligence (including the expenditure of reasonable sums). Force Majeure includes but is not limited to: (i) acts of God and other natural phenomena, such as storms, extraordinary seasonal conditions, tornados, hurricanes, floods, lightning, landslides, and earthquakes; (ii) explosions or fires arising from lightning or other causes unrelated to the acts or omission of the Party seeking to be excused from performance; (iii) acts of

war or public disorders, civil disturbances, riots, insurrection, sabotage or vandalism, epidemic, pandemic, terrorist acts, or rebellion; (iv) any industry or trade-wide national labor dispute or strike or any other strike or labor dispute not directed solely at a contractor or vendor; and (v) a reasonably unanticipated action, delay or failure to act by a governmental authority, including a moratorium on any activities related to this Agreement.

- k. **Notices.** All notices required by this Agreement may be sent by United States mail, postage pre-paid, to the Parties as follows:

DISTRICT:

Alpine Union School District
2001 Tavern Road
Alpine, CA 91901
Attention: Dr. Richard Newman
Email: rnewman@alpineschools.net

CHARTER SCHOOL:

Literacy First Charter Schools
698 West Main Street
El Cajon, CA
Attention: Debbie Beyer
Email: debbie.beyer@lfcsinc.org

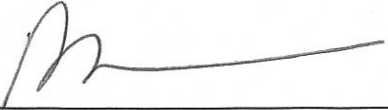
Any notices required by this Agreement sent by electronic mail to the electronic mail addresses above shall be considered received on the business day they are sent, provided they are sent during the receiving party's business hours and provided receipt is confirmed by telephone or electronic mail, and further provided the original is promptly placed into the United States mail, postage pre-paid, and addressed as indicated above.

- l. **Authority to Execute.** Each person below warrants and guarantees that she/he is legally authorized to execute this Agreement on behalf of the designated entity and that such execution shall bind the designated entity to the terms of this Agreement.
- m. **Execution in Counterparts.** This Agreement may be signed in counterpart such that the signatures may appear on separate signature pages. Facsimile or photocopy signatures shall have the same force and effect as original signatures.
- n. **Opportunity to Consult with Legal Counsel.** Each Party has entered into this Agreement freely and voluntarily and has either consulted with independent legal counsel or has had the opportunity to do so prior to approval and execution.
- o. **Effective Date.** This Agreement shall be deemed effective when it has been fully-executed and approved by the Parties' respective governing boards ("Effective Date").

Signatures on Following Page

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date indicated below.

DISTRICT:



Superintendent


Rich Newman

Print Name

1-14-22

Date

CHARTER SCHOOL:



Executive Director

Debbie Beyer

Print Name

1/14/2022

Date

Date of District Board of Trustees' Approval: _____

Date of Charter School Board of Directors' Approval: _____

Exhibit 1



Exhibit 2

Joan MacQueen Middle School
2001 Tavern Road, Alpine, CA 91901
Fields and gymnasium

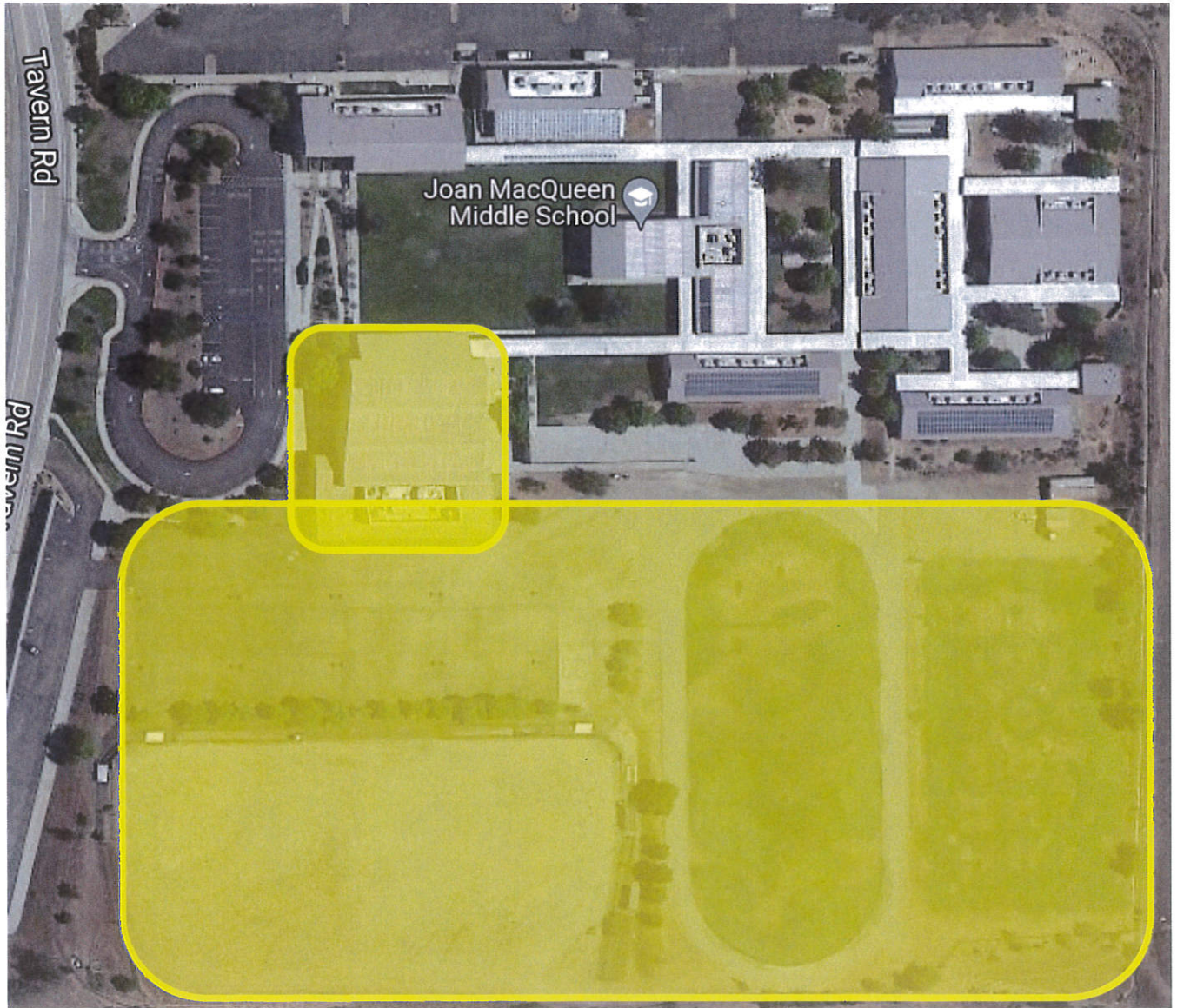


Exhibit 2

(Continued)

Maintenance & Operations Center
1323 Administration Way, Alpine, CA, 91901
Softball field



Exhibit 3

576-21/6262491.1