

**CHARTER SCHOOL FACILITIES MEMORANDUM  
OF UNDERSTANDING FOR 2019-20 through 2028-29**

THIS CHARTER SCHOOL FACILITIES MEMORANDUM OF UNDERSTANDING ("Agreement"), effective July 1, 2019 through June 30, 2029, is entered into by and between the Lompoc Unified School District, a public school district organized and existing under the laws of the State of California ("District") and the Manzanita Charter School, a California public charter school ("Manzanita" or the "Charter School"). The District and the Charter School are collectively referred to as "the parties."

**RECITALS**

**WHEREAS**, the District intends to provide facilities to the Charter School, and the Charter School intends to obtain its facilities from the District, in lieu of an allocation of facilities pursuant to California Proposition 39 (Education Code section 47614) and its implementing regulations ("Proposition 39"). The purpose of this Agreement is to provide facilities to the Charter School's students in lieu of the obligations set forth under Proposition 39.

**WHEREAS**, the Parties do not intend this Agreement to constitute a lease of real property pursuant to Education Code sections 17455, *et seq.* except as otherwise set forth herein. The District has found that the Charter School's use and occupation of the Facilities as set forth herein in lieu of Proposition 39 are authorized under Education Code section 47614, as implemented by 5 C.C.R. section 11969.1(b), as well as, alternatively, the Joint Use provisions of Education Code section 17527 *et seq.* in that 1) the District is making the facilities herein available for rent or lease to another educational agency/non-profit corporation; 2) Charter School is an educational agency; 3) Use of the facility as set forth herein shall not interfere with the educational program or activities of any school located upon the site, unduly disrupt the residents in the surrounding neighborhood or jeopardize the safety of the children of the school; 4) the Agreement herein is compatible with the educational purpose of the school under Education Code section 17531; 5) this Agreement does not call for the rent or lease of classrooms exceeding 30 percent of the District's total classroom space; and 6) this Agreement calls for a payment by Manzanita to the District; and

**WHEREAS**, the Department of the Air Force Lease of Property on Vandenberg Air Force Base Military Reservation in Santa Barbara County, California, Lease No. DACA09-1-85-16, attached hereto as **Exhibit A**, ("Lease") requires that the District obtain the written permission of the United States prior to subletting or otherwise allowing the use of any of the School Site; and

**WHEREAS**, the Lease further provides that the District and the Charter School will not construct any structure on the School Site without the prior written consent of the United States; and

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WHEREAS, the Parties now desire to set forth the terms and conditions pursuant to which the Charter School will occupy the Premises for the 2019-20 school year and continue to occupy the premises from 2019-2029. The Parties desire that the terms of this Agreement shall be deemed to be outside of the Proposition 39 charter school facilities process, which is set forth in Education Code section 47614, et seq., and the California Code of Regulations, Title 5, section 11969 et seq.; and

WHEREAS, the Parties approve this Charter Facilities Agreement as of 2019, for the 2019-2020; 2020-2021; and 2021-2022; 2022-2023; 2023-2024; 2025-2025; 2025-2026; 2026-2027; 2027-2028; 2028-2029 school years.

### TERMS

NOW, THEREFORE, for and in consideration of the facilities use payments and of the covenants and agreements hereinafter set forth to be kept and performed by the Charter School, the District hereby grants use to the Charter School of that portion of the former Los Padres School site, which consists of approximately 14.92 acres located on Vandenberg Air Force Base, in the unincorporated area in Santa Barbara County, California ("School Site"), the portion of which is further described on Exhibit B attached hereto; subject to and upon all of the tenets, covenants, and agreements set forth in this Agreement. The only portion of the Site to be used by the Charter School is described in Exhibit B, and shall be deemed the "Premises." It is the intent of the parties that this written agreement supersede all previous agreements, written or unwritten, related to the use and occupation of the Premises by the Charter School.

#### Section 1. Use of Premises.

1.1 District agrees to allow Charter School exclusive use of the Premises, for the sole purpose of operating the Charter School educational program in accordance with the Charter School's charter and MOU with the District. The Charter School's right to exclusive use of the Premises shall not extend to the use of any portion of the Site except the Premises. Charter School's right to exclusive use of the Premises shall be coterminous with the term of this Agreement and shall be for school years between 2019-2029 only. Upon the termination of this Agreement, the right to exclusive use and occupation of the Premises and the facilities and equipment thereon shall follow the succession requirements of Section 17078.62 of the Education Code once Charter School Facilities Program (CSFP) funds have been used for rehabilitation of the Premises, subject to the parties' negotiation of a successor Agreement, if necessary, containing the terms of the District's provision of facilities to the Charter School in accordance with the provisions of Proposition 39. As Lessee and sublessor of the Premises and owner of the facilities and equipment located thereon, 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 the Premises, the balance of the Site, and all facilities and equipment for District purposes.

1.2 Charter School shall otherwise have full and exclusive use of all classrooms, administrative space, and other facilities on the Premises. Charter School shall comply

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with District policies and/or practices regarding the operations and maintenance of the facilities, furnishings, and equipment.

**1.3** Although Charter School shall have the exclusive use of the Premises, Charter School agrees to comply with the provisions of the Civic Center Act (Education Code section 38130 et seq.) in making use of the facilities accessible to members of the community. For purposes of compliance with the Civil Center Act with respect to the Premises only, the Charter School Governing Board shall hold the same powers and obligations applicable to school district governing boards under Education Code sections 38130-38139 and shall also follow District Board Policy BP 1330 and Administrative Regulation AR 1330 in making use of the facilities accessible to members of the community.

**1.4** The Charter School further agrees that the Premises, furnishings, and equipment, described in this Agreement and/or currently located on the Premises for the 2016-2017 school year, shall be satisfactory for the term of the Agreement, and that it is not entitled to, nor shall it request, additional facilities, furnishings, or equipment. The Parties agree that the provision of facilities pursuant to this Agreement constitutes full and complete satisfaction of the District's obligation to provide facilities to Charter School under Education Code section 47614 and the Proposition 39 Regulations for the 2016- 2017, 2017-2018, and 2018-2019 school years.

**1.5 Compliance with Lease.** Charter School agrees to comply with all terms and conditions of the Lease between the United States and the District. If the terms of this Agreement are inconsistent with the terms of the Lease in any respect, the terms of the Lease shall prevail. Charter School shall allow the United States access to the Premises as required by the Lease.

**1.6 Entry by District.** District reserves the right to enter the Premises to inspect the same, to supply any service to be provided by District to Charter School hereunder, to submit said Premises to prospective purchasers or future tenants to post notices of non-responsibility and "for lease" signs, and to alter, improve or repair the Premises without abatement of use payments, and may erect scaffolding and other necessary structures where reasonably required by the character of the work to be performed, providing always that the entrance to the Premises shall not be blocked thereby, and further providing that the business of Charter School shall not be unreasonably interfered with. Charter School hereby waives any claim for damages for any injury or inconvenience to or interference with Charter School's business, any loss or occupancy or quiet enjoyment of the Premises. For each of the aforesaid purposes District shall at all times have and retain a key with which to unlock all of the doors in, upon and about the Premises, excluding Charter School's vaults and safes, and District shall have the right to use any and all means which District may deem proper to open said doors in an emergency, in order to obtain entry to the Premises, and any entry to the Premises obtained by District

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by any of said means, or otherwise, shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into or a detainer of the Premises,

**Section 2. Furnishings and Equipment.** In accordance with Section 1.4, the Parties agree that, for the entire term of this Agreement, the District shall provide only the current inventory of furnishings and equipment at the Premises for the 2019-20 school year. These furnishings and equipment shall remain the property of the District. The District and the Charter School shall develop a mutually agreeable inventory of the furnishings and equipment that will be located at the Premises.

**Section 3. Termination.** This Agreement will automatically terminate upon the termination or revocation of Charter School's charter, the cessation of Charter School's operations for any reason, or termination of the Lease. No later than July 1, 2028, MANZANITA shall contact the District to request a meeting with the District Superintendent to discuss whether the Parties desire to enter into a successor agreement. Or the Charter School may make a Proposition 39 request for facilities for the year following the termination of the Agreement, but only in the event that the Agreement expires at the end of its term on June 30, 2029 without termination prior to that date for any reason. In the event that this Agreement terminates for any reason prior to June 30, 2029, MANZANITA agrees not to submit a request for facilities under Proposition 39 to the District for any school year prior to the 2019-2020 school year. MANZANITA shall have the right to submit a request for facilities under Proposition 39 prior to June 30, 2029, only in the event that this Agreement terminates under the provisions of this Agreement.

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**Section 4. Rent.** The facilities hereunder shall be provided to MAZANITA Charter School rent-free. As set forth in Section 13, Compensation to DISTRICT for Oversight Services, of the MOU between the parties, and in consideration of the District's provision of facilities to the Charter School substantially rent free pursuant to Education Code section 47613, the Charter School shall pay the District an amount equal to three percent (3%) of the Charter School revenues (excluding grants, loans, and private donations). The District shall also charge the pro rata share amount referred to in Education Code section 47614(b)(1).

b) The above payment terms shall extend for the entire duration of the Agreement, regardless of the percentage of MANZANITA students that are in-District or out-of-District.

**Section 5. Utilities.** Charter School shall be responsible to pay 70% of the cost of all utilities used or consumed by the Charter School on the Premises. The Charter School shall pay 70% of the costs for the use of utilities by paying the District all amounts invoiced by the District for the following utilities: water/sewer, gas and electricity. With respect to internet connectivity, the Charter School shall obtain its own internet service provider and shall assume sole responsibility for upkeep and maintenance of all telephone systems, data lines, and related equipment, software and hardware.

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**Section 6. Maintenance.**

**6.1** Facilities and furnishings and equipment provided to the Charter School shall remain the property of the District. The ongoing operations and maintenance of the facilities and equipment is the responsibility of the Charter School. Projects eligible to be included in the District deferred maintenance plan established pursuant to Education Code section 17582 and the replacement of furnishings and equipment supplied by the District in accordance with District schedules and practices shall remain the responsibility of the District. The Charter School may purchase operations and maintenance services from the District as provided in a separate written agreement.

**6.2** District shall be responsible for the major maintenance of the facilities used by the Charter School. For purposes of this section, "major maintenance" includes the major repair or replacement of plumbing, heating, ventilation, air conditioning, electrical, roofing, and floor systems, exterior and interior painting, and any other items considered deferred maintenance under Education Code section 17582. All major maintenance shall require advance approval by the United States. All other kinds of maintenance shall be considered routine maintenance.

**Section 7. Installation of Improvements.** Charter School shall not construct or install any improvements on the Premises or otherwise alter the Premises (the "Work") without the prior written consent of the United States, the District, and if required, the Division of the State Architect. District's approval of any Work, including the construction schedule, work hours, and modifications, shall be at District's sole and absolute discretion, and District may disapprove of such Work without reason. Contractors retained by Charter School with respect to the Work 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 law and District construction requirements. Charter School shall ensure that the Work is performed in a sound and workmanlike manner, in compliance with all laws, ordinances and regulations applicable to the Work, including but not limited to building codes and regulations, prevailing wage and other labor laws. District or District's agent shall have a continuing right at all times during the performance of the Work to enter the Premises and to inspect the Work.

**Section 8. Condition of Property.**

**8.1** Charter School, at its expense, shall comply with all applicable laws, regulations, rules and orders with respect to its use and occupancy of the Premises, including, without limitation, those relating to health, safety, noise, hazardous material, environmental protection, waste disposal, and water and air quality. The Charter School shall not be responsible for any and all environmental conditions that existed prior to the Charter School's occupancy of the Premises. The District shall remain responsible for compliance with the ADA, FEHA, and other applicable building code standards regarding access for any existing compliance issue prior to the date of execution of this Agreement. The Charter School shall assume responsibility for compliance with ADA and FERA

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access rights to the extent of any Work, modifications or improvement made by the Charter School.

8.2 Should any discharge, leakage, spillage, release, emission, or pollution of any type occur upon or from the Premises due to the Charter School's use and occupancy thereof ("Discharge"), Charter School, at its expense, shall be obligated to clean all the property affected, to the satisfaction of District and any governmental agencies having jurisdiction over the School Site. Charter School shall indemnify and defend the United States, the District, and their trustees, employees, representatives and agents with regard to any Discharge.

**Section 9. Title to Property.** The parties acknowledge that title to the Site, excluding the land, is held by the District and shall remain in the District at all times and that title to the land is held by the United States.

**Section 10. Fingerprinting.** Charter School shall be responsible for ensuring compliance with all applicable fingerprinting and criminal background investigation requirements described in Education Code section 45125.1, *et seq.* Verification of compliance with the aforementioned fingerprinting and criminal background investigation requirements shall be provided in writing to District prior to each individual's commencement of employment or participation in any activity of Charter School on the Premises and prior to permitting contact with District pupils.

**Section 11. Insurance.**

**11.1 Commercial General Liability Insurance and Auto Insurance.** Charter School shall, at its own expense, obtain and keep in force during the term of this Agreement, a policy of commercial general liability insurance and a comprehensive auto liability policy insuring the United States, the District and the Charter School against claims and liabilities arising out of the operation, condition, use, or occupancy of the Premises and all areas appurtenant thereto, including parking areas. Charter School's comprehensive auto liability policy shall insure all vehicle(s), whether hired, owned or non-owned. Charter School's commercial general insurance shall be at least as broad as the Insurance Service Office (ISO) CG 00-01 form and in an amount of not less than five million dollars (\$5,000,000) for bodily injury or death and property damage to any one person and five million dollars (\$5,000,000) as a result of any one occurrence. In addition, Charter School shall obtain a products/completed operations aggregate policy in the amount of two million dollars (\$2,000,000) and a personal injury insurance policy in the amount of one million dollars (\$1,000,000). The insurance carrier, deductibles and/or self-insured retentions shall be approved by District. Prior to the Commencement Date Charter School shall deliver to District a certificate of insurance as shown in **Exhibit C** evidencing the existence of the policies required hereunder and copies of endorsements stating that such policies shall:

- (a) not be canceled or altered without thirty (30) days prior written notice to the United States and the District;

- (b) insure performance of the indemnity set forth in this Agreement, including Section 15;
- (c) state the coverage is primary and any coverage by the United States or the District is in excess thereto;
- (d) contain a cross liability endorsement; and
- (e) include a separate endorsement naming the United States, the District, their trustees, officers, employees, representative, and agents as additional insureds.

At least thirty (30) days prior to the expiration of the certificate, and every subsequent certificate, Charter School shall deliver to District a new certificate of insurance consistent with all of the terms and conditions required in connection with the original certificate of insurance as described above.

**11.2 Fire Insurance.** During the term of this Agreement, District shall maintain at its cost a policy of standard fire and casualty insurance limited to the value of the buildings and improvements located on the Premises as of the Commencement Date. In the event of loss or damage to the buildings, the Premises or any contents, each of the parties hereto, and all persons claiming under each of the parties, shall look first to any insurance in its favor before making any claim against the other party, and to the extent possible without adding additional costs, each party shall obtain for each policy of insurance provisions permitting waiver of any claim against the other party for loss or damage within the scope of the insurance, and each party, to the extent permitted, for itself and its insurers, waives all such insurance claims against the other party.

**11.3 Workers' Compensation Insurance.** During the term of this Agreement, Charter School shall comply with all provisions of law applicable to Charter School with respect to obtaining and maintaining workers' compensation insurance. Charter School shall provide District prior to the Commencement Date a certificate of insurance evidencing the existence of the policy required hereunder.

**11.4 Subtenant Insurance.** During the term of this Agreement, Charter School shall not sublease or assign any portion of the Premises, however if a sublease is ever requested, reviewed and approved by both the District and the United States, Charter School shall require any subtenant or assignee of all or any portion of the Premises to maintain in effect during the term of its sublease or assignment, insurance coverage equivalent to that required to be maintained by Charter School.

**11.5 Charter School's Property Insurance,** Charter School acknowledges that the insurance to be maintained by District on the Premises will not insure any of Charter School's property or improvements made by Charter School. Accordingly, Charter School shall, at its own expense, maintain in full force and effect an insurance policy on all of its fixtures, equipment, improvements made by Charter School and personal property in,

about, or on the Premises. Said policy to be for "All Risk" coverage insurance, including business interruption and casualty, to the extent of at least ninety percent (90%) of the insurable value of Charter School's property, including all assets listed in the Charter School's property inventory, and consumables. Charter School shall deliver to the District prior to the Commencement Date a certificate of insurance evidencing the existence of the policy required hereunder.

**11.6 Insurance Limits, Rating of Insurers and Certificates.** It is the intent of the parties that policy limits set herein shall be raised from time to time during the Term of this Agreement to account for (i) increases in the estimated full replacement cost of the Premises, and (ii) increases in the general marketplace insurance limits for property. Insurance is to be placed with insurers with a current A.M. Best Insurance rating of no less than A-minus: VII and subject to the approval of District. Charter School shall furnish District with the original certificates and amendatory endorsements effecting coverage required.

**Section 12. Release** Charter School hereby releases District and the United States, and their trustees, officers, agents and employees from any and all claims, demands, loss, expense or injury to the Premises or to the furnishings, fixtures, equipment, inventory or other personal property of Charter School in, about, or upon the Premises, which is caused by perils, events or happenings which are covered by the insurance required by this Agreement or which are the subject of insurance carried by Charter School and in force at the time of loss. Charter School shall procure an appropriate clause in, or an endorsement to, all policies required by this Agreement or any other insurance policy maintained by Charter School, pursuant to which the insurance company or companies waive subrogation or consent to a waiver of a right of recovery against the other party.

**Section 13. Indemnification.** Charter School shall indemnify, hold harmless, and defend the United States, the District, their trustees, officers, employees and agents against and from any and all claims, demands, actions, suits, losses, liability, expenses and costs for any injury, death or damage to any person or property occurring in, on or about the Premises and the Site after District delivers possession of the Premises to the Charter School, arising from the Charter School's use of the Premises or from the conduct of its business or from any activity, work, or other things done, permitted or suffered by Charter School in or about the Site; provided, however, that Charter School shall not have any obligation to indemnify, hold harmless or defend the United States, the District, their trustees, officers, employees and agents against and from any and all claims, demands, actions, suits, losses, liability, expenses and costs for any injury, death or damage to any person or property occurring in, on or about the Premises after District delivers possession of the Premises to the Charter School, resulting from or arising out of those parties' sole negligence or willful malfeasance.

As such, there is also a reciprocal agreement that the District shall indemnify, hold harmless, and defend the United States, the Charter, their trustees, officers, employees and agents against and from any and all claims, demands, actions, suits, losses, liability, expenses and costs for any injury, death or damage to any person or property arising from



the Charter School's use of the Premises or from the conduct of its business or from any activity, work, or other things done, permitted or suffered by Charter School in or about the Site.

#### **Section 14. Default Remedies.**

14.1 Default. The occurrence of any of the following shall constitute a default and breach of this Agreement by Charter School:

(a) Any failure by Charter School to make payments required to be paid hereunder, where such failure continues for ten (10) days after receiving written notice of the failure to make payment;

(b) Any failure by the Charter School to use and occupy the Premises for the operation of a Charter School as required by this Agreement;

(c) The abandonment of the entire Premises by Charter School;

(d) Any failure by the Charter School to maintain insurance on the Premises as outlined herein or to provide evidence of insurance as required by this Agreement, and where the failure continues for 10 days after receiving written notice of the failure to make payment or cancellation of insurance;

(e) Any failure by the Charter School to observe and perform any other provision of this Agreement to be observed or performed by Charter School, where such failure continues for 30 days after receipt of written notice thereof by District to Charter School, unless, however, the nature of the default is such that the same cannot reasonably be cured within said 30 day period. Charter School shall not be deemed to be in default if Charter School shall within the 30 day period commence such cure, and by determination of the District, diligently prosecute the cure to completion. In the event that the District has to issue written notice to the Charter School for violation of the same obligation or provision of this Agreement on three or more occasions, the District may commence legal proceedings to terminate this Agreement, or take any other remedy provided in this Agreement, without the necessity of providing written notice to the Charter School.

(f) If the Charter School's charter is not renewed, or is revoked, or terminated for any reason, after exhaustion of all statutory appeals thereof, or the Charter School ceases to use the Premises for a charter school purpose.

(g) The making by Charter School of any general assignment or general arrangement for the benefit of creditors; the filing by or against Charter School of a petition to have 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 Charter School, the same is dismissed within 60 days); the appointment of a trustee or receiver to take possession of substantially all of Charter School's assets located at the Premises or of Charter School's interest in this Agreement, where possession is not restored to Charter School within 30 days; or the attachment execution or other judicial seizure of

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substantially all of Charter School's assets located at the Premises or of Charter School's interest in this Agreement, where such seizure is not discharged within 30 days

(h) The failure of the charter school to perform, in the judgment of the District, any of the obligations set forth in this Agreement, subject to the cure provision set forth in subdivision (e) of Section 14.1 of this Agreement.

**Section 15. Notice.** Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service or facsimile transmission, addressed as follows:

If to the District:                   Lompoc Unified School District  
1301 North "A" Street  
Lompoc, CA 93436  
Attn: Trevor McDonald, Superintendent

If to the Charter School:       Manzanita Charter School  
P. O. Box 2951  
Lompoc, CA 93438  
Attn: Suzanne Nicastro, Superintendent/Principal

Any notice personally given or sent by facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective five (5) days after deposit in the United States mail.

**Section 16. Subcontract and Assignment.** Neither party shall assign its rights, duties or privileges under this Agreement, nor shall a party attempt to confer any of its rights, duties or privileges under this Agreement (including that of sublease) on any third party, without the written consent of the other party and the United States.

**Section 17. Independent Status.** This Agreement is by and between two independent entities and is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, or association.

**Section 18. Entire Agreement of Parties.** This Agreement and the MOU constitute the entire agreement between the parties on the subjects covered by these agreements and supersede all prior discussions, negotiations and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by the parties.

**Section 19. California Law.** This Agreement shall be governed by and the rights, duties and obligations of the parties shall be determined and enforced in accordance with

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the laws of the State of California. The parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in Santa Barbara County, California.

**Section 20. Waiver.** The waiver by any party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

**Section 21. Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors, and assigns.

**Section 22. Counterparts.** This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.

**Section 23. Captions.** The captions contained in this Agreement are for convenience only and shall not in any way affect the meaning or interpretation hereof nor serve as evidence of the interpretation hereof, or of the intention of the parties hereto.

**Section 24. Severability.** Should any provision of this Agreement be determined to be invalid, illegal or unenforceable in any respect, such provision shall be severed and the remaining provisions shall continue as valid, legal and enforceable.

**Section 25. Incorporation of Recitals and Exhibits.** The Recitals and each exhibit attached hereto are incorporated herein by reference.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

**LOMPOC UNIFIED SCHOOL DISTRICT**

**By:** \_\_\_\_\_ **O**\_\_\_\_\_

Name and Title: Doug Sorum, Assistant Superintendent

**MANZANITA CHARTER SCHOOL**

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

Name and Title: Suzanne Nicastro, Superintendent/Principal

Manzanita Public Charter School

**EXHIBIT A**  
**Lease from United States for Los Padres School Site**

**EXHIBIT B**

**Description of Portion of School Site to be Occupied by Manzanita (the "Premises,")**



**EXHIBIT C**  
**Proof of Insurance**

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