

Board Office Use: Legislative File Info.	
File ID Number	12-0606
Introduction Date	5-23-12
Enactment Number	12-1481
Enactment Date	6-13-12



OAKLAND UNIFIED  
SCHOOL DISTRICT

Community Schools, Thriving Students

# Memo

To Board of Education

From Jacqueline Minor, General Counsel

Board Meeting Date May 23, 2012

Subject **FACILITIES AND OPERATIONS AGREEMENT BY AND BETWEEN THE OAKLAND UNIFIED SCHOOL DISTRICT AND 100 BLACK MEN OF THE BAY AREA COMMUNITY CHARTER SCHOOL**

**Action** Action by the Board on the Facilities and Operations Agreement By and Between The Oakland Unified School District and 100 BLACK MEN OF THE BAY AREA COMMUNITY CHARTER SCHOOL

**Background** See the Preamble in the MOU

**Discussion** This Agreement includes the use of the Marshall school facility, which will continue to be maintained by District employed Custodians and the District's Building and Grounds Department; access to data systems, professional development, new teacher support, and technology support. The Charter School will contribute its pro rata share to the payment of the State Emergency Loan.

**Fiscal Impact** Revenues to the District in the amount of \$ 453,564 per year

**Attachment** Facilities and Operations Agreement By and Between The Oakland Unified School District and 100 BLACK MEN OF THE BAY AREA COMMUNITY CHARTER SCHOOL

**FACILITIES AND OPERATIONS AGREEMENT**

**BY AND BETWEEN**

**OAKLAND UNIFIED SCHOOL DISTRICT**

**AND**

**100 BLACK MEN OF THE BAY AREA CHARTER**

**SCHOOLS**

**FACILITIES AND OPERATIONS AGREEMENT  
BY AND BETWEEN  
THE OAKLAND UNIFIED SCHOOL DISTRICT,  
AND  
100 BLACK MEN OF THE BAY AREA CHARTER SCHOOLS**

**TABLE OF CONTENTS**

Preamble

ARTICLE 1 - FACILITIES PROVISIONS..... 4

    Section 1.1. Use of Dedicated Space. .... 4

    Section 1.2. Facility & Amenities – Occupancy & Use. .... 4

    Section 1.3. Maintenance and Operations. .... 5

    Section 1.4. Annual Application Process and Reimbursement..... 6

    Section 1.5. Modernization. .... 6

    Section 1.6. Utilities and Custodial Services. .... 6

    Section 1.7. Installation of Improvements. .... 6

    Section 1.8. Condition of Property..... 7

    Section 1.9. Title to Property..... 7

    Section 1.10. Access..... 8

    Section 1.11. Surrender of Dedicated Space. .... 8

    Section 1.12. Holding Over..... 8

    Section 1.13. Liens. .... 8

    Section 1.14. Damage and Destruction..... 9

    Section 1.15. Eminent Domain..... 9

    Section 1.16 Use of King Estates..... 10

ARTICLE 2 - OPERATIONS PROVISIONS..... 10

    Section 2.1. Student Assignment, Enrollment and Options. .... 10

    Section 2.2. Custodial Services. .... 10

    Section 2.3. English Learner Services. .... 11

    Section 2.4. Nutrition Services..... 11

    Section 2.5. Certificated Substitutes. .... 11

    Section 2.6. Grants, Programs Sponsored by Third Parties. .... 11

    Section 2.7. Beginning Teacher Support and Assessment (BTSA)..... 11

    Section 2.8. Professional Learning Support Services. .... 11

    Section 2.9. Family, Community Partnership Services. .... 12

    Section 2.10. Purchasing..... 12

    Section 2.11. Research, Assessment & Data (RAD)..... 12

    Section 2.12. Assessments. .... 12

    Section 2.13. Student Records..... 13

    Section 2.14. E-rate..... 13

    Section 2.15. District Website..... 13

    Section 2.16. Technology Support Services..... 13

    Section 2.17. Telecommunications. .... 13

    Section 2.18. Other Services..... 14

    Section 2.19. Fingerprinting ..... 14

ARTICLE 3 - SPECIAL EDUCATION AND 504 SERVICES.....	14
Section 3.1. Education Services .....	14
Section 3.2. Child Find ("Search and Serve" Notices).....	15
Section 3.3. Public School of the District for Purposes of Special Education.....	15
Section 3.4. Division and Coordination of Responsibility.....	15
Section 3.5. Identification and Referral.....	17
Section 3.6. Complaints.....	18
Section 3.7. Due Process Hearings.....	18
Section 3.8. Transfer of Special Education Apportionment Directly to District.....	19
Section 3.9. CHARTER SCHOOL Contribution to Encroachment.....	19
Section 3.10. Discipline.....	19
Section 3.11. Parent Revocation of Consent for Special Education.....	20
Section 3.12. Section 504 of the Rehabilitation Act of 1973.....	20
Section 3.13. Student Application/Registration/Records/Withdrawal.....	20
Section 3.14. General and Special Education – Discipline and Documentation.....	21
ARTICLE 4 - CONTRIBUTION TO PAYMENT OF DISTRICT EMERGENCY STATE LOAN .....	21
ARTICLE 5 - DISTRICT OVERSIGHT AND CHARTER RESPONSIBILITIES.....	21
Section 5.1. Oversight Obligations .....	21
Section 5.2. Compliance with Generally Accepted Accounting Principles .....	23
Section 5.3. Oversight Fees.....	24
ARTICLE 6 - Legal Relationship and Compliance.....	24
Section 6.1. Legal Relationship.....	24
Section 6.2. No Liability for Debt; No Authority to Bind the District.....	24
Section 6.3. Non-Discrimination.....	24
Section 6.4. Drug-Free Workplace.....	25
Section 6.5. Safety.....	25
Section 6.6. Compliance with Laws.....	26
ARTICLE 7 - INDEMNIFICATION, INSURANCE; DEFAULT; DISPUTE RESOLUTION.....	26
Section 7.1. Indemnification.....	26
Section 7.2. Insurance.....	27
Section 7.3. Default and Remedies.....	28
Section 7.4. Dispute Resolution.....	30
Section 7.5. Term; Option to Renew .....	31
ARTICLE 8 - PAYMENTS .....	32
Section 8.1. Payment.....	32
ARTICLE 9 - POINT OF CONTACT; FUTURE RECONCILIATION; CONTINUOUS REVIEW; ANNUAL QUALITY REVIEW; TWO YEAR REVIEW.....	33
Section 9.1. Point of Contact.....	33
Section 9.2. Future Adjustments or Reconciliations; Annual Review; Quality Review Committee.....	33
Section 9.3. Year Two Review.....	33
ARTICLE 10 - GENERAL PROVISIONS.....	34
Section 10.1. Subcontract and Assignment.....	34
Section 10.2. Independent Status.....	34

Section 10.3. Entire Agreement. .... 34

Section 10.4. California Law. .... 34

Section 10.5. Waiver..... 34

Section 10.6. Successors and Assigns..... 34

Section 10.7. Counterparts..... 34

Section 10.8. Captions. .... 34

Section 10.9. Severability..... 35

Section 10.10. Incorporation of Recitals and Exhibits..... 35

Section 10.11. Notice..... 35

Section 10.12. Modifications. .... 35

Section 10.13. Force Majeure. .... 35

Section 10.14. Incorporation of Recitals and Exhibits..... 35

**FACILITIES AND OPERATIONS AGREEMENT  
BY AND BETWEEN  
THE OAKLAND UNIFIED SCHOOL DISTRICT,  
AND  
100 BLACK MEN OF THE BAY AREA COMMUNITY CHARTER SCHOOL**

THIS AGREEMENT ("Agreement") is effective on May 23, 2012 and is entered into by and between the Oakland Unified School District, a unified public school district organized and existing under the laws of the State of California (the "District"), THE 100 BLACK MEN OF THE BAY AREA CHARTER SCHOOLS, a California non-profit public benefit corporation which was granted a charter to operate the 100 Black Men of the Bay Area Community School ("CHARTER SCHOOL") by the District Board of Education on January 11, 2012. The District and CHARTER SCHOOL are collectively referred to as "the Parties."

**PREAMBLE**

We are now in the 58<sup>th</sup> year since the Supreme Court's decision in *Brown vs the Brown of Education* when our nation made the commitment to equal educational opportunities and the dismantling of segregated schools. However, educational justice remains one of the most significant civil rights that has eluded many African American students and their families. In particular, both nationally and locally, the academic and social outcomes for many African American male students paint an alarming picture of societal failure.

Despite improvements in some areas in recent years, in Oakland, African American male students have the worst overall outcomes of any demographic group. In Alameda County, African American boys and men have the highest death rates and bear the heaviest burden of chronic diseases among all groups of males. In this District in 2009-10, only 28 percent of African American male students tested proficient or advanced on the English Language Arts CST, compared to 78 percent of White male students (a 50 percent-point gap); and in 2009-10, only 30 percent of African American male students tested proficient or advanced on the Math CST compared to 76 percent of White male students (a 46 percent-point gap).

It is indisputable that the achievement gap between African American male students and other students limits their life chances, and has long-term implications for the health, economic

well-being, and participation of African American men in society. Low levels of academic achievement are linked to lower educational attainment, which in turn are linked to lower earnings in adulthood, poor adult health and reduced life expectancy, higher rates of incarceration, and lower levels of civic engagement. Raising the achievement levels of African American male students has the potential to alter the life course of the next generation of African American children as well, because greater parental education is correlated with better child outcomes. Society as a whole stands to benefit from raising the achievement of African American male students.

Many excuses are proffered as to why we can not successfully education African American males – everything including historical racism, poverty, hunger, family structure, and the language spoken. It is clear that progress will require an unequivocal commitment by the entire community.

In late 2010, this District, with the support of a number of foundation partners, launched a bold new initiative aimed at addressing the disparities in educational and social outcomes for African American male students in Oakland. This six-year initiative established a set of strategies aimed at improving outcomes and eliminating these disparities. The key goals of the African American Male Initiative are: 1) increasing graduation rates; 2) increasing attendance rates; 3) increasing literacy rates; 4) decreasing suspension rates; 5) decreasing incarceration rates; and 6) improving academic performance in Middle and High School students.

In support of this initiative, the Board of Education in January 2012 granted a charter to THE 100 BLACK MEN OF THE BAY AREA CHARTER SCHOOLS, a California non-profit public benefit corporation, to operate the 100 Black Men of the Bay Area Community School ("CHARTER SCHOOL").

The District had hoped that the District, in collaboration and in partnership with its unions, would make the changes and concessions necessary for the CHARTER SCHOOL to be a dependent charter within the OUSD community of schools. That did not happen within a timeframe set by the 100 BLACK MEN OF THE BAY AREA CHARTER SCHOOLS. Therefore, the charter petitioners and the District determined that it was in the best interests of the students the CHARTER SCHOOL seeks to serve for the CHARTER SCHOOL to proceed expeditiously with implementation of its commitment to open a school in Oakland in 2012-13 school year.

This Agreement is the second agreement between the District and a charter school that represents a fundamental change in the way the District and charter schools have operated. Ultimately, this Agreement should be seen as another example of the District's implementation of the Theory of Action adopted by the Board of Education on December 11, 2011, and the District's commitment to serve the children of Oakland by harnessing all the resources of this community and using those resources in the most effective manner possible.

Under the terms of this Agreement, THE 100 BLACK MEN OF THE BAY AREA CHARTER SCHOOLS, will become a District partner school; will have use of a District school facility that will continue to be maintained by District employed Custodians and the District's Building and Grounds Department; will share access to data systems, professional development, new teacher support, and testing data; and among other things, will use the District's special education resources, nutrition services and technology support. In addition, the District will provide District employees, both classified and certificated, who seek to work with the CHARTER SCHOOL and who are selected by the CHARTER SCHOOL, a two year leave of absence.

**NOW THEREFORE**, in consideration of the covenants and agreements set forth, the Parties agree as follows:

## **ARTICLE 1 - FACILITIES PROVISIONS**

### **Section 1.1. Use of Dedicated Space.**

The District agrees to allow CHARTER SCHOOL use of the following Dedicated Space:

Marshall Elementary School  
3400 Malcolm Ave.  
Oakland, CA 94605

for the sole purpose of operating CHARTER SCHOOL educational programs in accordance with its charters. CHARTER SCHOOL's right to use of the Dedicated Space shall commence on July 15, 2012. Upon the termination of this Agreement, the right to use and occupation of the Dedicated Space and the facilities and equipment thereon shall revert to the District, subject to the parties' negotiation of a successor Agreement. As titleholder to the Dedicated Space and 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 such Dedicated Space, facilities and equipment for District use.

Although CHARTER SCHOOL shall have the use of the Dedicated Space, District with the prior consent of CHARTER SCHOOL, may agree to make the Dedicated Space available to members of the community in accordance with the provisions of the Civic Center Act (Education Code section 38131, *et seq.*) If CHARTER SCHOOL authorizes access to the Dedicated Space pursuant to the Civic Center Act, CHARTER SCHOOL assumes the risk of loss or damage to property as a result of such access.

For purposes of compliance with the Civil Center Act with respect to the Dedicated Space only, the governing body of CHARTER SCHOOL shall hold the same powers and obligations applicable to School District Boards of Trustees under Education Code sections 38130-38139 and shall also follow District Board Policy and Administrative Regulations in making use of the facilities accessible to members of the community.

### **Section 1.2. Facility & Amenities – Occupancy & Use.**

**FURNISHINGS AND EQUIPMENT:** The District shall deliver the Dedicated Space equipped with furnishings required for the CHARTER SCHOOL program. After the Dedicated Space is vacated by the existing District program, the Parties agree to meet and confer to establish a list of additional furnishings that are needed which the District may be able to provide. In addition, the District agrees to install a commercial oven and hood in the kitchen, provide and install at least six smartboards in classrooms designated by CHARTER SCHOOL and designate an area on the playground as a "track".

At the time of the execution of this Agreement, CHARTER SCHOOL agrees that the furnishings and equipment located at the Dedicated Space are owned by the District. The Parties shall, in cooperation, prepare a complete inventory of all furnishings and equipment at the Dedicated Space at the time this Agreement is executed.

Thereafter, CHARTER SCHOOL shall inventory all such property at the site on an annual basis and provide an inventory list to the District within thirty (30) days setting forth the

property belonging to each party. The District may submit objections to the list within thirty (30) days of receipt of the list. The list shall be made available and maintained at CHARTER SCHOOL and in the District Fiscal Services Department. All parties shall meet in good faith to resolve any disputes about the ownership of property in accordance with the dispute resolution provisions in this Agreement.

**SECURITY:** The Dedicated Space shall be wired to the Dedicated Space's alarm system. CHARTER SCHOOL shall be responsible for costs incurred due to false alarms and security breaches that are related to the Dedicated Space. CHARTER SCHOOL shall operate a closed campus and cooperate with the District on security issues. CHARTER SCHOOL may have a unique security code. If there is a fire at the property, CHARTER SCHOOL shall immediately notify the District but no later than within one business day.

**SCHOOL SAFETY OFFICER:** If School Safety Officer services are to be provided to CHARTER SCHOOL for the Dedicated Space, the CHARTER SCHOOL has the option to contract with the District for such services for a fee. CHARTER SCHOOL will be responsible for costs of on-site security staff, whether provided by the District or an external provider.

**EMERGENCY:** In an emergency, including if the Space is destroyed or damaged in any material way, the District reserves the right to temporarily interrupt CHARTER SCHOOL use of the Space, or any Dedicated Space facilities or systems.

### **Section 1.3. Maintenance and Operations.**

**MAINTENANCE AND OPERATION DEFINED.** 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.

**DISTRICT AND CHARTER SCHOOL RESPONSIBILITIES.** The District and CHARTER SCHOOL shall be responsible for performing M&O on the Dedicated Space, including the Dedicated Space, to maintain a good, safe and sanitary condition, as described in CHARTER SCHOOL Facilities Guide attached hereto as Exhibit A. The District shall provide M&O services to the Dedicated Space consistent with the District's M&O standards and policies and shall provide these services at a service level similar to that provided to the District public schools. Costs of M&O services provided by the District are included in the fees and costs paid by CHARTER SCHOOL. If CHARTER SCHOOL requests any additional facilities-related services that are above and beyond the service level provided to District public schools, the actual costs of such services shall be billed to CHARTER SCHOOL; provided however, the District shall provide CHARTER SCHOOL in advance of commencement of such additional facilities-related services a good faith estimate of the costs and shall not commence such work until CHARTER SCHOOL provides the District with a written authorization to commence the work .

**DEFERRED MAINTENANCE PLAN AND SERVICES.** "Deferred Maintenance" shall mean facilities repair or replacement projects as described in Education Code section 17582(a) or additionally approved by the State Allocation Board; and further detailed by Office of Public School Construction Deferred Maintenance Program Handbook, as updated from time to time.. The Parties acknowledge and agree that the District is responsible to deliver Deferred Maintenance to the Dedicated Space. The District acknowledges and agrees that it will carry out its responsibilities in a good and workmanlike manner by properly qualified and licensed personnel and in accordance with all applicable laws and District policies. The District further

acknowledges and agrees that all work it is obligated will be timely commenced and diligently prosecuted through completion.

**Section 1.4. Annual Application Process and Reimbursement.**

CHARTER SCHOOL shall not be required to submit a Prop. 39 request on an annual basis during the term of this Agreement. Further, the over-allocation provisions of 5 C.C.R. Section 11969.8 shall not be applicable during the term of this Agreement; the District shall not collect a pro rata share for the facility as outlined in 5 CCR 11969.7.

**Section 1.5. Modernization.**

In the event that the District designates matching facilities funds for the facility and begins modernizing the facility, the Parties will meet to discuss the issue of modernization for the Dedicated Space and impact on the schools' occupancy.

**Section 1.6. Utilities and Custodial Services.**

**Utilities.** CHARTER SCHOOL shall be solely responsible for the cost of all utilities used or consumed by CHARTER SCHOOL on the Dedicated Space, including charges for electricity, natural gas, water, sewer, waste disposal, telephone and internet connectivity. With respect to internet connectivity, if feasible, CHARTER SCHOOL may assume use of the pre-existing T-1 line and transfer billing for the use of such line over to CHARTER SCHOOL.

**Custodial Services.** CHARTER SCHOOL shall agree to the recommended level of custodial service identified by the District's Custodial Services Director; the recommended number of FTE, which includes custodial supplies, shall be comparable to that of other District school sites with the same or similar square footage. Throughout the term of this Agreement, unless subsequently modified, each site shall maintain the agreed number of custodians, who shall be District employees, and their salaries and benefits shall be reimbursed by CHARTER SCHOOL to the District. Substitutes for illness and other District Leave, such as vacation and personal leaves, and emergency cleaning shall be provided by the District but shall be paid for by CHARTER SCHOOL, provided however for the term of this Agreement the custodial costs are included in the payments set forth in Article 7 of this Agreement.

In partnership with the CHARTER SCHOOL, the District shall collaborate with the CHARTER SCHOOL and assign District staff that will provide services to students in the CHARTER SCHOOL in such a way as to support the goals and objectives of the charter petition and the mission of the school.

CHARTER SCHOOL may supplement the custodial services provided by District custodians with parent volunteers, or with prior written approval of the District, a third party vendor, provided there is no reduction in the number of agreed upon custodians provided by the District. Nothing in this section is intended to preclude CHARTER SCHOOL from holding parent led Work Days whereby parent volunteers assist with clean up of the Dedicated Space. CHARTER SCHOOL with the support of the District may meet and confer with collective bargaining representatives of the custodians to determine if a side letter agreement will further support the schools goals and objectives.

**Section 1.7. Installation of Improvements.**

**IMPROVEMENTS:** During the Term of this Agreement, CHARTER SCHOOL may not make alterations, additions, or improvements to the Dedicated Space ("Improvements"), without the prior written consent of the District, and if required, the Division of the State

Architect ("DSA"). CHARTER SCHOOL may submit a request to make Improvements to the Dedicated Space and the District agrees to act upon such a timely and complete request within thirty (30) days. If the District fails to provide a response within thirty (30) days, the request shall be deemed approved. The District's approval of any Improvements, including the construction schedule, work hours, and modifications, shall be at District's sole and absolute discretion, and District may disapprove of such improvements without reason. Contractors retained by CHARTER SCHOOL 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 Improvements shall be performed in a sound and workmanlike manner, in compliance with all laws applicable to charter schools. The District or the District's agent shall have a continuing right at all times during the period that Improvements are being constructed or installed to enter the premises 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.

SIGNAGE: CHARTER SCHOOL may install signage at the Dedicated Space including one sign at each school's main entrance stating CHARTER SCHOOL name and that the school is an **OAKLAND UNIFIED SCHOOL DISTRICT PARTNER SCHOOL**, a sign indicating the main office of CHARTER SCHOOL, and other directional signs as appropriate. The signage shall not require any Improvement to the Dedicated Space in order to erect such signage. Such signage shall be in compliance with any District standards and CHARTER SCHOOL's receipt of any applicable permits and approvals required under any municipal or other governmental laws, ordinances, rules or regulations; provided, that in the event of any conflict between the District's standards and any applicable municipal or governmental permit and/or approval, the terms and conditions of the municipal or governmental permit and/or approval shall prevail. CHARTER SCHOOL may place additional signs on the property with prior District approval.

### **Section 1.8. Condition of Property.**

CHARTER SCHOOL, at its expense, shall comply with all applicable laws, regulations, rules and orders with respect to their use and occupancy of the Dedicated Space, including, without limitation, those relating to health, safety, noise, environmental protection, waste disposal, and water and air quality. CHARTER SCHOOL shall not be responsible for any and all environmental conditions that existed prior to their occupancy of the Dedicated Space. The District shall remain responsible for compliance with all laws, including but not limited to, 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. CHARTER SCHOOL shall only assume responsibility for compliance with ADA and FEHA access rights to the extent of any modifications or improvement made by CHARTER SCHOOL.

Should any discharge, leakage, spillage, emission, or pollution of any type occur upon or from the Dedicated Space due to CHARTER SCHOOL use and occupancy thereof, CHARTER SCHOOL at its expense, shall be obligated to clean all the property affected, to the satisfaction of the District and any governmental agencies having jurisdiction over the Dedicated Space.

### **Section 1.9. Title to Property.**

The parties acknowledge that title to the Dedicated Space is held by the District and shall remain in the District at all times.

### **Section 1.10. Access.**

The District and its authorized representatives shall have the right, after forty-eight (48) hours prior written notice to CHARTER SCHOOL, to enter the Dedicated Space during normal business hours for the purpose of inspection and audit ("Inspection"); or to perform Deferred Maintenance in or on the Dedicated Space. Nothing in this section shall prevent the District from entering the Dedicated Space to address an emergency nor shall this provision restrict the District's authority to enter the Dedicated Space without advanced notice to perform its general oversight responsibilities under the terms of charters and applicable law. An "emergency" shall be defined to include circumstances that risk the health and safety of students, personnel or other persons on the Dedicated Space, or circumstances that risk further imminent damage or destruction to the facilities or property located at the Dedicated Space, or otherwise jeopardizes the operation of the Dedicated Space including, but not limited to, the safety and sanitary condition of the Dedicated Space.

### **Section 1.11. Surrender of Dedicated Space.**

Upon the termination date or other termination of this Agreement, CHARTER SCHOOL shall peaceably quit and surrender to the District the Dedicated Space together with the Improvements and all alterations approved by the District in good order and condition, except for normal wear and tear, or for any portion of the Dedicated Space condemned and any damage and destruction for which CHARTER SCHOOL is not responsible hereunder.

### **Section 1.12. Holding Over.**

CHARTER SCHOOL shall surrender possession of the Sites immediately upon the expiration of the term or earlier termination of this Agreement. CHARTER SCHOOL will not be permitted to hold over possession of the Sites after such expiration or earlier termination of the Term without the express written consent of the District, which consent the District may withhold in its sole and absolute discretion. Subject to the Dispute Resolution provision in Section 6.4 below, any holdover by CHARTER SCHOOL shall constitute a breach of this Agreement entitling the District to pursue any and all remedies available at law and in equity, including without limitation consequential damages resulting therefrom. During any hold over period CHARTER SCHOOL shall: (i) not occupy and use the premises during the hold over period except to remove its personal property and Alterations as it has coordinated with District; and (ii) authorize District to charge CHARTER SCHOOL \$100 per day (or any portion thereof) on the sixth day of the hold over and said per day rate shall increase by 100% for each 15 day period thereafter.

### **Section 1.13. Liens.**

CHARTER SCHOOL shall not suffer or permit any liens to stand against the Dedicated Space, or any part thereof, by reason of any work, labor, services or materials done, supplied, or claimed to have been done or supplied. If as a result of work performed by or under the direction of CHARTER SCHOOL any such lien shall at any time be filed against either Dedicated Space, CHARTER SCHOOL shall provide written notice thereof to the District as soon as notice of such lien or action comes to their knowledge. CHARTER SCHOOL shall cause the lien or action to be discharged of record within thirty (30) days after the date of the filing of same, either by payment, deposit or bond, unless a bond therefore is already in effect. Nothing in this Agreement shall be construed as consent or agreement by the District to subject its estate in the Sites or any estate that may be construed, in favor of either charter school under this

agreement to liability under any mechanics' lien law or to any contractor or laborer for work performed.

If any such liens are not so discharged within thirty (30) days after the date of the filing of the same, the District, without waiving its rights and remedies based on such breach by CHARTER SCHOOL whose dealings gave rise to the lien and without releasing CHARTER SCHOOL from any of its obligations, cause such liens to be released by any reasonable means, including payment in satisfaction of the claim giving rise to such lien. The District's rights under this Section 1.13 are not subject to the Dispute Resolution provision of this Agreement.

#### **Section 1.14. Damage and Destruction.**

NOTICE TO THE DISTRICT. CHARTER SCHOOL shall provide written notice to the District immediately of any casualty that wholly or partially damages or destroys the Dedicated Space.

(1) If the Parties mutually determine that all or substantially all of the Dedicated Space are inaccessible or unusable by CHARTER SCHOOL in a safe manner, then the parties may mutually agree to terminate Article 1 of this Agreement.

(2) If the Parties mutually determine that CHARTER SCHOOL can safely continue its educational program, CHARTER SCHOOL may elect to continue Article 1 of this Agreement in effect subject to adjustments in the fees.

(3) Upon mutual agreement between the parties, CHARTER SCHOOL may elect to pay the District for the full estimated cost and expense to repair such damage or destruction, or pay in accordance with a structured payment schedule agreed to by the District. If CHARTER SCHOOL exercises such option, this Article 1 of this Agreement shall continue in full force and effect subject to adjustments in the fees.

(4) If Article 1 of this Agreement is terminated as provided above, the District shall house CHARTER SCHOOL's entire program in a single facility for the remainder of the school year. If the District cannot provide CHARTER SCHOOL with a single facility, the District shall provide sufficient classrooms to house CHARTER SCHOOL's entire program across multiple facilities or by temporary use of DSA compliant modular classrooms, as permitted by law, either on the Dedicated Space or at other District real property that the District deems appropriate; provided, that pursuant to Section 47614(b)(1) of the Education Code nothing herein shall obligate the District to expend unrestricted general fund revenues.

#### **Section 1.15. Eminent Domain**

TERMINATION OF ARTICLE 1 OF THIS AGREEMENT. Article 1 of this Agreement shall terminate if all of the Dedicated Space is permanently taken under the power of eminent domain. If only a part of the Dedicated Space is permanently taken under the power of eminent domain, the District or CHARTER SCHOOL may elect to terminate Article 1 of this Agreement as to the affected charter school by providing sixty (60) days' written notice to the other party. In the event of a permanent partial taking which does not result in termination of Article 1 of this Agreement, fees shall be proportionately reduced based on the portion of the Dedicated Space rendered unusable, and the District shall restore the Dedicated Space by constructing a demising wall deemed necessary by the District to separate the Dedicated Space from the portion permanently taken. In the event the District terminates Article 1 of this Agreement pursuant to this Section, the District shall make best efforts to house CHARTER SCHOOL's entire program in a contiguous facility for the remainder of the school year. If the

District cannot house the entire program in a single contiguous facility, the District shall make best efforts to provide CHARTER SCHOOL with sufficient classrooms to house the entire program across multiple facilities or by use of temporary modular classrooms.

**ALLOCATION OF CONDEMNATION AWARD.** In the event of a permanent condemnation or taking of all or part of the Dedicated Space, the District shall be entitled to any and all awards which may be made in such taking or condemnation relating to all interests, including the fee title, to the Dedicated Space. Nothing contained in this Section 1.15 shall be deemed to give the District any interest in or to require CHARTER SCHOOL, to assign to the District any separate award as designated by the condemning authority made to CHARTER SCHOOL for (i) the taking of CHARTER SCHOOL's personal property, (ii) interruption of or damage to CHARTER SCHOOL; or (iii) amounts attributable to CHARTER SCHOOL's relocation expenses.

**TEMPORARY TAKING.** No temporary taking of the Dedicated Space or any part of the Dedicated Space under this Agreement shall terminate this Agreement or give CHARTER SCHOOL any right to any abatement of any payments owed to the District pursuant to this Agreement, provided that such temporary taking does not continue for more than five (5) consecutive days or a total of five (5) non-consecutive days in any thirty (30) day period. Any award made by reason of such temporary taking shall belong entirely to the District, except as to compensation for (i) the temporary taking of personal property, (ii) interruption of or damage to CHARTER SCHOOL's business, or (iii) amounts attributable to CHARTER SCHOOL's temporary relocation expenses.

#### **Section 1.16 Use of King Estates.**

CHARTER SCHOOL may have weekend use of the gymnasium and recreational fields at the King Estates campus under the Civic Center Act, subject to the priorities of use as provided in the Act and the District's Civic Center Handbook. CHARTER SCHOOL, as soon as practicable will provide to the District a list of the dates and times it proposes to use the King Estates campus.

#### **Section 1.17 Joint Use of John Marshall Field Adjacent to the Dedicated Space**

The field adjacent to the Dedicated Space is the John Marshall Field; the field is owned and operated by the City of Oakland and it is one of the Joint Facilities Use designated on an agreement between the City and the District. The field is available for CHARTER SCHOOL Monday through Friday until 4 PM. Outside of these hours, permits should be obtained through the City's Recreation and Parks Department.

### **ARTICLE 2 - OPERATIONS PROVISIONS**

#### **Section 2.1. Student Assignment, Enrollment and Options.**

The CHARTER SCHOOL maintains its independent student recruitment efforts, and has the option, in its sole discretion, to use District student assignment services which may include Options, student assignment, assignment lottery and recruitment..

#### **Section 2.2. Custodial Services.**

See Article 1, Section 1.6 of this Agreement.

### **Section 2.3. English Learner Services.**

The District shall coordinate with CHARTER SCHOOL the initial English Language testing for English Language Learners. Students who enroll at CHARTER SCHOOL shall complete a Home Language Survey at the time of enrollment. CHARTER SCHOOL shall then fax the surveys to the District. After testing, the District shall upload the information into the District system and send the test results to CHARTER SCHOOL.

### **Section 2.4. Nutrition Services**

CHARTER SCHOOL has notified the District that for the 2012-13 school year, it will not participate in the District sponsored Nutrition Services program. Provided CHARTER SCHOOL notifies the District prior to May 1 of any year during the term of this Agreement, CHARTER SCHOOL may elect to participate in the District Nutrition Services program and use and develop an independent nutritional program or contract with another provider for these services.

### **Section 2.5. Certificated Substitutes.**

CHARTER SCHOOL may request teacher substitutes through the District's electronic system called SmartFindExpress. Substitutes assigned to CHARTER SCHOOL through SmartFindExpress shall be employees or contractors of CHARTER SCHOOL and not the District and shall be paid at substitute rates established by CHARTER SCHOOL.

### **Section 2.6. Grants, Programs Sponsored by Third Parties.**

As a District partner school, the District will support the grant and additional funding applications of CHARTER SCHOOL. If the District applies for additional sources of funding in the form of grants and/or categorical funding at the request of and for the benefit of CHARTER SCHOOL, which it may do in its sole discretion, the District will charge the maximum indirect costs as allowed under law or as specified by the specific funding source. Funds shall be allocated to CHARTER SCHOOL on a prorated basis related to the formula that generates the funds. For example, if funds are generated on a per eligible students basis, they shall be allocated to CHARTER SCHOOL on a per eligible student basis minus the administration fee (i.e., indirect cost fee) charged by the District.

Specifically for the ASES and 21st CCLC after school grants, there are additional administrative and evaluation costs above the allowable 5 percent indirect that the California Department of Education (CDE) authorizes the District to assess against the grant award. These additional costs include custodial services and the costs incurred by the District's After School Programs Office for processing fiscal paperwork, as well as providing training, monitoring, technical assistance, program evaluation costs, the Cityspan attendance database system, and grant reporting to CDE. The ASES and 21st CCLC grants set a maximum ceiling of 15 percent for administrative costs overall, which includes no more than 5 percent indirect costs.

### **Section 2.7. Beginning Teacher Support and Assessment (BTSA).**

CHARTER SCHOOL may participate in District provided BTSA training, programs and services at the costs set forth in Exhibit B The cost of participation in the BTSA program is not included in this Agreement and will be billed separately to CHARTER SCHOOL.

### **Section 2.8. Professional Learning Support Services.**

CHARTER SCHOOL, may at its option, participate in professional learning and development opportunities or events provided by the District.

### **Section 2.9. Family, Community Partnership Services.**

The Parties shall meet and confer to determine the FCPS programs and services that may be available to CHARTER SCHOOL .

### **Section 2.10. Purchasing.**

CHARTER SCHOOL may access and order from the District E-Marketplace for custodial, office, and classroom supplies. These orders shall be delivered to CHARTER SCHOOL directly. CHARTER SCHOOL shall be invoiced as provided in Article 7 of this Agreement for all purchases under this Section.

### **Section 2.11. Research, Assessment & Data (RAD).**

All students attending CHARTER SCHOOL shall be entered into the District's student information system (Aeries). CHARTER SCHOOL shall have the responsibility to maintain all student information in the District's format.

State CST testing shall be conducted independently by CHARTER SCHOOL, but RAD shall create the "pre-ID file" for labeling of the tests from the District student information system. When test results are returned a copy of the scores shall be sent to RAD to be uploaded into the District system and CHARTER SCHOOL student files. RAD shall then run California English Language Development Test (CELDT) pre ID labels for the students at from the District student information system. RAD shall then also run the R30 count for CHARTER SCHOOL that is submitted to the State annually. RAD shall process and submit the Physical Fitness scores for CHARTER SCHOOL students using each school's CDS Code. Further, RAD shall report student scores on the Edusoft<sup>R</sup> system for analysis and review. CHARTER SCHOOL may request Annual CELDT assessment services from RAD.

### **Section 2.12. Assessments.**

#### **Local**

All District assessments administered in paper or electronic format will be available for CHARTER SCHOOL. Paper assessments will be delivered to CHARTER SCHOOL in accordance with predetermined District timelines.

#### **State**

All state mandated assessments will be sent to CHARTER SCHOOL based on predetermined State and District timelines. All reports sent by the California Department of Education will be distributed to CHARTER SCHOOL in accordance with predetermined state and district timelines.

#### **Assessment Platform**

Edusoft<sup>R</sup> and reports specific to Edusoft<sup>R</sup> will be accessible by CHARTER SCHOOL. The District shall be responsible for uploading updated student files to Edusoft<sup>R</sup> according to predetermined District timelines.

#### **Data Reporting**

All data reports currently created by the Data Support Team will be available for CHARTER SCHOOL. Additional data requests may be available upon request at an additional fee.

#### **Training**

All State mandated training sessions will be available to CHARTER SCHOOL.

### **Section 2.13. Student Records.**

CHARTER SCHOOL student information shall be entered into the District student information system (Aeries) when a student enrolls. Each student shall be assigned a student ID number as well as a CSIS student ID number. If the student is new, then CHARTER SCHOOL shall create a cum folder for the student. If a student is transferring from a District school to CHARTER SCHOOL, the CHARTER SCHOOL shall send a request for records to the student's former school. Either the former school or the District's Student Records Department shall send the records to CHARTER SCHOOL or CHARTER SCHOOL office, as applicable. All student records shall to be maintained in accordance with applicable law. All immunization history, suspensions and retention information shall be entered into the District's student information system and also included in the student's cum record.

Should a student leave CHARTER SCHOOL for a District school and the subsequent school requests the student's records, CHARTER SCHOOL shall forward all records to that subsequent school. If a student leaves for another school district, CHARTER SCHOOL shall send the student's records to the District's Student Records Department accompanied by the receiving school district's request.

At the end of each school year, CHARTER SCHOOL shall scan and send all records electronically to the District's Student Records Department for students who have left during the school year but for whom the records have not been sent to a subsequent school or district.

### **Section 2.14. E-rate.**

Commencing for the 2013-14 school year, CHARTER SCHOOL, at its option may be considered a school of the District for purposes of E-rate filing. CHARTER SCHOOL shall provide the District with notice if it opts to be a school of the District for E-rate purposes for 2013-14 no later than September 15, 2012.

### **Section 2.15. District Website.**

CHARTER SCHOOL shall have links off of the District website as OUSD partner schools.

### **Section 2.16. Technology Support Services.**

Authorized personnel of CHARTER SCHOOL may access District applications pertaining to CHARTER SCHOOL students and staff, including the Aeries student information system. CHARTER SCHOOL shall observe District policies and regulations, and state and federal laws, including the Family Education Rights and Privacy Act of 1974, commonly known as FERPA, related to the confidentiality of pupil and personnel records. At CHARTER SCHOOL's request, additional software development or customization, reporting, technology, equipment and repair, or other services will be provided to CHARTER SCHOOL at the cost of the service.

### **Section 2.17. Telecommunications.**

Upon the CHARTER SCHOOL's request, the District shall provide data network service and local and long distance phone service for CHARTER SCHOOL. For any problems with the service or special requests: CHARTER SCHOOL shall prepare a work order and submit it to the appropriate District department. CHARTER SCHOOL shall have sole responsibility for the cost of the services provided. If CHARTER SCHOOL opts not to be a school of the District for E-rate purposes as provided in Section 2.14, CHARTER SCHOOL has the option of contracting with another telecommunication service provider using the existing infrastructure.

### **Section 2.18. Other Services.**

Unless specified clearly in this Agreement as an obligation of the District, CHARTER SCHOOL shall be fully responsible for the operations of CHARTER SCHOOL.

### **Section 2.19. 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. In addition, the District shall be responsible for complying with all criminal background check laws for all employees or vendors that it directs to the Dedicated Spare for any work to be performed.

## **ARTICLE 3 - SPECIAL EDUCATION AND 504 SERVICES**

### **Section 3.1. Education Services**

Pursuant to Education Code section 47641, subdivision (b), CHARTER SCHOOL is a school of the District for purposes of compliance with federal and state special education laws. The District operates its own Special Education Local Plan Area ("SELPA"), such that references in this section to District and SELPA are interchangeable for purposes of this Agreement. CHARTER SCHOOL agrees to cooperate with the District to jointly discharge all District and CHARTER SCHOOL obligations and duties created by special education laws, including but not limited to the Individuals with Disabilities Education Improvement Act, ("IDEIA") 20 U.S.C. §§ 1400 et seq., and implementing regulations and Education Code §§ 56000 et seq. and implementing regulations.

In partnership with the CHARTER SCHOOL, the District shall collaborate with the CHARTER SCHOOL and assign District staff that will provide services to students in the CHARTER SCHOOL in such a way as to support the goals and objectives of the charter petition and the mission of the school.

If, in the future, CHARTER SCHOOL becomes its own LEA and joins another SELPA, the Parties agree this Agreement will be modified in light of that new status. Such modification will include, but not be limited to recognition that as an LEA member of another SELPA, CHARTER SCHOOL shall be solely responsible for all aspects of compliance with State and Federal special education laws, including but not limited to the IDEA, Education Code §§ 56000 et seq., and their respective implementing regulations. In the event that CHARTER SCHOOL decides to become an independent LEA member of another SELPA, or anything other than a school of the District for purposes of special education, CHARTER SCHOOL shall immediately notify the District in writing. CHARTER SCHOOL agrees that such a change would necessitate revision of this Agreement. Until such time as CHARTER SCHOOL is operating as its own LEA as a member of another SELPA, the following provisions govern the provision of Special Education services to CHARTER SCHOOL students.

No student shall be denied admission due to disability.

As a school of the District for purposes of special education, CHARTER SCHOOL shall also comply with all District and SELPA policies, procedures and other requirements regarding special education. The District shall represent the needs of the CHARTER SCHOOL like other schools within the District in the SELPA governance structure. The District shall be responsible for procuring and funding appropriate special education services even though a student may

live outside the boundaries of the District within California. The District may contract for these services with public or private educational entities. CHARTER SCHOOL shall obtain all District and SELPA Policies, Procedures and Forms regarding special education. At least annually, and as further required by District, CHARTER SCHOOL shall be responsible for reviewing pertinent information from the Policies, Procedures, and Forms with all CHARTER SCHOOL staff at a staff meeting, including explanation of any updates or revisions thereto. CHARTER SCHOOL will collaborate with District special education staff in developing its staff training and may request their assistance in preparing for the training. However, CHARTER SCHOOL has the option to contract with a third party vendor to provide training to its staff. CHARTER SCHOOL shall be solely responsible for preparation of materials, for conducting their staff review annually, and ensuring CHARTER SCHOOL staff understands the Policies, Procedures and Forms.

CHARTER SCHOOL shall utilize District SELPA forms.

The District will notify CHARTER SCHOOL of any scheduled special education training sessions which include staff from other public schools within the District. CHARTER SCHOOL staff will attend all mandatory District special education training sessions and will notify the District's Director of Special Education if any such staff members cannot attend.

CHARTER SCHOOL agrees to implement a process (e.g. a Student Study Team) to monitor and guide referrals of general education students for special education evaluation and services, such that general education interventions are utilized and exhausted before CHARTER SCHOOL refers the student for a special education evaluation. CHARTER SCHOOL understands that this process, and any interventions employed prior to a referral for special education evaluation, is general education functions that are CHARTER SCHOOL's sole responsibility.

### **Section 3.2. Child Find ("Search and Serve" Notices).**

CHARTER SCHOOL shall include a notice at the beginning of the year and at the semester in a publication to parents of CHARTER SCHOOL students notifying them of the District's responsibility to "search and serve" students who need or are believed to need special education services. The text of the notice shall be given to the charter school prior to the beginning of each school year by the District's Director of Special Education. Said Director shall be named, including contact information, and shall be the contact person for parents of charter school students inquiring about special education evaluation, eligibility, and/or services. Each semester, CHARTER SCHOOL shall notify the District's Director of Special Education of all regular education students that either required interventions beyond CHARTER SCHOOL's regular programming or were placed on modified curriculum at CHARTER SCHOOL.

### **Section 3.3. Public School of the District for Purposes of Special Education.**

Except as provided in Section 3.4 below, CHARTER SCHOOL and the District intend that CHARTER SCHOOL will be treated as any other public school in the District with respect to the provision of special education services, including allocation of resources and duties between on-site staff and resources and District administrative staff and resources.

### **Section 3.4. Division and Coordination of Responsibility.**

CHARTER SCHOOL and the District intend to jointly and collaboratively ensure that all students entitled to special education services will receive those services. CHARTER SCHOOL acknowledges it is obligated to cooperate with and assist the District in ensuring that eligible CHARTER SCHOOL students receive the special education services to which they are entitled.

The Parties acknowledge that CHARTER SCHOOL has as a priority the assignment of Special Education staff that is culturally competent to support the needs of students at the CHARTER SCHOOL.

**-- Special Education Services During School Year 2012-13**

a. For the first year of this Agreement, which is the school year 2012-13, the CHARTER SCHOOL has the sole responsibility for providing services to students in need of RSP services, including but not limited to hiring and/or contracting for instructors in such a way as to support the goals and objectives of the charter petition and the mission of the school, evaluating and identifying children with disabilities, developing, reviewing and revising IEPs, integrating special education into the general education program, delivering special education and related services (in-house or contracted out) and purchasing equipment and materials necessary for the instruction and assessment of RSP students receiving special education or related services.

b. For the first year of this Agreement, which is the school year 2012-13, CHARTER SCHOOL shall have the sole responsibility for providing educationally-related mental health services to students enrolled in RSP.

c. For the first year of this Agreement, which is the school year 2012-13, the District SELPA shall enter into an agreement in an amount not to exceed \$200,000 with CHARTER SCHOOL whereby CHARTER SCHOOL shall provide RSP services, DIS counseling services and educationally-related mental health services to RSP students enrolled in the CHARTER SCHOOL. The form of the Agreement between the District and the CHARTER SCHOOL shall be the District approved SELPA Non Public School/Non Public Agency Agreement and the Individual Service Agreement which delineate the services provided to special education students.

It is understood and agreed that the CHARTER SCHOOL would not be responsible for funding any special education or related service that is not provided directly by the CHARTER SCHOOL (e.g., residential placement, speech and language therapy, occupational therapy). Equipment and materials purchased by CHARTER SCHOOL under this provision shall remain the sole property of the CHARTER SCHOOL. In the event the number of students requiring RSP services exceeds 10 per cent of CHARTER SCHOOL enrollment, or the CHARTER SCHOOL anticipates that its special education costs will exceed \$200,000 for the 2012-13 school year, the Parties shall meet and confer to determine if the allocation provided in this subsection "c" is sufficient to meet the needs of the students in the CHARTER SCHOOL.

d. For the first year of this Agreement, which is the school year 2012-13, CHARTER SCHOOL shall have the right to independently bill for Medi-Cal services for RSP students, and such funds shall be retained by the CHARTER SCHOOL.

e. No later than March 30, 2013, CHARTER SCHOOL and the District Director of Special Education shall meet and confer to determine if changes are necessary in this Section 3.4 and the division of responsibility for the provision of services to special education students in the CHARTER SCHOOL. The Parties agree that based upon the District's evaluation of CHARTER SCHOOL's management and delivery of services to special education students, the District, in the exercise of its reasonable discretion, may opt not to continue to authorize CHARTER SCHOOL to provide said special education services. CHARTER SCHOOL also acknowledges and agrees that in order to have more flexibility for the delivery of innovative special education programs for its students, CHARTER SCHOOL shall actively consider becoming

an independent LEA member of another SELPA commencing the beginning of the 2013-14 school year.

f. Special education services will be offered at CHARTER SCHOOL or elsewhere in the District based upon each student's IEP. To the extent that the agreed upon IEP requires educational or related services to be delivered by staff other than CHARTER SCHOOL staff, the District shall provide and/or arrange for such services in the same manner as at other District schools. District services shall include consultative services by District staff to CHARTER SCHOOL staff in the same manner that District staff consults with staff at other District schools.

### **Section 3.5. Identification and Referral.**

CHARTER SCHOOL shall have the same responsibility as any other public school in the District to work cooperatively with the District in identifying and referring students who have or may have exceptional needs that qualify them to receive Special Education services. CHARTER SCHOOL, with the assistance of the District, will develop, maintain, and implement policies and procedures to ensure identification and referral of students who have, or may have, such exceptional needs. These policies and procedures will be in accordance with California law and District policy. CHARTER SCHOOL shall be solely responsible for obtaining the cumulative files, prior and/or current IEPs and other special education information on any student enrolling from a non-District school.

The District shall provide CHARTER SCHOOL with any assistance that it generally provides its other public schools in the identification and referral processes. The District will ensure that CHARTER SCHOOL is provided with notification and relevant files of all students transferring to CHARTER SCHOOL from a District school who have an existing IEP, in the same manner that it ensures the forwarding of such information between District schools.

Except where the CHARTER SCHOOL's school psychologist conducts special education assessments, the District shall make the determination as to what assessments are necessary for students for which it provides direct services, , in accordance with the District's policies and procedures, and applicable laws.

The District shall arrange necessary IEP meetings in collaboration with the CHARTER SCHOOL in accordance with the District's policies, procedures and applicable law. CHARTER SCHOOL shall be responsible for having a designated CHARTER SCHOOL administrator, CHARTER SCHOOL general education teacher(s), and any special education providers employed by CHARTER SCHOOL who is/are knowledgeable about the student's regular education program at CHARTER SCHOOL in attendance at all IEP meetings. The District shall be responsible for having all required special education staff and providers at each IEP meeting for a CHARTER SCHOOL student.

Decisions regarding initiation, determination, or change in eligibility, areas of need, goals/objectives, services, program, placement and exit from special education shall made by the IEP team. Team membership shall be in compliance with state and federal law and shall include the designated representative of CHARTER SCHOOL (or designee) and the designated representative of the District (or designee). The District shall provide special education services and placements to all eligible CHARTER SCHOOL students in accordance with the policies, procedures and requirements of the District, and state and federal law. CHARTER SCHOOL shall ensure each CHARTER SCHOOL student's IEP is made available to, understood and fully implemented by CHARTER SCHOOL staff who works with the student, including, where

applicable, all accommodations, modifications, supports for instruction, goals and objectives, data collection and progress reporting.

For students who enroll in CHARTER SCHOOL with a current IEP, the District and CHARTER SCHOOL shall conduct an IEP meeting in accordance with applicable law. CHARTER SCHOOL shall notify the District of such students prior to their enrollment in CHARTER SCHOOL. For such students who were previously enrolled in the District, the District agrees to forward the student's cumulative file including all Special Education files to CHARTER SCHOOL within 10 days of District receipt of notice of the student's intention to enroll in CHARTER SCHOOL. The District will consult with CHARTER SCHOOL to facilitate student transitions to CHARTER SCHOOL, where appropriate.

Special Education services will be offered at CHARTER SCHOOL or elsewhere in the District based upon each student's IEP with due consideration of provision of such services in the least restrictive environment. To the extent that the agreed upon IEP requires educational or related services to be delivered by staff other than CHARTER SCHOOL staff, the District shall provide and/or arrange for such services in the same manner as at other District schools. If needed, the District may seek out contracts with other school districts, companies, or organizations, at its discretion, to serve CHARTER SCHOOL students. CHARTER SCHOOL shall cooperate with and assist the District in providing any such vendored services at no additional cost to CHARTER SCHOOL.

### **Section 3.6. Complaints.**

CHARTER SCHOOL is solely responsible for investigating and responding to all complaints related to Section 504 as provided in Section 3.12 of this Agreement.

The CHARTER SCHOOL shall address/respond to/investigate all complaints received under the Uniform Complaint Procedure, as provided in CODE OF REGULATIONS, TITLE 5, Sections 4600-4687, as amended from time to time, involving Special Education. CHARTER SCHOOL shall notify the District within 48 hours of receiving any complaint, whether oral or in written, regarding special education.

### **Section 3.7. Due Process Hearings.**

In consultation with CHARTER SCHOOL, the District may initiate a due process hearing regarding a student enrolled in CHARTER SCHOOL, as the District determines is legally necessary to meet responsibilities under federal and state law special education laws. CHARTER SCHOOL shall cooperate with the District and assist when necessary, to prepare, file and prosecute the case. In the event that the District determines that legal counsel representation is needed, the District and CHARTER SCHOOL shall be jointly represented by District legal counsel, unless 1) there is a conflict of interest, 2) CHARTER SCHOOL provided the services under subsections a, b, or c of Section 3.4 of this Agreement, 3) CHARTER SCHOOL did not comply with Sections 3.6, 3.10, 3.11 of this Agreement, or 4) CHARTER SCHOOL did not act or did not provide special education services in accordance with the direction, guidance or advice of the District ("Independent Decision by Charter School"). In the event of the occurrence of 1, 2, 3, or an "Independent Decision by Charter School," CHARTER SCHOOL shall indemnify and hold the District harmless as provided in Section 7.1 of this Agreement. In case separate counsel is needed by CHARTER SCHOOL, CHARTER SCHOOL is solely responsible for the costs of its legal counsel. CHARTER SCHOOL staff and administrators shall cooperate in the prosecution as needed, even if represented by separate counsel.

The District and CHARTER SCHOOL shall also work together to prepare and defend any case filed against CHARTER SCHOOL and/or District regarding a special education eligibility, placement or services provided to a student enrolled in CHARTER SCHOOL. .

### **Section 3.8. Transfer of Special Education Apportionment Directly to District.**

The Parties agree that, pursuant to the division of responsibilities set forth in this Agreement, CHARTER SCHOOL has elected the status of any other public school in the District for the purposes of special education services and funding, and except as provided in this Article 3, the District has agreed to provide special education services to CHARTER SCHOOL. Except as otherwise provided in this Article 3, consistent with this division of responsibility, all funds apportioned to and received by CHARTER SCHOOL for special education services, including any and all funds apportioned to CHARTER SCHOOL through the District SELPA and any and all state or federal funds for special education services otherwise apportioned to CHARTER SCHOOL, shall be forwarded to the District by CHARTER SCHOOL. In exchange, CHARTER SCHOOL shall receive an equitable share of funding and services consisting of either or both of the following:

State and federal funding provided to support Special Education instruction or designated instruction and services or both provided or procured by CHARTER SCHOOL that serve pupils enrolled in and attending CHARTER SCHOOL.

Any necessary Special Education services including administrative and support services and itinerant services that are provided by the local educational agency on behalf of pupils with disabilities enrolled in CHARTER SCHOOL.

### **Section 3.9. CHARTER SCHOOL Contribution to Encroachment.**

Except as provided in this Article 3, The District shall retain all revenue generated by CHARTER SCHOOL for the delivery of special education and related services promised in this Agreement with the Each school year, CHARTER SCHOOL will contribute an equitable share of excess costs expended by the District to the District ("encroachment"), to the extent that the prior year District-wide (including CHARTER SCHOOL) special education costs exceeded District-wide (including CHARTER SCHOOL) special education funding. The prior year's excess costs shall be charged to CHARTER SCHOOL on a prorated basis, based upon the number of students enrolled at CHARTER SCHOOL compared to District-wide enrollment, recalculated annually. The formula for calculating CHARTER SCHOOL's contribution is as follows: Total District encroachment divided by District-wide attendance x Total CHARTER SCHOOL attendance, including all students, regardless of home district. No prorated adjustment will be made for students who leave or who enroll during the academic year after P2 counts. The encroachment amount owing to the District shall be offset by any cost CHARTER SCHOOL has incurred in providing necessary special education services to its students provided that such costs have been approved by the District prior to being incurred by CHARTER SCHOOL. CHARTER SCHOOL's contribution to encroachment will be deducted from the District's annual in-lieu property tax transfer.

### **Section 3.10. Discipline.**

CHARTER SCHOOL acknowledges it is obligated to and will ensure that its student discipline procedures for suspension and expulsion of students with disabilities are in full compliance with State and Federal law. CHARTER SCHOOL shall notify the District's Director of Special Education in writing whenever CHARTER SCHOOL intends to recommend for expulsion a student currently receiving special education, or for whom CHARTER SCHOOL has a basis of

knowledge may be eligible for special education, prior to make such recommendation. CHARTER SCHOOL shall comply and cooperate with directions from the District's when considering any disciplinary action against special education students, including suspension and expulsion. CHARTER SCHOOL shall notify the District's Director of Special Education in writing of all suspensions and expulsions of students eligible for special education. CHARTER SCHOOL understands and acknowledges that prior to imposing any discipline on a special education student that would constitute a change in placement, a manifestation determination must first be convened to determine whether the conduct was a manifestation of the student's disability or caused by a failure to implement the student's IEP.

### **Section 3.11. Parent Revocation of Consent for Special Education.**

CHARTER SCHOOL will ensure that it receives a written revocation of consent from an eligible CHARTER SCHOOL student's parent or guardian if, at any time subsequent to the initial provision of special education and related services to the student, the parent or guardian of that student wishes to withdraw that student from special education. Such revocation of consent for the continued provision of special education and related services must be in writing. Should a parent or guardian revoke consent to special education and related services in writing, CHARTER SCHOOL understands that District and CHARTER SCHOOL may not continue to provide special education and related services to the child after providing prior written notice to the parent in accordance with Section 300.503 of the Title 34 of the Code of Federal Regulations. CHARTER SCHOOL agrees to forward any such written revocation of consent to the District's Director of Special Education within 24 hours of receipt.

### **Section 3.12. Section 504 of the Rehabilitation Act of 1973.**

CHARTER SCHOOL shall be solely responsible for its compliance with Section 504 of the Rehabilitation Act of 1973 ("Section 504"). CHARTER SCHOOL shall adopt a Section 504 policy, procedure and forms.

By September 1 of each year, CHARTER SCHOOL shall designate a CHARTER SCHOOL employee responsible for Section 504 compliance and notify the District's Director of Student Services in writing of the responsible individual. The designated CHARTER SCHOOL employee shall notify the District's Director of Student Services anytime a student eligible under Section 504 withdraws from CHARTER SCHOOL, including notice of the school in which the student enrolled in following withdrawal from CHARTER SCHOOL and the student's district of residence.

### **Section 3.13. Student Application/Registration/Records/Withdrawal**

CHARTER SCHOOL shall adopt Student Application and Registration forms that include questions about whether the student is currently receiving or has ever received any type of special services (e.g. special education, IEP, Section 504 plan, accommodation plan), or has been expelled from a school district.

CHARTER SCHOOL shall use a Records Request form to request pupil records from the prior school of attendance for all students who indicate an intention to enroll in CHARTER SCHOOL.

Within 48 hours of any District resident student's expulsion, withdrawal, or disenrollment from CHARTER SCHOOL for any reason during the school year, CHARTER SCHOOL shall notify the District's Director of Student Services of the student's name, date of expulsion, withdrawal or disenrollment, the reason for such separation, and the student's next school/district of attendance. CHARTER SCHOOL shall comply with Education Code section 47605(d)(3) in terms

of providing notice of expulsion, withdrawal, or disenrollment of students who reside in other school districts.

### **Section 3.14. General and Special Education – Discipline and Documentation.**

CHARTER SCHOOL shall maintain copies in student files of all correspondence, including e-mails, between CHARTER SCHOOL and parents relating to student discipline and special services, including any requests for services, inquiries, referrals, and responses.

## **ARTICLE 4 - CONTRIBUTION TO PAYMENT OF DISTRICT EMERGENCY STATE LOAN**

CHARTER SCHOOL on behalf of CHARTER SCHOOL shall pay a prorated amount of the District's annual loan repayment. The prorated amount shall be determined by:

Dividing the annual payment made by the District by the number of pupils enrolled in the District combined with the number of District resident pupils enrolled in CHARTER SCHOOL to derive a per pupil share of the annual loan payment; and then multiplying the per pupil share of the loan payment by the number of pupils who reside within the District and are enrolled in CHARTER SCHOOL.

## **ARTICLE 5 - DISTRICT OVERSIGHT AND CHARTER RESPONSIBILITIES**

### **Section 5.1. Oversight Obligations**

District oversight obligations include, but are not necessarily limited to, the following:

a. Review and revision of this Agreement and any subsequent agreements to clarify and interpret the charters of CHARTER SCHOOL and amendments thereto and the relationship between CHARTER SCHOOL and the District

b. Monitoring performance and compliance with CHARTER SCHOOL charters and with applicable laws, including, without limitation, by way of the following:

- Identifying at least one District staff member as a contact person for CHARTER SCHOOL;

Visiting each the CHARTER SCHOOL, at least once per year;

- Ensuring that CHARTER SCHOOL submits, on behalf of each charter school, all reports and documents required of charter schools by law and this Agreement;

- Monitoring the fiscal condition of CHARTER SCHOOL and of each charter school;

- Notifying the State of California upon the occurrence of any of the events described in Education Code section 47604.32(e).

c. Reasonable inquiries made pursuant to Education Code section 47604.3, , including, but not limited to, inquiries regarding its financial records, from the District, the Alameda County Office of Education, or from the Superintendent of Public Instruction, to which CHARTER SCHOOL shall promptly respond and regarding which CHARTER SCHOOL shall consult with such agencies.

d. Any process conducted in compliance with Education Code section 47607(c) through (k), related to the issuance of a notice to remedy or other corrective notice related to

CHARTER SCHOOL's operations, including document requests, hearings, notices, and investigations, and monitoring efforts to remedy operational problems identified by the District.

e. For purposes of fiscal oversight and monitoring by the District, the District requires CHARTER SCHOOL to annually provide information and documentation related to its operations, some of which is included in the Fall Information Update ("FIU"). The District annually prepares a calendar of key dates for charter schools including due dates for submission of required financial and attendance reports ("Reports"), as provided in the charter or applicable law or regulation. CHARTER SCHOOL shall provide all information and documentation, on behalf of CHARTER SCHOOL, in the form and at the times specified by the District. Whether listed in the calendar of key dates or not, CHARTER SCHOOL shall provide the District with a copy of the following documents, data and reports, in the form and at the times specified.

(A) Student Data

CHARTER SCHOOL shall submit student enrollment projections to the District by March 19 of the preceding school year each year. During the school year, monthly enrollment and ADA reports with respect to CHARTER SCHOOL shall be provided to the District. CHARTER SCHOOL shall annually provide the District a list of names and addresses of students enrolled along with the school district of residence of each respective student no later than September 1 of each year.

CHARTER SCHOOL shall maintain contemporaneous written records of enrollment and ADA and make these records available to the District for inspection and audit upon request. CHARTER SCHOOL shall provide copies of the P-1, P-2, and annual state attendance reports to the District by December 15, April 5, and June 25, respectively, each year, or as listed in the calendar of key dates, whichever is later. Copies of amended state attendance reports, if any, shall be provided to the District within 3 weeks of discovery of the need for an making such an amendment

CHARTER SCHOOL will cooperate with the District in correcting and clarifying student information submitted the state student identification system, CalPADS.

(B) Personnel Data/Credential Data

Actual staffing data shall be provided to the District on an annual basis prior to commencement of each school year. Teacher credentials, clearances, and permits for CHARTER SCHOOL employees shall be maintained on file at CHARTER SCHOOL and shall be subject to periodic inspection by the District. Copies of credentials and a list of teaching/class assignments for each teacher working at CHARTER SCHOOL shall be provided to the District by CHARTER SCHOOL as indicated in the calendar of key dates and no later than September 15, and whenever any changes in staffing, credentials or assignments occur during the school year, along with written verification by CHARTER SCHOOL that credentialing requirements imposed on CHARTER SCHOOL under NCLB have been met. CHARTER SCHOOL shall also provide to the District at the commencement of each school year and no later than September 15, all available information to demonstrate compliance with Education Code section 44237 (criminal record check) for CHARTER SCHOOL employees working at CHARTER SCHOOL.

(C) Financial Reporting

In order to ensure the necessary oversight and review of mandated reports from which the District must determine fiscal health and sustainability, the following schedule of reporting deadlines to the District will apply each year:

September 1 – Final Unaudited Financial Report for Prior Year

December 1 – First Interim Financial Report for Current Year

March 1 – Second Interim Financial Report for Current Year

June 15 – Preliminary Budget for Subsequent Year

District shall be notified at least three weeks in advance of CHARTER SCHOOL Board of Directors action to incur short or long term debt on behalf of CHARTER SCHOOL, and financing documents shall be made available for District review upon request.

(D) Audit

As provided in Education Code section 47605, CHARTER SCHOOL shall transmit a copy of its annual, independent financial audit report for the preceding fiscal year, to the state Controller, the Alameda County Superintendent of Schools, and the state Department of Education by December 15 of each year. The audit shall be submitted to the District by December 1 of each year, for review prior to submission to the state and county authorities.

(E) Governing Board

CHARTER SCHOOL shall annually, at a date to be set by the District, transmit to the District a roster of the members of its Board of Directors, officers and key employees; a schedule of its meetings for the academic year; and copies of all agendas and minutes for meetings of the Board of Directors and its committees from the preceding twelve (12) months. CHARTER SCHOOL shall submit a revised roster whenever changes occur.

(F) Policies and Implementation

CHARTER SCHOOL shall annually, at a date to be set by the District, transmit copies of the most recent board-approved versions of specified policies and procedures applicable to CHARTER SCHOOL, and including, but not limited to policies covering student admissions and enrollment, student retention and promotion, student suspension and expulsion, student code of conduct, conflict of interest, fiscal management, and procedures for addressing complaints. CHARTER SCHOOL shall also, as requested by the District, identify individuals responsible for specific areas of compliance with such policies and applicable law, including but not limited to coordinators for Section 504 of the Rehabilitation Act and the McKinney-Vento Homeless Assistance Act.

(G) Pupil Outcomes

Twice annually CHARTER SCHOOL shall, at dates to be set by the District, transmit information documenting the performance of CHARTER SCHOOL with respect to the Measurable Pupil Outcomes set forth in the schools' charters. Documentation shall be in a format specified by the District, including data supporting CHARTER SCHOOL's assessment of its performance relative to the established targets.

**Section 5.2. Compliance with Generally Accepted Accounting Principles**

CHARTER SCHOOL shall comply with Generally Accepted Accounting Principles (GAAP) applicable to public school finance and fiscal management. CHARTER SCHOOL shall maintain a minimum reserve for economic uncertainties (designated fund balance) in an amount to be determined appropriate by the District but in no case less than 3 per cent of year end expenditures of CHARTER SCHOOL.

### **Section 5.3. Oversight Fees.**

In addition to the fees in Article 7, CHARTER SCHOOL shall pay the District one percent (1%) of CHARTER SCHOOL revenues attributable to students attending CHARTER SCHOOL to cover the actual cost of oversight of these schools. "CHARTER SCHOOL revenue" means the general purpose entitlement and categorical block grant, as defined in subdivisions (a) and (b) of Section 47632. The District will invoice CHARTER SCHOOL quarterly as provided in Article 7 below.

## **ARTICLE 6 - Legal Relationship and Compliance**

### **Section 6.1. Legal Relationship.**

CHARTER SCHOOL and District agree that CHARTER SCHOOL is a separate legal entity that operates CHARTER SCHOOL under the supervisory oversight of the District. CHARTER SCHOOL retains all operating charter rights and responsibilities, as provided by law, including but not limited to the charter law mega-waiver in Section 47610 of the Education Code, access to charter State bonds and charter appeal rights.

### **Section 6.2. No Liability for Debt; No Authority to Bind the District.**

The District shall not be liable for the debts or obligations of CHARTER SCHOOL or for claims arising from the performance of acts, errors, or omissions by CHARTER SCHOOL, as long as the District has performed the oversight responsibilities described in Education Code Sections 47604.32 and 47605(m).

CHARTER SCHOOL shall not have the authority to enter into a contract that would bind the District, nor to extend the credit of the District to any third person or party. CHARTER SCHOOL shall clearly indicate to vendors and other entities and individuals outside the District with which or with whom CHARTER SCHOOL enters into an agreement or contract for goods or services that the obligations of CHARTER SCHOOL and are not the responsibility of the District.

Pursuant to Education Code section 47604, subdivision (c) CHARTER SCHOOL agrees that all loans received by CHARTER SCHOOL shall be the sole responsibility of CHARTER SCHOOL and the District shall have no obligation for repayment. The parties agree that it is their intent, consistent with Education Code section 47604, subdivision (c), that "an authority that grants a charter to a charter school ...shall not be liable for the debts or obligations of CHARTER SCHOOL, or for claims arising from the performance of acts, errors, or omissions by CHARTER SCHOOL, if the authority has complied with all oversight responsibilities required by law, including, but not limited to, those required by Section 47604.32 and subdivision (m) of Section 47605." CHARTER SCHOOL agrees that all revenue obtained by CHARTER SCHOOL shall only be used to provide educational services consistent with the charters, this Agreement or any authorized amendments. All expenditures shall be in accordance with applicable law.

### **Section 6.3. Non-Discrimination.**

CHARTER SCHOOL is a single gender school which is permitted and authorized by Sections 5131(a)(23) and 5131(c) of the federal No Child Left Behind Act. Except for the enrollment of single gender students, CHARTER SCHOOL agrees it will comply with Title VII of the Civil Rights Act of 1964 and that no person shall, on the grounds of race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status,

political affiliation, or any other non-merit factor, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Agreement.

- a. CHARTER SCHOOL shall, in all solicitations or advertisements for applicants for employment placed as a result of this Agreement, state that it is an "Equal Opportunity Employer" or that all qualified applicants will receive consideration for employment without regard to their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.
- b. Except as provided in this Section 6.3, CHARTER SCHOOL shall, if requested to do so by the District, certify that it has not, in the performance of this Agreement, discriminated against applicants or employees because of their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.
- c. If requested to do so by the District, CHARTER SCHOOL shall provide the District with access to copies of all of its records pertaining or relating to its employment practices, except to the extent such records or portions of such records are confidential or privileged under state or federal law.
- d. CHARTER SCHOOL shall recruit vigorously and encourage minority - and women-owned businesses to bid its subcontracts.
- e. Nothing contained in this Agreement shall be construed in any manner so as to require or permit any act, which is prohibited by law.
- f. CHARTER SCHOOL shall include the provisions set forth in paragraphs a through e (above) in each of its subcontracts.

#### **Section 6.4. Drug-Free Workplace.**

CHARTER SCHOOL and its employees shall comply with the District's policy of maintaining a drug-free workplace. Neither CHARTER SCHOOL nor its employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code § 812, including, but not limited to, marijuana, heroin, cocaine, and amphetamines, at any District facility or work site. If CHARTER SCHOOL or any employee of CHARTER SCHOOL is convicted or pleads nolo contendere to a criminal drug statute violation occurring at a District facility or work site, CHARTER SCHOOL within five days thereafter shall notify the District' Charter School Office. Violation of this provision shall constitute a material breach of this Agreement.

#### **Section 6.5. Safety.**

If a death, serious personal injury or substantial property damage occurs, CHARTER SCHOOL shall immediately notify the District by telephone. CHARTER SCHOOL shall promptly submit to the District a written report, in such form as may be required by the District of all accidents or serious injuries which occur in connection with this Agreement. This report must include the following information: (1) name and address of the injured or deceased person(s); (2) name and address of witnesses; (3) name and address of CHARTER SCHOOL's liability insurance carrier; and (4) a detailed description of the accident and whether any of District property, equipment, tools, material, or staff was involved. CHARTER SCHOOL further agree to take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety,

and to grant to the District the opportunity to review and inspect such evidence, including the scene of the accident.

### **Section 6.6. Compliance with Laws.**

- a. CHARTER SCHOOL will comply all applicable state and federal laws and regulations as they may be amended or modified from time to time, including, without limitation, the Ralph M. Brown Act (Gov't. Code, § 54950 et seq.), the California Public Records Act (Gov. Code, § 6250 et seq.), conflict of interest laws, including without limitation, the Political Reform Act (Gov't. Code, Section 87100) and Government Code section 1090 and the anti-self-dealing provisions of the Corporation's Code applicable to nonprofit public benefit corporations.
- b. CHARTER SCHOOL shall also comply with all applicable federal and state laws and regulations as they may be amended or modified from time to time, concerning the maintenance and disclosure of student records, including, without limitation, the Family Education Rights and Privacy Act of 1974 (20 U.S.C.A. § 1232g), all state and federal laws and regulations concerning the improvement of student achievement, including, without limitation, applicable provisions of the Elementary and Secondary Education Act of 1965 (20 U.S.C.A. § 6301, et seq. as amended by the No Child Left Behind Act of 2001 (hereinafter the law, state and federal regulations referred to herein as "NCLB") and agrees to take appropriate remedial action if notified by the State of California of a violation of any of the foregoing.
- c. It shall be the sole responsibility of CHARTER SCHOOL to file, and update as required, the "Statement of Facts Roster of Public Agencies" as required by Government Code section 53051. The State of Facts Roster shall be submitted to the District by October 31 each year. It shall also be the sole responsibility of CHARTER SCHOOL to file an amendment to the Statement of Facts within 10 days after a change in any of the required information.
- d. Any complaints or concerns (including complaints filed with OCR, EEOC, or FEHA) received by the District about any aspect of the operation of CHARTER SCHOOL, shall be forwarded by the District to the Executive Director of CHARTER SCHOOL. The District may request that CHARTER SCHOOL inform the District of how such concerns or complaints are being addressed. CHARTER SCHOOL shall handle its own uniform complaints pursuant to a Uniform Complaint Procedure adopted in accordance with California Code of Regulations, Title 5, Section 4600 *et seq.*

## **ARTICLE 7 - INDEMNIFICATION, INSURANCE; DEFAULT; DISPUTE RESOLUTION**

### **Section 7.1. Indemnification.**

CHARTER SCHOOL shall indemnify, hold harmless, and defend the District, its trustees, officers, employees and agents against and from any and all claims, demands, actions, suits, losses, liability, expenses and costs for any injury, death or damage to any person or property

occurring in, on or about the Site after District delivers possession of the Dedicated Space to CHARTER SCHOOL, arising from CHARTER SCHOOL's use of the Dedicated Space 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 Dedicated Space; provided, however, that CHARTER SCHOOL shall not have any obligation to indemnify, hold harmless or defend the District, its trustees, officers, employees and agents against and from any and all claims, demands, actions, suits, losses, liability, expenses and costs for any injury, death or damage to any person or property occurring in, on or about the Site after the District delivers possession of the Dedicated Space to CHARTER SCHOOL, resulting from or arising out of the sole negligence or willful malfeasance of the District, its trustees, officers, employees and agents or any person or entity not subject to CHARTER SCHOOL's control and supervision.

The District shall indemnify, hold harmless, and defend CHARTER SCHOOL, its trustees, officers, employees and agents against and from any and all claims, demands, actions, suits, losses, liability, expenses and costs for any injury, death or damage to any person or property occurring in, on or about the Site after District delivers possession of the Dedicated Space to CHARTER SCHOOL, arising from the District's use of the Dedicated Space or from the conduct of its business or from any activity, work, or other things done, permitted or suffered by the District in or about the Dedicated Space; provided, however, that the District shall not have any obligation to indemnify, hold harmless or defend CHARTER SCHOOL, its trustees, officers, employees and agents against and from any and all claims, demands, actions, suits, losses, liability, expenses and costs for any injury, death or damage to any person or property occurring in, on or about the Site after the District delivers possession of the Dedicated Space to CHARTER SCHOOL, resulting from or arising out of the sole negligence or willful malfeasance of CHARTER SCHOOL, its trustees, officers, employees and agents or any person or entity not subject to the District's control and supervision.

## **Section 7.2. Insurance.**

CHARTER SCHOOL INSURANCE. CHARTER SCHOOL, at its sole cost and expense, shall both obtain and keep in full force and effect, beginning on the commencement date and continuing until this Agreement terminates, the following insurance policies for the Site, or, in lieu of maintaining coverage through an insurance company, use a self-insurance mechanism that meets the following criteria:

(1) Liability Insurance. Commercial general liability insurance with respect to the Dedicated Space, if any, and the operations of or on behalf of CHARTER SCHOOL in, on or about the Dedicated Space, including but not limited to: bodily injury, product liability (if applicable), blanket contractual, broad form property damage liability coverage and host liquor liability in an amount not less than One Million Dollars (\$1,000,000) in the aggregate, and excess liability coverage on a basis consistent with coverage for schools of a type similar to CHARTER SCHOOL. The policy shall be endorsed to name the Oakland Unified School District as named additional insured and shall provide specifically that any insurance carried by the District which may be applicable to any claims or loss shall be deemed excess and CHARTER SCHOOL's insurance primary, provided however, that District's insurance shall be primary for claims caused by the actions of third parties, except to the extent that the third party's actions arose as a result of the negligence, intentional disregard or malfeasance of CHARTER SCHOOL.

(2) Property Insurance. Property insurance against fire, vandalism, malicious mischief and such other additional perils as now are or hereafter may be included in a standard "All Risks" coverage, including sprinkler leakage, insuring all of CHARTER SCHOOL's trade fixtures,

furnishings, equipment, stock, loss of income or extra expense, and other items of personal property ("Charter's Property") in an amount not less than eighty hundred percent (80%) of fair market value.

(3) Workers' Compensation, Employer Liability. Workers' compensation insurance in accordance with provisions of the California Labor Code adequate to protect CHARTER SCHOOL from claims that may arise from its operations pursuant to the Workers' Compensation Act.

(4) Fidelity Bond. Fidelity bond coverage for all of CHARTER SCHOOL's employees and who handle, process, or otherwise have responsibility for funds, supplies, equipment or other assets. Minimum amount of coverage shall be \$50,000 per occurrence, with no self-insurance retention.

**INSURANCE POLICY CRITERIA.** All policies of insurance required to be carried by CHARTER SCHOOL shall be written by responsible insurance companies authorized to do business in the State of California. Any such insurance required of CHARTER SCHOOL hereunder may be furnished by CHARTER SCHOOL under any blanket policy carried by it or under a separate policy therefor. A true and exact copy of each paid-up policy evidencing such insurance or a certificate of the insurer, certifying that such policy has been issued, providing the coverage required and containing the provisions specified herein, shall be delivered to the District prior to the date CHARTER SCHOOL is given the right to possession of the Dedicated Space. In addition, the District and the Board of Education shall be named as an additional insured on the liability policies and a loss payee on the property coverages for the Dedicated Space. The District may, at any time and from time to time, upon reasonable notice to CHARTER SCHOOL and at no cost to CHARTER SCHOOL, inspect and/or copy any and all insurance policies required hereunder, and in no event shall the then-limits of any policy be considered as limiting the liability of CHARTER SCHOOL under this Agreement.

**FAILURE TO OBTAIN INSURANCE.** If CHARTER SCHOOL fails to procure, maintain and/or pay for at the times and for the durations specified in this Agreement, the insurance required hereunder, or fails to carry insurance required by any applicable law, the District may (but without obligation to do so), and with concurrent notice to CHARTER SCHOOL, perform such obligations on behalf of CHARTER SCHOOL, and the cost thereof, together with interest thereon at the Interest Rate from the date of demand until paid, shall become due and payable as additional payment by CHARTER SCHOOL to the District. CHARTER SCHOOL shall reimburse the District for cost of the premiums paid by the District for the insurance carried by the District pursuant to the terms above.

**DISTRICT INSURANCE.** During the Term of this Agreement, the District shall maintain insurance or shall self-insure against claims for injuries to persons or damages to property (real and personal, including the structures on the Dedicated Space and any District-owned personal property) in amounts equal to that which would be in place if the Dedicated Space were occupied by another school of the District. For services provided by the District to CHARTER SCHOOL, the District shall maintain responsibility for these services and such services shall be covered by the District's self-insurance or any insurance that the District may maintain.

### **Section 7.3. Default and Remedies.**

**CHARTER SCHOOL'S DEFAULT.** The occurrence of any one of the following events shall be considered a default of this Agreement:

(1) The failure of CHARTER SCHOOL to pay any charges or fees due and payable hereunder ten (10) business days after receipt of written notification of said failure to pay;

(2) The failure of CHARTER SCHOOL to observe or perform any of its covenants or obligations hereunder, which failure continues past the notice and cure period provided herein. The District shall provide CHARTER SCHOOL with written notice of default and CHARTER SCHOOL shall have twenty (20) business days to provide a response to the District either evidencing compliance with the terms of this Agreement or a plan to cure the default and a reasonable timeline acceptable by the District within which CHARTER SCHOOL will diligently prosecute the same to completion. In no event shall such default continue for more than ninety (90) days after written notice thereof by the District to CHARTER SCHOOL without prior written agreement by the District. Any such notice shall be in lieu of, and not in addition to, any notice required under Code of Civil Procedure section 1161; and such cure period shall run concurrently with any cure period required under California law, including Code of Civil Procedure section 1161;

(3) CHARTER SCHOOL's abandonment of the Dedicated Space for a period of thirty (30) consecutive days, it being agreed that the fact that any of CHARTER SCHOOL's property remains in the Dedicated Space shall not be evidence that CHARTER SCHOOL has not vacated or abandoned the Dedicated Space; provided, however, any normal school holidays including summer and inter-term breaks shall not constitute abandonment of the Dedicated Space;

(4) 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 a petition for reorganization or arrangement under any law relation to bankruptcy (unless the same is dismissed within sixty (60) days); the appointment of a trustee or receiver to take possession of substantially all of CHARTER SCHOOL's assets located at Dedicated Space, or of CHARTER SCHOOL's interest in this Agreement, where possession is not restored to CHARTER SCHOOL within thirty (30) days; or the attachment, execution or other judicial seizure of substantially all of CHARTER SCHOOL's assets located at the Dedicated Space or of CHARTER SCHOOL's interest in this Agreement, where such seizure is not discharged within thirty (30) days.

(5) The cessation of CHARTER SCHOOL charter program after a revocation, nonrenewal or surrender of the charter to the granting agency. However, CHARTER SCHOOL shall not be in default of this Use Agreement until after CHARTER SCHOOL has exhausted all appeals subsequent to the revocation or nonrenewal of its charter.

**DISTRICT'S REMEDIES.** (1) In the event of any default by CHARTER SCHOOL and if CHARTER SCHOOL fails to cure such default within the time period specified in this Agreement after receipt of written notice from the District of such default, the District shall have the right, in addition to all other rights available to the District under this Agreement or now or later permitted by law or equity, to terminate this Agreement by providing CHARTER SCHOOL with a ninety (90) day prior written notice of termination. Upon termination, the District may recover any damages proximately caused by CHARTER SCHOOL's failure to perform under this Agreement, or which are likely in the ordinary course of business to be incurred, including any amount expended or to be expended by the District in an effort to mitigate damages, as well as any other damages which the District is entitled to recover under any statute now or later in effect.

(2) In accordance with Civil Code section 1951.4 (or any successor statute), CHARTER SCHOOL acknowledges that in the event CHARTER SCHOOL has breached this Agreement and abandoned the Dedicated Space, this Agreement shall continue in effect for so long as the District does not terminate CHARTER SCHOOL's right to possession, and the District may

enforce all its rights and remedies under this Agreement, including the right to recover fees as they become due under this Agreement and the reasonable costs incurred to preserve the property. Acts of maintenance or preservation of the Dedicated Space or the appointment of a receiver upon initiative of the District to protect the District's interest under this Agreement shall not constitute a termination of CHARTER SCHOOL's right to possession. In addition to its other rights under this Agreement, the District has the remedy described in Civil Code section 1951.4.

(3) If CHARTER SCHOOL fails to perform any covenant or condition to be performed by CHARTER SCHOOL within a the time period specified in this Agreement after CHARTER SCHOOL received written notice of such failure from the District, the District may perform such covenant or condition at its option, after notice to CHARTER SCHOOL. In the event of an Emergency, the District has the right to perform such activity to mitigate the impact of the Emergency. All reasonable costs incurred by the District in so performing shall be reimbursed to the District by CHARTER SCHOOL in accordance with section 5.2 hereof. Any performance by the District of CHARTER SCHOOL's obligations shall not waive or cure such default. All out-of-pocket, reasonable costs and expenses actually incurred by the District in collecting payments due, or enforcing the obligations of CHARTER SCHOOL under this Agreement shall be paid by CHARTER SCHOOL to the District.

(4) The rights and remedies of the District set forth herein are not exclusive, and the District may exercise any other right or remedy now or later available to it under this Agreement, at law or in equity.

(5) The termination of this Agreement does not affect CHARTER SCHOOL's charters. Said charters may only be terminated or revoked as provided by California law.

**DEFAULT BY DISTRICT.** The occurrence of anyone of more of the following events shall constitute a default and material breach of this Agreement by the District:

The failure by the District to observe or perform any of the express covenants, conditions or provisions of this Agreement to be observed or performed by District where such failure shall continue for a period of thirty (30) days after receipt of written notice thereof by CHARTER SCHOOL to District; provided however, that if the nature of District's default is such that more than thirty (30) days are reasonably required for its cure, then District shall not be deemed to be in default if District commences such cure within said thirty (30) days period and thereafter diligently prosecutes such cure to completion.

In addition, if the District fails to perform any service defined as an "emergency" in Section 1.10 of this Agreement in a timely fashion, five (5) days after written notice to the District, CHARTER SCHOOL or a vendor retained by CHARTER SCHOOL, shall have the right to perform said "emergency" service and bill the cost thereof to the District.

Except in the instance of the revocation of CHARTER SCHOOL's charter or as otherwise provided in this Agreement, neither party may terminate this Agreement without first complying with the Dispute Resolution procedures outlined in Section 6.4 below.

#### **Section 7.4. Dispute Resolution.**

Notwithstanding anything in this Agreement to the contrary, disputes between CHARTER SCHOOL and the District regarding this Agreement, including, the alleged violation, misinterpretation, or misapplication of this Agreement shall be resolved using the dispute resolution process identified below.

The party initiating the dispute resolution process shall prepare and send to the other party a notice of dispute that shall include the following information: (1) the name, addresses and phone numbers of designated representatives of the party (the designated representatives must be an employees(s) of CHARTER SCHOOL or the District); (2) a statement of the facts of the dispute, including information regarding the parties attempts to resolve the dispute; (3) the specific sections of the Agreement that are in dispute; and (4) the specific resolution sought by the party. Within ten (10) business days from receipt of the notice of dispute the representatives from CHARTER SCHOOL shall meet with representatives from the District in an informal setting to try to resolve the dispute.

If the informal meeting fails to resolve the dispute the party initiating the dispute resolution process shall notify the other party (the responding party) in writing that it intends to proceed to mediation of the dispute and shall request the State Mediation and Conciliation Service to appoint a mediator within ten (10) business days to assist the parties in resolving the dispute (if the State Mediation and Conciliation Service ("SMCS") is unable or refuses to provide a mediator the parties shall mutually agree upon a mediator with fifteen (15) days from notice that SMCS will be unable to provide a mediator). The initiating party shall request appointment of a mediator who is available to meet as soon as possible but not later than 30 calendar days after receipt of the request for appointment. The party initiating the dispute shall forward a copy of the notice of the dispute to the appointed mediator. The responding party shall file a written response with the mediator and serve a copy on the initiating party within seven business days of the first scheduled mediation. The mediation procedure shall be entirely informal in nature; however, copies of exhibits upon which either party bases its case shall be shared with the other party in advance of the mediation. The relevant facts should be elicited in a narrative fashion to the extent possible, rather than through examination and cross examination of witnesses. The rules of evidence will not apply and no record of the proceedings will be made. If an agreement is reached, the agreement shall be reduced to writing and shall be signed by the District and CHARTER SCHOOL.

Neither party may commence a civil action with respect to the matters submitted to mediation until after the completion of the initial mediation session, or 60 calendar days after the date of filing the written request for mediation, whichever occurs first. Mediation may continue after the commencement of a civil action, if the parties so desire. If, following the mediation, the dispute remains unresolved, CHARTER SCHOOL shall precede with the claims presentation process under Govt. Code section 900 et. seq. as a prerequisite to initiating litigation, if applicable. Either party may file equitable remedies such as injunctive relief while proceeding through mediation in order to preserve the status quo.

#### **Section 7.5. Term; Option to Renew**

The Term of this Agreement shall be coterminous with the term of CHARTER SCHOOL charters (i.e., ending June 30, 2017); provided however, CHARTER SCHOOL, at its option may elect to terminate Article 1 effective June 30, 2013, provided further however CHARTER SCHOOL provides the District with notice of its decision to terminate no later than March 1, 2013. After the first year of the Agreement, CHARTER SCHOOL retains the right to terminate Article 1 of this Agreement provided it gives notice to the District no later than March 1 of the fiscal year termination shall be effective. Subject to modifications which the Parties may mutually negotiate, if CHARTER SCHOOL's charter is renewed by the District, CHARTER SCHOOL shall have the right to renew this Agreement for a five (5) year renewal term.

## ARTICLE 8 - PAYMENTS

### Section 8.1. Payment.

In addition to the Oversight Fees provided in Section 4.3 of this Agreement, annually, during the term of this Agreement, CHARTER SCHOOL shall pay the District a total of \$453,564 for facility use, contribution to the payment of the emergency State loan and contracted services. The total amount includes the following costs:

Facility Use and Custodial Services	\$130,833
Contribution to Payment of State Loan	\$47,238
Contracted Services	\$127,242
Special Education Contribution	\$148,251

PAYMENT OF FEES. The District will invoice CHARTER SCHOOL will make installment payments on this invoiced amount payable to "Oakland Unified School District" and delivered to the District's Office of Charter Schools according to the following schedule:

- 25% by October 1;
- 25% by December 1;
- 25% by April 1;
- 25% by July 1.

CHARTER SCHOOL may choose to prepay any of the installment payments without incurring a prepayment penalty from the District. CHARTER SCHOOL payments of undisputed amounts that are more than 30 calendar days late arriving at the District will incur a one (1%) percent per month interest charge on the balance. The District will deduct from subsequent transfer payments payable to CHARTER SCHOOL any undisputed scheduled payment amount due from this Agreement, plus interest charges, that is more than 60 calendar days past due.

The Fee does not include Site-specific costs not specified in this Agreement which the school must include in its own budget, including, but not limited to purchases through the District E-Market or Procurement Department as provided in Section 2.10 of this Agreement.

If CHARTER SCHOOL disputes any fee or charge, it shall send written notification to the District. CHARTER SCHOOL has the right to submit the issue for resolution in accordance with the dispute resolution procedures outlined herein. Pending resolution of any dispute resolution procedures relating to the fee or charge, CHARTER SCHOOL shall only be required to continue paying any undisputed amount. Upon resolution of the dispute relating to the fee or charge, and based upon the ultimate resolution thereof, the Parties shall reconcile the amounts owed. CHARTER SCHOOL withholding disputed funds in not grounds for revocation.

Except as specifically provided in this Agreement, all services and the costs associated therewith outlined in this Agreement to be provided by the District shall be covered by the fees provided for in this section; CHARTER SCHOOL shall only be responsible for those fees and costs that are expressly stated herein.

**ARTICLE 9 - POINT OF CONTACT; FUTURE RECONCILIATION; CONTINUOUS REVIEW; ANNUAL QUALITY REVIEW; TWO YEAR REVIEW**

**Section 9.1. Point of Contact.**

No later than July 1, 2012, the District shall appoint a "point of contact" in CHARTER SCHOOL Office who shall be responsible for problem solving and expediting the resolution of issues and concerns related to the provision of services to CHARTER SCHOOL under this Agreement. The initial contact is as follows:

Office of Charter Schools  
Tilden School, Room 11  
4551 Steele Street  
Oakland, CA 94619  
guadalupe.navarro@ousd.k12.ca.us

**Section 9.2. Future Adjustments or Reconciliations; Annual Review; Quality Review Committee.**

The District, CHARTER SCHOOL may, at any time convene a meeting to discuss adjustments or reconciliation of payments whenever there is reason to believe that the charges do not reflect actual amounts owing or the quality of services being provided by the District to CHARTER SCHOOL. During the first year of this Agreement, the Parties shall meet on January 15, 2013 and on May 15, 2013 to review implementation and discuss any needed modifications or changes in this Agreement. After the first year, the Parties shall meet at least once on or before March 1 of the fiscal year to review the services provided, to identify modifications in the Agreement and for a thorough quality review. Further, the Parties shall establish a Quality Review Committee with representatives from the District, CHARTER SCHOOL that during the first year of the term, will meet two weeks prior to the January 15, 2013 meeting and two weeks prior to May 15, 2013 meeting to review the services provided by the District. To facilitate its work, the Quality Review Committee shall develop a rubric to use to evaluate the services. The recommendations from the Quality Review Committee will be reviewed by the Parties; changes and modifications as recommended shall be incorporated into this Agreement by mutual agreement. After the first year, the Quality Review Committee shall meet two weeks prior to the annual review (i.e., two weeks prior to March 1 of each fiscal year after the first full year). If the Quality Review Committee determines any service provided by the District as "poor" or "below average" for the preceding year, CHARTER SCHOOL shall have the right to terminate that particular service from the Agreement and provide these services directly or through a third party vendor; the parties shall negotiate a commensurate reduction in the annual fee to be charged CHARTER SCHOOL.

**Section 9.3. Year Two Review.**

Representatives from the Parties agree that 4 months prior to the end of the second year of the Agreement they will meet for a full review of the Agreement, the services provided under the Agreement and the relationship of the Parties. A key component of the Year Two Review is an assessment of conditions for school success and accelerating student achievement such that CHARTER SCHOOL will reunite with the unified school district. Recommendations for

modifications or changes in the Agreement as a result of the year two review shall be incorporated into this Agreement by mutual agreement.

## **ARTICLE 10 - GENERAL PROVISIONS**

### **Section 10.1. 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.

### **Section 10.2. 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 10.3. Entire Agreement.**

The Charter and this Agreement constitute the entire agreement between the District and CHARTER SCHOOL 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 both the District and CHARTER SCHOOL expressly indicating the intent to modify or amend this Agreement.

### **Section 10.4. California Law.**

This Agreement shall be governed by and the rights, duties and obligations of the District and CHARTER SCHOOL shall be determined and enforced in accordance with the laws of the State of California. The District and CHARTER SCHOOL further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in Alameda District, California.

### **Section 10.5. 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 10.6. Successors and Assigns.**

This Agreement shall be binding upon and inure to the benefit of the District and CHARTER SCHOOL hereto and their respective heirs, legal representatives, successors and assigns.

### **Section 10.7. 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 10.8. 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 District and CHARTER SCHOOL hereto.

**Section 10.9. 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 10.10. Incorporation of Recitals and Exhibits.**

The Recitals and each exhibit attached hereto are incorporated herein by reference.

**Section 10.11. 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 personally delivered or either 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:

Office of Charter Schools  
Tilden School, Room 11  
4551 Steele Street  
Oakland, CA 94619  
Attn: Coordinator

Community Charter School  
3400 Malcolm Ave.  
Oakland, CA 94605  
Attn: 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 three (3) days after deposit in the United States mail.

**Section 10.12. Modifications.**

Modifications of this Agreement may be made by mutual written agreement at any time and must express intent to modify this Agreement. Any modification of this agreement must be in writing and executed by duly authorized representatives of both parties.

**Section 10.13. Force Majeure.**

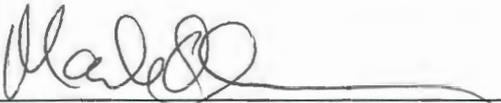
Whenever either party hereto shall be required by the terms of this Agreement or by law to perform any contract, act, work, construction, labor or services, or to perform and comply with any laws, rules, orders, ordinances, regulations or zoning regulations, said party shall not be deemed to be in default herein and the other party shall not enforce or exercise any of its rights under this Agreement, if and so long as nonperformance or default herein shall be directly caused by strikes, non-availability of materials, war or national defense preemptions or civil disobedience, governmental restrictions, alien invasion, or other similar causes beyond the reasonable control of the non-performing party.

**Section 10.14. Incorporation of Recitals and Exhibits.**

The Recitals and each exhibit attached hereto are incorporated herein by reference.

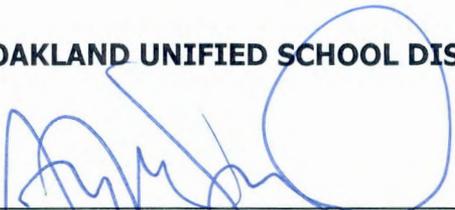
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

**100 BLACK MEN OF THE BAY AREA COMMUNITY CHARTER SCHOOL**



Dr. Mark Alexander

**OAKLAND UNIFIED SCHOOL DISTRICT**



Dr. Tony Smith, Superintendent

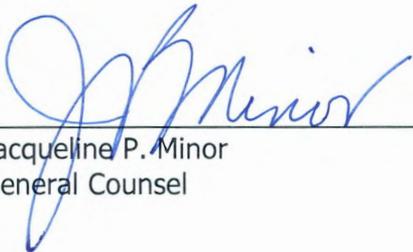


Jody London, President, Board of Education



Edgar Rakestraw, Jr., Secretary, Board of Education

APPROVED AS TO FORM:



Jacqueline P. Minor  
General Counsel

**LEGISLATIVE FILE**

File ID Number 12-0606  
Introduction Date 5-23-12  
Enactment Number 12-1481  
Enactment Date 6-13-12 