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**OAKLAND UNIFIED  
SCHOOL DISTRICT**  
Community Schools, Thriving Students

# Memo

**To** Board of Education

**From** Silke Bradford, Director – Quality Diverse Providers  
David Montes de Oca - Deputy Chief  
Marion McWilliams - General Counsel

**Board Meeting Date** June 28, 2017

**Subject** **Charter School Facilities Agreement - Aspire Public Schools - Continued Occupancy of Facilities Located at 6200 San Pablo Avenue**

**Action Requested** Approval by the Board of Education of the Charter School Facilities Agreement For 2017-2018 through 2021-2022 between Oakland Unified School District and Aspire Berkley Maynard Academy Charter School ("Charter School") for the latter's continued occupancy of facilities located at 6200 San Pablo Avenue and mutual intent to enter into a long term facilities agreement.

**Background and Discussion** The Board is being asked to approve a 5-year facilities use agreement with Charter School that includes:

- For the 2017-18 fiscal year, the Charter School agrees to pay the sum of \$4.74 per square foot for in-District students and \$10.00 per square foot for out-of-District students;
- The amount per square foot for in-District will increase to the annual Prop. 39 rate;
- The amount per square foot for out-of-District will increase incrementally by \$1.00 each school year up to \$15.00 per square foot for out-of-District students;
- Charter school shall have the right to make improvements to: thermostats; boiler; bathrooms; fire system; water fountains; exterior surface; roof; windows; potable water lines; plumbing lines; and old playground equipment;
- Charter School shall receive rent credits not to exceed \$1.5 million dollars for eligible improvement;
- The District shall apply the rent credit in the following manner - deduct \$300,000 from the Charter School's yearly rent calculation; and
- Charter School waives the right to receive facilities from the District under Proposition 39 for every school year during which the Charter School occupies the facilities located at



6200 San Pablo Avenue under a long term facilities use agreement.

**Recommendation**

Approval by the Board of Education of the Charter School Facilities Agreement for 2017-2018 through 2021-2022 with Aspire Berkley Maynard Academy Charter School for long term occupancy of and capital improvements to the facilities located 6200 San Pablo Avenue.

**Fiscal Impact**

Exact amount to be determined. Charter School will pay the Prop 39 rate per square foot for in-District students. Charter School will pay \$10.00 per square foot for out-of-District students. The out-of-District rate shall incrementally increase by \$1.00 per square foot for out-of-District students up to \$15.00 per square foot for out-of-District students. Facility use fee will be subject to a rent credit offset for the dollar cost value of the improvements.

**Attachments**

Facilities Use Agreement

**CHARTER SCHOOL FACILITIES AGREEMENT  
FOR 2017-2018 through 2021-2022**

THIS CHARTER SCHOOL FACILITIES AGREEMENT ("Agreement") effective July 1, 2017 through June 30, 2022, is entered into by and between the Oakland Unified School District, a California Public School district (hereinafter referred to as the "District") and Aspire Public Schools, a California non-profit public benefit corporation (hereinafter referred to as "CHARTER SCHOOL"), for use of the facilities located at 6200 San Pablo Avenue, Oakland, CA 94608 (hereinafter referred to as "Site").

RECITALS

WHEREAS, the District intends to provide facilities to the CHARTER SCHOOL, and the CHARTER SCHOOL intends to obtain its facilities from the District for the operation of Aspire Berkley Maynard Academy in lieu of an allocation of facilities pursuant to California Proposition 39 (Education Code section 47614) and its implementing regulations ("Proposition 39").

WHEREAS, the District has found that the CHARTER SCHOOL's use and occupation of the Site as set forth herein in lieu of Proposition 39 are authorized under Education Code section 47614, as implemented by 5 C.C.R. section 11969.1(b), provides that "[i]f a charter school and a school district mutually agree to an alternative to specific compliance with any of the provisions of this article, nothing in this article shall prohibit implementation of that alternative."

WHEREAS, the parties intend that CHARTER SCHOOL may make certain improvements to the Site as set forth more fully herein, with CHARTER SCHOOL bearing all the costs of making such improvements, and bearing full responsibility for compliance with all legal requirements in the course of making such improvements.

WHEREAS, the parties intend that the District shall provide certain rent credits for certain improvements to the Site as set forth more fully herein.

NOW, THEREFORE, for and in consideration of the facilities use payments and of the covenants and agreements hereinafter set forth to be kept and performed by the CHARTER SCHOOL, the District hereby grants use to the CHARTER SCHOOL of the school site located at 6200 San Pablo Avenue, Oakland CA, described more fully in Exhibit "A" attached hereto, subject to and upon all of the terms, covenants, and agreements hereinafter set forth. It is the intent of the parties that this written agreement supersede all previous agreements, written or unwritten, related to the use and occupation of the Site by the CHARTER SCHOOL.

APPLICABILITY

This Agreement shall only relate to District's provision of facilities for CHATER SCHOOL's Berkely Maynard Academy charter. Nothing contained herein shall restrict, limit or otherwise affect CHARTER SCHOOL's rights to District-provided facilities for its other charters nor shall the Agreement obligate CHARTER SCHOOL or District to take or refrain from taking any action related to its other charters.

1. SITE

The CHARTER SCHOOL's exclusive use of the Site shall consist of the entire property located at 6200 San Pablo Avenue, Oakland CA and set forth in Exhibit "A" hereto.

2. TERM

The term of this Agreement shall be for five (5) consecutive school years, commencing on July 1, 2017 and ending on June 30, 2022, with an option to renew for one additional five (5) year term.

This Agreement terminates automatically upon revocation, nonrenewal or termination of the charter, but not before CHARTER SCHOOL has exhausted its administrative (non-judicial) appeals process from such nonrenewal/revocation. This agreement shall not continue in operation while CHARTER SCHOOL exercises any judicial challenges to any such nonrenewal/revocation. CHARTER SCHOOL shall quit the Site and remove its possessions therefrom as of the effective date of termination, or upon the expiration of this Agreement. CHARTER SCHOOL shall have no obligations under this Agreement as of the effective date of the termination, except for those obligations that survive the termination of this Agreement.

No later than July 15 of the final year of this Agreement or July 15 of the final year of the option if exercised, CHARTER SCHOOL shall contact the District to request a meeting with the District Superintendent or his/her designee to discuss whether the parties desire to enter into a successor agreement. In the alternative, CHARTER SCHOOL may make a Proposition 39 request for facilities for the year following the termination of the Agreement or the option.

In the event that the CHARTER SCHOOL applies for, and is granted, funding under Charter School Facilities Program (Proposition 51) for the construction or rehabilitation of facilities during the term of this Agreement, the DISTRICT and CHARTER SCHOOL shall, upon mutual written agreement, execute an agreement to serve as a successor to this Agreement.

3. CHARTER SCHOOL's OBLIGATIONS

A. PAYMENTS

1. CHARTER SCHOOL shall pay the following rate for use and occupation of the Site:
  - a. 2017-18 fiscal year: the sum of \$4.74 per square foot for in-District students and \$10.00 per square foot for out-of-District students;

- b. 2018-19 fiscal year: the sum of \$4.74 per square foot for in-District students and \$11.00 per square foot for out-of-District students;
- c. 2019-20 fiscal year: the sum of \$4.74 per square foot for in-District students and \$12.00 per square foot for out-of-District students;
- d. 2020-21 fiscal year: the sum of \$4.74 per square foot for in-District students and \$13.00 per square foot for out-of-District students; and
- e. 2021-22 fiscal year: the sum of \$4.74 per square foot for in-District students and \$14.00 per square foot for out-of-District students

The per square foot rate for out-of-District students will continue to increase by \$1.00 per square foot annually, during the term of any successor agreement, until reaching the rate of \$15.00 per square foot.

For the purposes of this calculation, the total building square footage for the Site is 50,233 square feet, and the total site acreage is 3.4. The square footage for in-District students shall be determined by dividing the number of in-District students by the total number of students served at the Site and multiplying that resulting percentage by the total building square footage of the Site. The square footage for out-of-District students shall be determined by dividing the number of out-of-District students by the total number of students served at the Site and multiplying that resulting percentage by the total building square footage of the Site.

The initial rent calculation for each year shall be based on the number of in-District and out-of-District students as reported by the CHARTER SCHOOL in the prior year P-2 ADA. The parties shall conduct a one-time reconciliation each fiscal year based on the CHARTER SCHOOL's actual P-2 ADA for that fiscal year. The reconciliation should occur in in June of each year.

2. Payments shall be made in twelve (12) equal installments based on the initial rent calculation payable in advance on the first day of each month, without prior notice or demand, in lawful money of the United States. If payment is made more than fifteen (15) days late, District shall notify the CHARTER SCHOOL and may assess a late fee of 1% (one percent) of the installment payment due and interest shall accrue after the installment payment is thirty (30) days late at the rate of 5% (five percent) per annum. The payment of late fees and/or interest shall not by itself excuse or cure any default by CHARTER SCHOOL, and shall not estop the District from commencing legal action to regain possession of the facilities based on default by CHARTER SCHOOL under Section 11 of this Agreement.

3. The above payment terms shall pertain to the entire duration of the Agreement, regardless of the percentage of CHARTER SCHOOL students that are in-District or out-of-District.

B. CHARTER SCHOOL'S RIGHT TO MAKE IMPROVEMENTS ON THE

SITE

1. The CHARTER SCHOOL shall have the right to make the following improvements (collectively “Eligible Improvements”) only on the Site at its own expense:

Thermostats	Repair or replace all individual units and system components
Boiler	Repair or replace boiler, including but not limited to all components, fittings and assemblies, and piping/lines
Bathrooms	Repair or replace all bathroom components, including but not limited to toilets, sinks and pipes, and partitions
Fire system	Repair or replace all components of fire system, including but not limited to panels, wiring, sensors/detectors, sprinklers and lines
Water fountains	Install, repair or replace water fountains
Exterior Surface	Paint exterior surfaces; Repair/refurbish/replace exterior stucco
Roof	Repair/replace exterior roof
Windows	Repair/replace windows
Potable water lines	Repair/replace lines carrying potable water
Plumbing lines	Repair/replace plumbing lines
Old Kindergarten Playground Equipment	Removal of old kindergarten playground equipment

2. CHARTER SCHOOL shall receive rent credits not to exceed \$1.5 million during the Initial Term of the Agreement for the Eligible Improvements for work actually performed on the Site. The rent credit shall be applied as follows:
  - a. Each year of the five year Initial Term, the District shall deduct \$300,000 from its yearly rent calculation.
  - b. If the CHARTER SCHOOL has not actually spent \$300,000 on Eligible Improvements in a given year, CHARTER SCHOOL shall reimburse the District for the difference between the amount of the work actually performed that year and the \$300,000 rent credit.
  - c. Notwithstanding the foregoing paragraph, if the CHARTER SCHOOL spends more than \$300,000 on Eligible Improvements in a given year, the amount in excess of \$300,000 will carry over to the following years, until the \$1.5M rent credit is exhausted or the Agreement is terminated, whichever comes first.

The rent credit shall not exceed the rent payment assessed for any year.

3. All improvements, including Eligible Improvements, are subject to the following procedures and requirements:
  - a) CHARTER SCHOOL must bear financial responsibility for all improvements (other than the application of the rent credit), and must hold the District harmless for claims for payment by any

contractors, subcontractors or other parties, as well as any liens assessed as result of work performed. CHARTER SCHOOL agrees to defend and indemnify the District against any claims arising out of or related to performance of the work related to the improvements.

- b) CHARTER SCHOOL agrees to bear responsibility for paying for and performing any required unanticipated upgrades related to disability access triggered by the performance of any work done on the site. This paragraph shall not limit CHARTER SCHOOL's receipt of rent credits for the Eligible Improvements.
- c) CHARTER SCHOOL must follow all applicable procurement laws with respect to all projects at the Site; issue requests for proposals for all projects to obtain competitive pricing at the Site; and adhere to prevailing wage laws at the Site.
- d) The District reserves the right to review CHARTER SCHOOL's selection of contractors. Contract prices are subject to District approval, which shall not be unreasonably withheld.
- e) The CHARTER SCHOOL agrees to provide copy of documentation related to the work, including requests for proposals, bids/proposals, schematic designs, specifications, work plans, work schedules, change orders, etc.
- f) All work performed, including designs (if applicable), specifications, work plans and work schedules, are subject to prior approval, which shall not be unreasonably withheld, and periodic inspection by the District upon District request.
- g) CHARTER SCHOOL shall provide and pay for project management for all work performed, subject to compliance and progress reports to the District.
- h) CHARTER SCHOOL shall bear the exclusive responsibility, and bear the exclusive cost for, full compliance with any and all improvements or modifications to the Site with all legal requirements, including but not limited to the Field Act (Education Code section 17280 *et seq.*); all requirements of the Division of State Architect ("DSA"); any other applicable Building Code requirements; the California Environmental Quality Act (Government Code section 21000 *et seq.*) ("CEQA"); Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 and applicable State law governing access to facilities; and any federal, local and state requirements governing building construction, building

occupancy, fire safety, food storage and preparation. Notwithstanding the foregoing, District assumes full responsibility for all DSA tickets that were open as of the date the Agreement was executed.

- i) The CHARTER SCHOOL shall be responsible for maintaining required fire and smoke detection/alarm systems and all telephone and data communication lines.
- j) CHARTER SCHOOL agrees to defend and indemnify the District against any and all claims arising out of any and all improvements that it makes related to the Site in accordance with Section 8 (“Indemnification”) of this Agreement.
- k) Section 6.2 of this Agreement (“Alterations and Additions”) shall apply to any and all improvements performed by CHARTER SCHOOL to the Site.
- l) CHARTER SCHOOL shall keep the Site and any facilities built thereon free from any liens arising out of any work performed, materials furnished or obligations incurred by or on behalf of CHARTER SCHOOL. Notwithstanding anything stated herein to the contrary, if CHARTER SCHOOL fails to promptly release and remove any such lien, District, at its sole option, may immediately (but shall not be obligated to) take all action necessary to release and remove such lien, without any duty to investigate the validity thereof, and all sums, costs and expenses, including reasonable attorneys’ fees and costs, incurred by District in connection with such lien shall be immediately due and payable by CHARTER SCHOOL.
- m) CHARTER SCHOOL shall not uninstall or remove any fixtures or improvements made at the Site without prior written approval of the District.
- n) CHARTER SCHOOL may only make improvements to facilities within the Site. CHARTER SCHOOL shall be expressly prohibited from making alternation, addition, improvement, or modification to any portion of the Site not exclusively contained within CHARTER SCHOOL’s Site.
- o) The District shall hold title to any improvements made to the site, and Charter School expressly waives any liens, encumbrances, rights in equity, or any other claim of ownership or title thereto based upon any improvements made to the Site



3. Approvals

CHARTER SCHOOL shall submit all requests for approval under this Section 3(B)(2) to the Office of the General Counsel by email. District shall respond to the request for approval within thirty (30) days. If District fails to respond to the request for approval within thirty (30) days, a District employee with the approval authority will attend a meeting or conduct a conference call with CHARTER SCHOOL within five (5) business days to review and approve the requests.

4. Compliance with California Environmental Quality Act

CHARTER SCHOOL shall bear exclusive responsibility for compliance with all requirements of California Environmental Quality Act (“CEQA”) at its sole expense, and agrees to defend and indemnify the District against any and all claims arising out of any project undertaken by CHARTER SCHOOL on the Site pursuant to Section 8 (“Indemnification”) of this Agreement brought under CEQA.

4. USE

4.1 Independence of Operation. District acknowledges that CHARTER SCHOOL is governed by CHARTER SCHOOL’s own board of directors, which has the sole responsibility for determining the policies and operations of CHARTER SCHOOL in accordance with its charter.

4.2 Use. The facilities on the Site shall be used and occupied by CHARTER SCHOOL for the sole purpose of operating a California public charter school and all its related school activities and for no other purpose without the prior written consent of District. CHARTER SCHOOL’s compliance with the provisions of the Civic Center Act (Education Code Section 38131, et seq.) in making use of the Facilities accessible to members of the community shall be included in the permissible uses of the Site under this Agreement. CHARTER SCHOOL ACKNOWLEDGES AND AGREES (I) THAT, EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH HEREIN, IN ENTERING INTO THIS AGREEMENT, THE CHARTER SCHOOL HAS NOT RELIED ON ANY REPRESENTATION, STATEMENT, OR WARRANTY BY DISTRICT, OR ANYONE ACTING FOR OR ON BEHALF OF DISTRICT, AND THAT ALL MATTERS CONCERNING THE SITE HAVE BEEN INDEPENDENTLY VERIFIED BY CHARTER SCHOOL; (II) THAT CHARTER SCHOOL IS TAKING/CONTINUING POSSESSION OF THE SITE BASED ON ITS OWN INSPECTION AND EXAMINATION THEREOF AND ON AN “AS IS” BASIS; AND (III) THAT DISTRICT MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF CONDITION, HABITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE WITH RESPECT TO THE SITE.

4.3 Restrictions. CHARTER SCHOOL shall have no rights to the air above or the subjacent terrain below any area of the Premises outside of CHARTER SCHOOL’s Site.

#### 4.4 Uses Prohibited.

(a) CHARTER SCHOOL shall not do or permit anything to be done in or about the Site nor bring or keep anything therein which would fall under an exclusion from coverage or cause a cancellation of any insurance policy covering said Site or any part thereof or any of its contents, nor shall CHARTER SCHOOL sell or permit to be kept, used, or sold in or about said Site any articles which may be prohibited by a standard form policy of fire insurance.

(b) Neither party shall do or permit anything to be done in or about the Site that will in any way obstruct or interfere with the rights of the other party or injure or annoy the other party or use or allow the Site to be used for any unlawful or objectionable purpose nor shall either party cause, maintain or permit any nuisance in or about the Site. Neither party shall not commit or suffer to be committed any waste in or upon the Site.

(c) CHARTER SCHOOL shall not use the Site or permit anything to be done in or about the Site that will in any way conflict with any applicable law, statute, ordinance or governmental rule, or regulation now in force or which may hereafter be enacted or promulgated, or with CHARTER SCHOOL's charter. CHARTER SCHOOL shall comply with District policies and/or procedures and practices regarding the operations and maintenance of the facilities, furnishings and equipment.

#### 5. FURNISHINGS AND EQUIPMENT

5.1 CHARTER SCHOOL shall be solely responsible for providing its own furnishings and equipment at its Site. District shall have no obligation to provide furnishings or equipment to CHARTER SCHOOL.

#### 6. MAINTENANCE AND REPAIRS; ALTERATIONS AND ADDITIONS

##### 6.1 Maintenance and Repairs.

The ongoing daily operations and maintenance of the facilities and equipment on the Site is the responsibility of CHARTER SCHOOL. CHARTER SCHOOL and CHARTER SCHOOL's agents and employees shall observe and comply fully and faithfully with all policies, rules, and regulations adopted by the District for the maintenance, care, protection, cleanliness, and operation of the Site, and the facilities, furnishings and equipment thereon, and shall comply with all applicable laws. CHARTER SCHOOL's students, visitors, and invitees shall observe and comply fully and faithfully with all policies, rules, and regulations adopted by the District for the use and care of the Site. The District will provide CHARTER SCHOOL with copies of all relevant written use, care, maintenance and operations policies. The District will provide any such written policies that are amended during the term of the Agreement.

CHARTER SCHOOL shall be responsible for the routine maintenance of all facilities existing on CHARTER SCHOOL's Site. District shall be responsible for major maintenance, except as otherwise set forth in this Agreement. For purposes of this section, "major maintenance"

includes the major repair or replacement of plumbing, heating, ventilation, air conditioning, electrical, roofing, and floor systems, exterior and interior painting, and any other items considered deferred maintenance under Education Code section 17582. All other kinds of maintenance shall be considered routine maintenance.

## 6.2 Alterations and Additions.

(a) CHARTER SCHOOL must obtain prior written consent of District for any alterations, additions or improvements that exceed \$10,000 or that involve “major repair or replacement of plumbing, heating, air conditioning, electrical, roofing, and floor systems, the exterior and interior painting of school buildings, the inspection, sampling, and analysis of building materials to determine the presence of asbestos-containing materials, the encapsulation or removal of asbestos-containing materials, the inspection, identification, sampling, and analysis of building materials to determine the presence of lead-containing materials, the control, management, and removal of lead-containing materials” under Education Code section 17582. Alterations, additions, or improvements are defined as changes that would be deemed to be a “fixture” in accordance with California Civil Code section 660) to the Site or any part thereof without obtaining the prior written consent of District. Civil Code section 660 defines a fixture as follows: “A thing is deemed to be affixed to land when it is attached to it by roots, as in the case of trees, vines, or shrubs; or imbedded in it, as in the case of walls; or permanently resting upon it, as in the case of buildings; or permanently attached to what is thus permanent, as by means of cement, plaster, nails, bolts, or screws; except that for the purposes of sale, emblements, industrial growing crops and things attached to or forming part of the land, which are agreed to be severed before sale or under the contract of sale, shall be treated as goods and be governed by the provisions of the title of this code regulating the sales of goods.”

(b) Consent for alterations, additions, or improvements may not be unreasonably withheld. District has the sole discretion to impose as a condition to the aforesaid consent any reasonable requirements the District may deem necessary, including but not limited to, the manner in which the work is done, a right of approval of the contractor by whom the work is to be performed, the times during which the work is to be accomplished, the manner in which the work is inspected, and the requirement that upon written request of District prior to the expiration or earlier termination of the Agreement, CHARTER SCHOOL will remove any and all alterations, additions or improvements to the Site installed by CHARTER SCHOOL pursuant to this provision. District reserves the right to require approval of all terms, including but not limited to construction schedule, work hours, and modifications, as well as requiring licensing and bonding of contractors (including performance and payment bonds covering 100% of contract price), as well as compliance with prevailing wage laws. CHARTER SCHOOL agrees to name District as an intended third party beneficiary of any contract for the construction of alterations, additions, or improvements to the Site.

(c) All such alterations, additions or improvements that were permitted to be made consistent with Section 6.2(a) and (b) shall at the expiration or earlier termination of the Agreement become the property of District and remain upon and be surrendered with the Site, unless the District requests its removal as specified in Section 6.2(b) above.

(d) All articles of personal property owned by CHARTER SCHOOL or installed by CHARTER SCHOOL at its expense on the Site shall be and will remain the property of CHARTER SCHOOL and may be removed by CHARTER SCHOOL at any time during the Agreement term.

(e) CHARTER SCHOOL shall be allowed to post signs that identify its location and name on the Site in a manner that is customary and equivalent to what other District school sites have established, and subject to District's prior approval.

## 7. ENTRY BY DISTRICT

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

## 8. INDEMNITY

8.1 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 Site to the CHARTER SCHOOL, arising from CHARTER SCHOOL's use of the Site, from the conduct of its business or from any activity, work, or other things done, permitted or suffered by CHARTER SCHOOL in or about the Site; provided, however, that CHARTER SCHOOL shall not have any obligation to indemnify, hold harmless or defend the 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 Site to CHARTER SCHOOL, resulting from or arising out of the sole negligence or willful malfeasance of the District, its trustees, officers, employees and agents.

DISTRICT shall indemnify, defend, save and hold harmless CHARTER SCHOOL, its trustees, officers, employees and agents from and against any and all demands, claims, causes of action, fines, penalties, damages, losses, liabilities (including, but not limited to, strict liability), judgments, and expenses (including, without limitation, reasonable attorneys' fees and expenses, filing and other court costs) solely and exclusively incurred in connection with or arising from any acts, omissions, or negligence that are solely and exclusively of DISTRICT. Notwithstanding the foregoing the DISTRICT shall have no indemnification obligation for claims related to the maintenance, care or suitability of the Site.

## 9. INSURANCE

9.1 Coverage. CHARTER SCHOOL will obtain its own insurance coverage and supply District certificates of insurance, with proof of insurance of at least the types and amounts recommended by the District's insurer based upon the standard coverage for a school of similar size and location, as follows:

a. Comprehensive or commercial general liability insurance with limits not less than Two Million Dollars (\$2,000,000) each occurrence combined single limit for bodily injury and property damage.

b. Comprehensive or Business Automobile Liability Insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence Combined Single Limit for Bodily Injury and Property Damage including coverage for Owned, Non-owned and Hired Vehicles, as applicable.

District reserves the right to require CHARTER SCHOOL to maintain limits required of other tenants on District property.

c. Workers' Compensation as required by law, with Employer's Liability limits not less than One Million Dollars (\$1,000,000) each.

d. Professional Liability (Errors and Omissions or Directors and Officers) Insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence.

e. If any policies are written on a claims-made form, CHARTER SCHOOL agrees to maintain such insurance continuously in force for three years following termination or revocation or termination of the Charter or extend the period for reporting claims for three years following the termination or revocation of the Charter to the effect that occurrences which take place during this time frame shall be insured.

f. CHARTER SCHOOL shall be responsible, at its sole expense, for separately insuring its personal property.

g. CHARTER SCHOOL shall add the District as a named additional insured on its insurance policies related to the Site, or those potentially covering any risk arising out of

CHARTER SCHOOL's improvement of the site under this Agreement, to the extent permissible, and shall provide the District with certificates of insurance and endorsement page no later than 30 days prior to the commencement of instruction.

District shall maintain property insurance insuring the structures contained on the site with terms and policy limits commensurate to those maintained on other comparable District structures.

#### 10. ASSIGNMENT AND SUBLETTING

10.1 CHARTER SCHOOL may not assign its rights or sublet any portion of the Site without the written consent of District.

10.2 Although CHARTER SCHOOL shall have the exclusive use of its Site provided for in this Agreement, CHARTER SCHOOL agrees to comply with the provisions of the Civic Center Act (Education Code section 38131 et seq.) in making use of the facilities accessible to members of the community. For purposes of compliance with the Civic Center Act with respect to the Site, the CHARTER SCHOOL shall hold the same powers and obligations applicable to School District Boards of Trustees under Education Code sections 38130-38139.

#### 11. DEFAULT; REMEDIES

11.1 Default. The occurrence of any of the following shall constitute a default and breach of this Agreement by CHARTER SCHOOL:

(a) Any failure by CHARTER SCHOOL to make payments required to be paid hereunder, where such failure continues for thirty (30) days after receiving written notice of the failure to make payment;

(b) Any failure by CHARTER SCHOOL to use and occupy the Site for the operation of a charter school as required by this Agreement;

(c) The abandonment of the entire Site by CHARTER SCHOOL;

(d) Any failure by CHARTER SCHOOL to maintain insurance on the Site as outlined herein or to provide evidence of insurance as required by this Agreement, and where the failure continues for thirty (30) days after receiving written notice of the failure to make payment or cancellation of insurance;

(e) Any failure by CHARTER SCHOOL to observe and perform any other provision of this Agreement to be observed or performed by CHARTER SCHOOL, where such failure continues for thirty (30) days after receipt of written notice thereof by District to CHARTER SCHOOL, unless, however, the nature of the default is such that the same cannot reasonably be cured within said thirty (30) day period. CHARTER SCHOOL shall not be deemed to be in default if CHARTER SCHOOL shall within the thirty (30) day period commence such cure, and by determination of the District, diligently prosecute the cure to completion. In the event that the District has to issue written notice to CHARTER SCHOOL for

violation of the same obligation or provision of this Agreement on three or more occasions in the same fiscal year, the District may commence legal proceedings to terminate this Agreement, or take any other remedy provided in this Agreement, without the necessity of providing written notice to CHARTER SCHOOL.

(f) If CHARTER SCHOOL's charter is not renewed, or is revoked, or terminated for any reason, after exhaustion of all statutory administrative and non-judicial appeals thereof, or CHARTER SCHOOL ceases to use the Site for a charter school purpose.

(g) The making by CHARTER SCHOOL of any general assignment or general arrangement for the benefit of creditors; the filing by or against CHARTER SCHOOL of a petition to have CHARTER SCHOOL adjudged bankrupt or of a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against CHARTER SCHOOL, the same is dismissed within 60 days); the appointment of a trustee or receiver to take possession of substantially all of CHARTER SCHOOL's assets located at the Site or of CHARTER SCHOOL's interest in this Agreement, where possession is not restored to CHARTER SCHOOL within 30 days; or the attachment execution or other judicial seizure of substantially all of CHARTER SCHOOL's assets located at the Site or of CHARTER SCHOOL's interest in this Agreement, where such seizure is not discharged within 30 days.

(h) The failure of the charter school to perform, in the judgment of the District, any of the payment obligations set forth in Section 3 of this Agreement, subject to the cure provision set forth in subdivision (e) of Section 11.1 of this Agreement.

11.2 District Default and CHARTER SCHOOL Remedies: District shall not be in material breach and default unless District fails to perform obligations required of District within a reasonable time, but in no event later than 30 days after receipt of written notice by CHARTER SCHOOL to District specifying wherein District has failed to perform such obligations; provided, however, that if the nature of the District's obligation is such that more than 30 days are required for performance, then the District shall not be in default if the District commences performance within such 30 day period and thereafter diligently prosecutes the same to completion.

11.3 Remedies: If CHARTER SCHOOL commits any default or breach, including but not limited to the obligations set forth in Section 3 of this Agreement, then District may, at any time thereafter without limiting District in the exercise of any right or remedy at law or in equity which District may have by reason or such default or breach:

(a) Maintain this Agreement in full force and effect and recover use payments and other monetary charges as they become due, without terminating CHARTER SCHOOL's right to possession irrespective of whether CHARTER SCHOOL shall have abandoned the Site. If District elects not to terminate the Agreement, then District shall have the right to attempt to lease the Site at such rent and upon such conditions and for such a term, and to do all acts necessary to maintain or preserve the Site as District deems reasonable and necessary without being deemed to have elected to terminate the Agreement, including removal of all persons and property from the Site; such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of CHARTER SCHOOL. If any such re-letting occurs, then this Agreement shall terminate automatically.

(b) Terminate CHARTER SCHOOL's right to possession by any lawful means, in which case this Agreement shall terminate and CHARTER SCHOOL shall immediately surrender possession of the Site to District. In such event District shall be entitled to recover from CHARTER SCHOOL all damages incurred by District by reason of CHARTER SCHOOL's default, including without limitations thereto, the following: (i) the worth at the time of award of any unpaid use payments which had been earned at the time of such termination; plus (ii) any other damages to which the District would be entitled under the law. Upon any such re-entry District shall have the right to make any reasonable repairs, alterations or modifications to the Site, which District in its sole discretion deems reasonable and necessary. As used in (i) above, the "worth at the time of award" is computed by allowing interest at the rate of 10% per year from the date of default. As used in (ii) and (iii) the "worth at the time of award" is computed by discounting such amount at the discount rate of the U.S. Federal Reserve Bank at the time of award plus 1%. The term "use payments", as used in this Section 12.2, shall be deemed to be and to mean the payments to be paid pursuant to Section 3 and all other monetary sums required to be paid by CHARTER SCHOOL pursuant to the terms of this Agreement.

11.3.5 If District commits any default or breach, then CHARTER SCHOOL may, at any time thereafter without limiting CHARTER SCHOOL in the exercise of any right or remedy at law or in equity which CHARTER SCHOOL may have by reason or such default or breach, proceed in equity or at law to compel District to perform its obligations and/or to recover damages proximately caused by such failure to perform or cure any default of District at District's cost.

11.4 No remedy conferred or reserved to the District or CHARTER SCHOOL is intended to be exclusive and every remedy shall be cumulative and in addition to every other remedy given under this Agreement or existing at law or in equity. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. The District and CHARTER SCHOOL are entitled to exercise any remedy reserved to it in this section without giving any notice other than such notice as is required under the Agreement. All remedies reserved to the District and CHARTER SCHOOL shall survive the termination of the Agreement.

## 12. CONDEMNATION

If all or any part of the Site shall be taken or appropriated for public or quasi-public use by right of eminent domain, with or without litigation, then CHARTER SCHOOL shall have the right at its option exercisable within thirty (30) days of receipt of notice of such taking to terminate this Agreement as of the date possession is taken by the condemning authority, provided, however, that before CHARTER SCHOOL may terminate this Agreement by reason of taking or appropriation as provided hereinabove, such taking or appropriation shall be of such an extent and nature as to impede or impair CHARTER SCHOOL'S use of more than sixty percent (60%) of the classroom space at the Site. CHARTER SCHOOL does not waive any award to which it



might be entitled which may be made in such taking or condemnation (specifically excluding any claim arising out of a claim in right, title, or interest to the Site, or any fixtures, improvements or appurtenances thereto), together with any and all rights of CHARTER SCHOOL now or hereafter arising in or to the same or any part thereof. If there is a partial taking that does not result in a termination of this Agreement, then all fees and use payments shall be abated in the proportion that the part of the Site so made unusable bears to the used area of the Site immediately prior to the taking. No temporary taking (defined as a taking of less than ninety (90) days of the Site and /or of CHARTER SCHOOL's rights therein or under this Agreement shall terminate this Agreement.

### 13. DESTRUCTION

If any of the improvements made by CHARTER SCHOOL on the Site are damaged by any casualty, CHARTER SCHOOL shall bear exclusive financial responsibility for replacement. CHARTER SCHOOL shall obtain adequate insurance pursuant to Section 9 of this Agreement to cover any all structures at the Site, and CHARTER SCHOOL's personal property.

If the Site is destroyed by any casualty, then the District shall have the option to either promptly restore the facilities or terminate this Agreement upon thirty (30) days written notice. CHARTER SCHOOL shall have no obligation to pay rent while the Site is under construction or after the termination of the Agreement, though to the extent that the CHARTER SCHOOL enjoys partial use of the site, the payments under this Agreement shall be prorated accordingly.

### 14. MISCELLANEOUS

14.1 Transfer of District's Interest. If District sells or conveys its interest in the Site (other than a transfer for security purposes only), then District shall be relieved from and after the date specified in any such notice of transfer of all obligations and liabilities accruing thereafter on the part of District, provided that any funds in the hands of District at the time of transfer in which CHARTER SCHOOL has an interest, shall be delivered to the successor of District. This Agreement shall not be affected by any such sale, transfer or conveyance, excepting that within 10 days of the effective date of sale, CHARTER SCHOOL shall have the right to terminate the Agreement upon 30 days written notice. CHARTER SCHOOL agrees to attorn to the purchaser or assignee provided all District's obligations hereunder are assumed in writing by the transferee.

#### 14.2 Captions; Attachments; Defined Terms, Amendments.

(a) The captions of the paragraphs of this Agreement are for convenience only and shall not be deemed to be relevant in resolving any question of interpretation or construction of any section of this Agreement.

(b) Exhibits attached hereto, and addenda and schedules initialed by the parties, are deemed by attachment to constitute part of this Agreement and are incorporated herein.

(c) This Agreement may only be amended in a writing that specifically indicates its intent to modify and/or amend this Agreement. All amendments shall only be effective if executed by both parties.

14.3 Entire Agreement. This instrument, along with any exhibits and attachments hereto, constitutes the entire agreement between District and CHARTER SCHOOL relative to the Site. District and CHARTER SCHOOL agree hereby that all prior or contemporaneous oral or written agreements between and among themselves and their agents or representatives relative to the leasing of the Site are merged in, revoked by, and superseded by this Agreement.

14.4 Severability. If any term or provision of this Agreement shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, then the remainder of this Agreement shall not be affected thereby, and each term and provision of this Agreement shall be valued and be enforceable to the fullest extent permitted by law.

14.5 Binding Effect; Choice of Law. The parties hereto agree that all provisions hereof are to be construed as both covenants and conditions as though the words importing such covenants and conditions were used in each separate paragraph hereof. Subject to any provisions hereof restricting assignment or subletting by CHARTER SCHOOL, all of the provisions hereof shall bind and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns. The laws of the State of California shall govern this Agreement.

14.6 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.

14.7 Smoking. The Site shall be non-smoking and no smoking shall be allowed in or on the Site, including but not limited to all balconies, courtyards, walkways, and parking areas. CHARTER SCHOOL shall also ensure that the Site shall remain drug and alcohol free.

14.8 Notices. All Notices or demands of any kind required or desired to be given by District or CHARTER SCHOOL hereunder shall be in writing and shall be deemed delivered upon depositing the notice or demand in the United States mail, certified or registered, postage prepaid, addressed to the District or CHARTER SCHOOL respectively at the following addresses:

Superintendent  
Oakland Unified School District  
1000 Broadway, Suite 680  
Oakland, CA 94607

Chief Financial Officer and General Counsel  
Aspire Public Schools – Berkley Maynard  
1001 22<sup>nd</sup> Avenue

Oakland, CA 94606

14.9 Corporate Authority. Each individual executing this Agreement on behalf of the CHARTER SCHOOL represents and warrants that he is duly authorized to execute and deliver this Agreement on behalf of the CHARTER SCHOOL in accordance with a duly adopted resolution of the Board of Directors of said corporation or in accordance with the Bylaws of said corporation, and that this Agreement is binding upon said corporation in accordance with its terms. CHARTER SCHOOL shall, within thirty (30) days after execution of this Agreement, deliver to District a copy of a resolution of the Board of Directors or the Executive and Compensation Committee of the CHARTER SCHOOL authorizing or ratifying the execution of this Agreement.

## 15. HAZARDOUS MATERIALS DISCLOSURE

(a) Lead: CHARTER SCHOOL shall assume that all ceramic tile and painted or varnished surfaces in the Site contain detectable levels of lead which may trigger compliance with California Code of Regulations, Title 8, Sections 1532.1. In addition, waste products from these materials could contain lead at levels that are subject to the hazardous waste requirements in the California Code of Regulations, Title 22, Sections 66260.1-66263.12 and 66268.1-66268.124 and the Health and Safety Code Section 25163, subdivision (c). Should CHARTER SCHOOL perform work that disturbs these materials, it is CHARTER SCHOOL's responsibility to handle and dispose of these materials in accordance with the regulations. If the CHARTER SCHOOL fails to comply with these regulations in performing work and this results in a site or worker contamination, then CHARTER SCHOOL will be held solely responsible for all costs involved in any required corrective action, and shall indemnify the District against all claims arising therefrom in accordance with Section 8 of the Agreement.

(b) Asbestos: CHARTER SCHOOL shall be responsible to review the site Asbestos Report. The District shall provide a copy of the site Asbestos Report to the CHARTER SCHOOL at the time of execution of this Agreement. CHARTER SCHOOL is responsible for complying with all applicable laws pertaining to the safe handling of asbestos-containing material (ACM) if the CHARTER SCHOOL is performing any modifications to the Site. Should CHARTER SCHOOL perform work that disturbs these materials, it is CHARTER SCHOOL's responsibility to handle and dispose of these materials in accordance with the regulations. If failure to comply with these regulations results in a site or worker contamination, then CHARTER SCHOOL will be held solely responsible for all costs involved in any required corrective action, and shall indemnify the District against all claims arising therefrom in accordance with Section 8 of the Agreement.

(c) CHARTER SCHOOL, at its expense, shall comply with all applicable laws, regulations, rules and orders with respect to its use and occupancy of the Site, including, without limitation, those relating to health, safety, noise, environmental protection, waste disposal, and water and air quality. The CHARTER SCHOOL shall be responsible for any and all environmental conditions that existed as a result of the CHARTER SCHOOL's occupancy of the Site. The CHARTER SCHOOL shall assume responsibility for compliance with ADA and FEHA access rights and other applicable building code standards to the extent of any

modifications or improvement made by, or triggered by the use or occupancy of the CHARTER SCHOOL.

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

#### 16. DISPUTE RESOLUTION

In the event of any disagreement as to the terms of this Agreement, the parties shall utilize the Dispute Resolution process set forth in the CHARTER SCHOOL's Charter.

#### 17. FINGERPRINTING

CHARTER SCHOOL and the District, their employees, agents, contractors and subcontractors shall comply with the requirements of Education Code Sections 45125.1 and 45125.2 related to access to the Site and protection of minor students. CHARTER SCHOOL shall not be required to have volunteers fingerprinted if they are directly supervised at all times by a CHARTER SCHOOL employee with proper criminal background check clearance. Any volunteer or visitor having unsupervised student contact is required to undergo a fingerprint scan and criminal background check under the supervision and/or responsibility (financial and otherwise) of CHARTER SCHOOL. CHARTER SCHOOL shall also ensure that its employees are in compliance with the tuberculosis testing requirements set forth in Section 49406 of the California Education Code.

#### 18. SECURITY

CHARTER SCHOOL shall be responsible for securing the Site, including all of the equipment and furnishings contained therein, in manner that reasonably prevents or deters the theft or destruction of District property. Such reasonable measures may include but are not limited to locking doors, locking windows, setting alarms, keeping valuable materials out of public view or restricting access to the Site. The responsibility to maintain the security of the Site under this subparagraph shall not be interpreted as the District's authorization of the alteration of the Site.

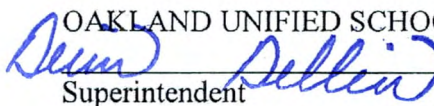
#### 19. WAIVER

CHARTER SCHOOL agrees to waive its right to seek facilities from the District for Berkely Maynard Academy in addition to those set forth herein, under Proposition 39 during the duration of this Agreement, except as otherwise expressly set forth in Section 2 ("Term"). CHARTER SCHOOL agrees to waive any and all claims, causes of action, and other legal actions against the District arising out of CHARTER SCHOOL's occupation of the Site based on Proposition 39.

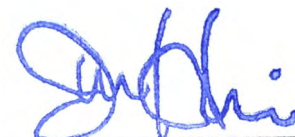
Nothing in this provision shall bar the application of Section 8 ("Indemnification") of this Agreement.

In the event that this Agreement is terminated for any reason prior to the end of its term, this provision shall survive termination of the Agreement through the end of its original term.

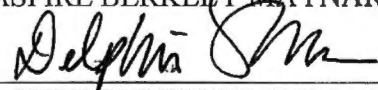
IN WITNESS WHEREOF, District and CHARTER SCHOOL execute this Agreement effective the date and year first above written.


OAKLAND UNIFIED SCHOOL DISTRICT  
  
Superintendent  
Oakland Unified School District *6/29/17*

Date: ~~April~~ June, 2017

  
James Harris *6/29/17*  
President, Board of Education

ASPIRE BERKLEY MAYNARD CHARTER SCHOOL:

  
ASPIRE BERKLEY MAYNARD CHARTER SCHOOL  
*June 16*  
Date: ~~April~~ June, 2017

OAKLAND UNIFIED SCHOOL DISTRICT  
Office of General Counsel  
APPROVED FOR FORM & SUBSTANCE  
By:   
Marion McWilliams Attorney at Law