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OAKLAND UNIFIED
SCHOOL DISTRICT

Community Schools, Thriving Students

Memo

To Board of Education
From Marion McWilliams, General Counsel
Andrea Epps, Staff Attorney

Board Meeting Date January 25, 2017
Subject

Amendment II To Facilities Use Agreement Between District And Yu Ming Charter School For Use Of Golden Gate Child Development Center, 6232 Herzog Street

Action Requested Approval by the Board of Education of the Amendment II to the Facilities Use Agreement Between District And Yu Ming Charter School For Use Of Golden Gate Child Development Center, 6232 Herzog Street.

Background Yu Ming is a Mandarin Immersion charter operating under a County wide charter approved by the Alameda County Office of Education. The District is amending the existing Facility Use Agreement for the use of the Golden Gate Child Development Center, 6232 Herzog Street, Oakland for an additional year 2017-2018 at the 2017-18 Facility Use rate of \$4.74 per square foot.

Discussion The Facilities Use Agreement For Use Of Golden Gate Child Development Center is for the term from July 1, 2017 through June 30, 2018. The rate is \$4.74 per square foot per year each year (approximately \$40,290.00).

Recommendation Approval by the Board of Education of Amendment II to the Facilities Use Agreement Between District And Yu Ming Charter School For Use Of Golden Gate Child Development Center, 6232 Herzog Street, Oakland.

Fiscal Impact Approximately \$40,290.00 in revenue

Attachments

- Amendment II
- Facilities Use Agreement Between District and Yu Ming Charter



CONTRACT JUSTIFICATION FORM

**This Form Shall Be Submitted to the Board Office
With *Every* Consent Agenda Contract.**

Legislative File ID No. 17-0069

Department: General Counsel

Vendor Name: Yu Ming Charter School

Contract Term: Start Date: July 1, 2017 End Date: June 30, 2018

Annual Cost: \$ 40,290.00 revenue

Approved by: General Counsel

Is Vendor a local Oakland business? Yes No

Why was this Vendor selected?

Continued Facility Use Agreement for one additional year.

Summarize the services this Vendor will be providing.

This vendor will continue using the property known as Golden Gate Child Development Center located at 6232 Herzog Street, Oakland, 94608.

Was this contract competitively bid? Yes No

If No, answer the following:

- 1) How did you determine the price is competitive?

N/A This contract agreement will generate .Income/Revenue

2) Please check the competitive bid exception relied upon:

- Educational Materials**
- Special Services** contracts for financial, economic, accounting, legal or administrative services
- CUPCCAA exception** (Uniform Public Construction Cost Accounting Act)
- Professional Service Agreements** of less than \$87,800 (increases a small amount on January 1 of each year)
- Construction related Professional Services** such as Architects, DSA Inspectors, Environmental Consultants and Construction Managers (require a "fair, competitive selection process)
- Energy** conservation and alternative energy supply (e.g., solar, energy conservation, co-generation and alternate energy supply sources)
- Emergency** contracts [requires Board resolution declaring an emergency]
- Technology** contracts
 - electronic data-processing systems, supporting software and/or services (including copiers/printers) over the \$87,800 bid limit, must be competitively advertised, but any one of the three lowest responsible bidders may be selected
 - contracts for computers, software, telecommunications equipment, microwave equipment, and other related electronic equipment and apparatus, including E-Rate solicitations, may be procured through an RFP process instead of a competitive, lowest price bid process
 - Western States Contracting Alliance Contracts (WSCA)
 - California Multiple Award Schedule Contracts (CMAS) [contracts are often used for the purchase of information technology and software]
- "Piggyback" Contracts** with other governmental entities
- Perishable Food**
- Sole Source**
- Change Order for Material and Supplies** if the cost agreed upon in writing does not exceed ten percent of the original contract price
- Other, please provide specific exception**


**AMENDMENT II TO THE
FACILITIES USE AGREEMENT BETWEEN
OAKLAND UNIFIED SCHOOL DISTRICT AND
YU MING CHARTER SCHOOL**

1. By Enactment # 14-1495 on August 13, 2014, the Board of Education approved the Facilities Use Agreement between Oakland Unified School District ("District") and Yu Ming Charter School for use of classroom space for educational purposes located at Golden Gate Child Development Center, 6232 Herzog Street, Oakland, CA, for the term from August 1, 2014 to June 30, 2016, with an option to extend for one additional year.
2. By Enactment # 16-0539 on April 13, 2016, the Board of Education approved an Amendment to the Facilities Use Agreement between the District and Yu Ming Charter School to exercise the option to extend the Facilities Use Agreement for an additional year.
3. By this Amendment II, the Parties hereby agree to extend the term for one additional year, with the extension ending effective June 30, 2018. For the 2017-18 school year, the Proposition 39 rate is \$4.74 per square foot at 8,500 square feet or a 2017-18 annual rate of \$40,290.00.
4. By this Amendment II, the Parties agree that Yu Ming Charter School may further extend the Facilities Use Agreement past the 2017-2018 school year by exercising an option to renew the term of the Agreement for a period of two years upon three (3) months prior written notice from June 30, 2018. During the extension, the facility use rate will be adjusted annually to conform to the then Proposition 39 or comparable rate then in effect.
5. By this Amendment II, the Parties agree to amend the Facilities Use Agreement such that Yu Ming waives any right to seek facilities from the District in addition to those for which use and occupation is granted under the Facilities Use Agreement, under Proposition 39 or any other statute, rule, regulation or legal authority, during the term of the Facilities Use Agreement and any subsequent renewals and/or extensions.
6. Except as expressly provided in this Amendment, the original Facility Use Agreement is unchanged.
7. This Amendment, together with prior the Agreement constitute the entire understanding and agreement between the Parties. All understandings, agreements, covenants, representations and warranties, express or implied, oral or written between are contained and merged herein. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made by or between the Parties concerning the subject matter hereof. This is an integrated agreement. It may not be altered, modified or otherwise changed in any respect except in a writing signed by each party.

8. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: The District certifies to the best of its knowledge and belief, that it and its officials: Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency according to Federal Acquisition Regulation Subpart 9.4, and by signing this contract, certifies that this vendor does not appear on the Excluded Parties List. <https://www.sam.gov/portal/public/SAM>

IN WITNESS WHEREOF, the Parties hereto agreed to be bound and have executed this Amendment II to the Agreement originally approved by the Oakland Unified School District Board of Education on August 13, 2014.

YU MING CHARTER SCHOOL


Head of School

OAKLAND UNIFIED SCHOOL DISTRICT



President, Board of Education
Oakland Unified School District



Secretary, Board of Education
Oakland Unified School District

Approved as to Form

Marion McWilliams, General Counsel

Board Office Use: Legislative File Info.	
File ID Number	16-0698
Introduction Date	4/13/16
Enactment Number	16-0539
Enactment Date	4/13/16



OAKLAND UNIFIED
SCHOOL DISTRICT

Community Schools Thriving Student

Memo

To Board of Education
From Jacqueline Minor, General Counsel
Board Meeting Date April 13, 2016
Subject **Amendment To Facilities Use Agreement Between District And Yu Ming Charter School For Use Of Golden Gate Child Development Center, 6232 Herzog Street**

Action Requested Approval by the Board of Education of the Amendment to the Facilities Use Agreement Between District And Yu Ming Charter School For Use Of Golden Gate Child Development Center, 6232 Herzog Street

Background
A one paragraph explanation
 Yu Ming is a Mandarin Immersion charter operating under a County wide charter approved by the Alameda County Office of Education. The District is amending the existing Facility Use Agreement for the use of the Golden Gate Child Development Center, 6232 Herzog Street, Oakland for an option year – 2016-17 at the 2016-17 Facility Use rate of \$4.73 per square foot.

Discussion
One paragraph summary
 The Facilities Use Agreement For Use Of Golden Gate Child Development Center is for the term from July 1, 2016 through June 30, 2017. The rate is \$4.73 per square foot per year each year (approximately \$40,205.00).

Recommendation Approval by the Board of Education of the Amendment to the Facilities Use Agreement Between District And Yu Ming Charter School For Use Of Golden Gate Child Development Center, 6232 Herzog Street, Oakland

Fiscal Impact Approximately \$40,205.00 in revenue

Attachments

- Amendment
- Facilities Use Agreement Between District and Yu Ming Charter



CONTRACT JUSTIFICATION FORM

**This Form Shall Be Submitted to the Board Office
With *Every* Consent Agenda Contract.**

Legislative File ID No. 16-0698

Department: Legal

Vendor Name: Yu Ming Charter School

Contract Term: Start Date: July 1, 2016 End Date: June 30, 2017

Annual Cost: \$ 40,205.00 in revenue

Approved by: General Counsel

Is Vendor a local Oakland business? Yes No

Why was this Vendor selected?

Yu Ming is a Mandarin Immersion charter operating under a County wide charter approved by the Alameda County Office of Education.

Summarize the services this Vendor will be providing.

Yu Ming has entered into an agreement for the use of Golden Gate Child Development Center, 6232 Herzog Street, Oakland.

Was this contract competitively bid? Yes No

If No, answer the following:

1) How did you determine the price is competitive?

N/A

2) Please check the competitive bid exception relied upon:

- Educational Materials**
- Special Services** contracts for financial, economic, accounting, legal or administrative services
- CUPCCAA exception** (Uniform Public Construction Cost Accounting Act)
- Professional Service Agreements** of less than \$87,800 (increases a small amount on January 1 of each year)
- Construction related Professional Services** such as Architects, DSA Inspectors, Environmental Consultants and Construction Managers (require a "fair, competitive selection process)
- Energy** conservation and alternative energy supply (e.g., solar, energy conservation, co-generation and alternate energy supply sources)
- Emergency** contracts [requires Board resolution declaring an emergency]
- Technology** contracts
 - electronic data-processing systems, supporting software and/or services (including copiers/printers) over the \$87,800 bid limit, must be competitively advertised, but any one of the three lowest responsible bidders may be selected
 - contracts for computers, software, telecommunications equipment, microwave equipment, and other related electronic equipment and apparatus, including E-Rate solicitations, may be procured through an RFP process instead of a competitive, lowest price bid process
 - Western States Contracting Alliance Contracts (WSCA)
 - California Multiple Award Schedule Contracts (CMAS) [contracts are often used for the purchase of information technology and software]
- "Piggyback" Contracts** with other governmental entities
- Perishable Food**
- Sole Source**
- Change Order for Material and Supplies** if the cost agreed upon in writing does not exceed ten percent of the original contract price
- Other, please provide specific exception**

**AMENDMENT TO THE
FACILITIES USE AGREEMENT BETWEEN
OAKLAND UNIFIED SCHOOL DISTRICT AND
YU MING CHARTER SCHOOL
FOR USE OF CLASSROOM SPACE FOR EDUCATIONAL
PURPOSES AT
GOLDEN GATE CHILD DEVELOPMENT CENTER, 6232 HERZOG
STREET, OAKLAND, CA**

1. By Enactment # 14-1495 on August 13, 2014, the Board of Education approved the Facilities Use Agreement Between The District And Yu Ming Charter School For Use Of Classroom Space For Educational Purposes At Golden Gate Child Development Center, 6232 Herzog Street, Oakland, CA, for the term from August 1, 2014 through June 30, 2016, with an option to extend for one additional year, at the Proposition 39 rate for 2016-17 fiscal year.
2. By this Amendment, the Parties hereby agree to exercise the option to extend the term for the 2016-17 fiscal year, with the extension ending effective July 1, 2017. During the extension rate, the facility use rate under Proposition 39 is \$4.73 per square foot at 8,500 square feet or an annual rate of \$40,205.00.
3. Except as expressly provided in this Amendment, the original Facility Use Agreement is unchanged.
4. This Amendment, together with prior the Agreement constitute the entire understanding and agreement between the Parties. All understandings, agreements, covenants, representations and warranties, express or implied, oral or written between are contained and merged herein. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made by or between the Parties concerning the subject matter hereof. This is an integrated agreement. It may not be altered, modified or otherwise changed in any respect except in a writing signed by each party.
5. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: The District certifies to the best of its knowledge and belief, that it and its officials: Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency according to Federal Acquisition Regulation Subpart 9.4, and by signing this contract, certifies that this vendor does not appear on the Excluded Parties List. <https://www.sam.gov/portal/public/SAM>

IN WITNESS WHEREOF, the parties hereto agreed to be bound and have executed this Amendment to the Agreement originally approved by the Oakland Unified School District Board of Education on August 13, 2014.

YU MING CHARTER SCHOOL



Rodrigo J Prudencio
President, Board of Directors
Yu Ming Charter School

OAKLAND UNIFIED SCHOOL DISTRICT

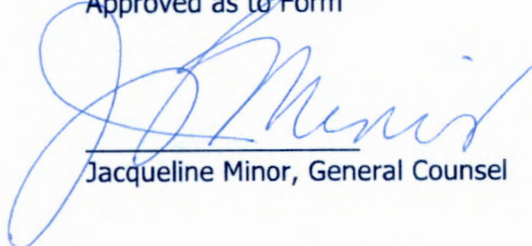



President, Board of Education
Oakland Unified School District



Secretary, Board of Education
Oakland Unified School District

Approved as to Form


Jacqueline Minor, General Counsel

File ID Number: 16-0698
Introduction Date: 4/13/16
Enactment Number: 16-0539
Enactment Date: 4/13/16
By: 

**FACILITIES USE AGREEMENT BETWEEN
OAKLAND UNIFIED SCHOOL DISTRICT AND
YU MING CHARTER SCHOOL
FOR USE OF CLASSROOM SPACE FOR EDUCATIONAL PURPOSES AT
GOLDEN GATE CHILD DEVELOPMENT CENTER, 6232 HERZOG STREET
WITHIN THE BOUNDARIES OF OAKLAND, CA**

THIS FACILITIES USE AGREEMENT ("Agreement") is effective August 1, 2014 by and between the **OAKLAND UNIFIED SCHOOL DISTRICT**, a public school district organized and existing under the laws of the State of California ("District"), and **YU MING CHARTER SCHOOL**, a California non-profit public benefit corporation ("Charter School"). District and Charter School may be referred to herein individually as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, Charter School is a non-profit public benefit corporation that is operating a K-8 Mandarin Immersion charter approved by the Alameda County Board of Education;

WHEREAS, the District and Charter School enter into this Agreement for the Charter School to use facilities (the "Premises") located at Golden Gate CDC, 6232 Herzog Street, Oakland, CA, commencing with the 2014-2015 school year; and

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

AGREEMENT

1. **Use of Premises.** District agrees to allow use of the Premises by Charter School for the sole purpose of operating Charter School's educational program in accordance with all applicable federal, state and local regulations relating to the Premises and to the operation of Charter School's educational program. Charter School shall not use the Premises for any use other than that specified in this Agreement without the prior written consent of District.
 - 1.1. Charter School shall not commit, or suffer to be committed, any waste upon the Premises, or allow any sale by auction upon the Premises, or allow the Premises to be used for any unlawful purpose, or place any loads upon the floor, walls or ceiling which endanger the structure, or place any harmful liquids in the plumbing, sewer or storm water drainage system of the Premises. No waste materials or refuse shall be dumped upon or permitted to remain upon any part of the Premises except in trash containers designated for that purpose.
 - 1.2. Any uses which involve the serving and/or sale of alcoholic beverages and the conducting of games of chance are prohibited on the Premises. Charter School shall comply with District-wide policy prohibiting the use of tobacco products on the Premises at all times.

- 1.3. Charter School shall not use or permit the use of the Premises or any part thereof for any purpose which is inimical to public morals and welfare or morally objectionable as unsuitable for a public educational facility.
- 1.4. If required, Charter School shall obtain a use permit from the City in which the School Site is located for Charter School's use throughout the Term. Charter School shall require all invitees and guests to use the Premises only in conformance with the permitted use and with applicable governmental laws, regulations, rules and ordinances.
- 1.5. Charter School shall not do or permit anything be done in or about the Premises nor bring or keep anything therein which will in any way increase the District's existing insurance rate or affect any fire or other insurance upon the Premises, or cause a cancellation of any insurance policy covering the Premises or any part thereof or any of the contents of the Premises, nor shall the Charter School sell or permit to be kept, used or sold in or about the Premises any articles which may be prohibited by a standard form policy of fire insurance.
- 1.6. **Civic Center Act.** Charter School agrees to comply with the provisions of the Civic Center Act (Education Code §§ 38131 et seq.) to make the Premises accessible to members of the community. The Parties understand that the Premises are to be used primarily for educational programs and activities and as such, any use of the Premises by the Community shall not interfere with Charter School's educational program. Any request received by Charter School for use of the Premises pursuant to the Civic Center Act shall be promptly forwarded to the District. District shall be responsible for coordinating access to the Premises under the Civic Center Act.

2. Term.

- 2.1. The term of this Agreement shall be for two years with an option to renew the term of the agreement for a period of one (1) year upon three (3) months prior written notice from the date the original Term expires under the same terms and conditions, except, if the option is exercised, as provided in Paragraph 3.1 below, the rental rate shall be the 2016-17 Proposition 39 rate. The commencement date shall be August 1, 2014, ("Commencement Date"), and, unless sooner terminated under any provision hereof, this Agreement shall end on June 30, 2016 ("Term"), unless the option to extend is exercised.

3. Rental Rate.

- 3.1. The rent shall be \$4.36 per square foot per year each year (approximately \$37,000 for 8500 square feet). If the option to renew for a third year is executed, the rental rate may be adjusted to align with the District's standard calculated rate for all charter schools occupying district space under Proposition 39, in-lieu of Proposition 39, and Joint Use agreements.
- 3.2. Each year's rent shall be paid in four installments: 25% by October 1, 25% by December 1, 25% by April 1, and 25% by July 1.

- 3.3. The Charter School may choose to prepay any of the installment payments without incurring a prepayment penalty from the District. Either the Charter School or the District may call, at any time, for a meeting to discuss adjustments or reconciliation of these figures when a reasonable basis exist to think that these estimates do not reflect actual amounts owing.
- 3.4. The Rent does not include Site-specific costs which the school must include in its own budget. The Rent does not include, among other items, utilities as defined in Section 4 below, the cost of computers, computer lab, laptop carts, server equipment, internet service, phone service, audio-visual equipment, custodial, or campus security.
- 3.5. If the Charter School disputes any fee or charge, it shall send written notification to the District. The 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, the 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. The Charter School withholding disputed funds is not grounds for revocation.
- 3.6. Charter School acknowledges that late payment by Charter School to District of the Rent and other sums due hereunder will cause District to incur costs not contemplated by this Agreement, the exact amount of which will be extremely difficult to ascertain. Those costs include, but are not limited to, processing and accounting charges. Accordingly, if District does not receive any installment of the Rent or any other sum due from Charter School by 4:00 p.m. within ten (10) days after the Rent is due, Charter School shall pay to District, as additional sums due, a late charge equal to five percent (5%) of the overdue amount or the maximum amount allowed by law, whichever is less. The Parties hereby agree that any late charge assessed to Charter School shall represent a fair and reasonable estimate of the costs District will incur by reason of late payment by Charter School. Acceptance of any late sums by District shall in no event constitute a waiver of Charter School's default with respect to any overdue amount, nor prevent District from exercising any of its other rights and remedies granted hereunder.
4. **Utilities.** Subject to Paragraph 3.4 above, the District shall furnish or cause to be furnished to the Premises necessary utilities. For purposes of the Agreement, utilities include electrical, natural gas, sewer, waste disposal/recycling and water services. The District's failure to furnish or cause to be furnished utilities when the failure is caused by (i) acts beyond the reasonable control of the District; (ii) strikes, lockouts, labor disturbances or labor disputes of any kind; (iii) any laws, rules, orders, ordinances, regulations, requirements or any other action by federal, state, county or municipal authority; or (iv) any other unavoidable delay, shall not cause the District to be in default of the Agreement and shall not result in any liability of the District. Charter School shall comply with all District energy conservation policies relating to use of the Premises.
5. **Additional Services.** Charter School and District may negotiate additional services, maintenance or equipment as requested by Charter School. District shall assess Charter School separately for

the cost to provide the additional services, if any.

6. Condition of Premises.

6.1 The parties have identified certain maintenance and repairs that are necessary to make the premises useable by Yu Ming for its intended purpose. The repairs are delineated on Attachment A, which is incorporated into this Agreement. With respect to the repairs on Attachment A, the Parties agree as follows:

- a) The District will agree to deduct from the rent an amount not to exceed \$35,000 per year for the costs of improvements identified by Yu Ming as necessary to make the site useable by Yu Ming
- b) Cost of the work identified on the Attachment A task matrix as "YMCS" is not deductible from the \$35,000
- c) Heating system repair work will be completed by the District at the District's cost and expense
- d) All improvement work shall be done by Yu Ming with licensed contractors, selected by Yu Ming and/or by supervised by licensed contractors
- e) All construction must meet California Building Code requirements, including Fire Code, for an E-occupancy use
- f) Final District sign off before occupancy

6.2 The District is not aware of any defect in or condition of the Premises that would prevent their use for the Charter School's purposes. The District has not received any notice of violation of statute, ordinance, regulation, order or holding from any state or federal agency with jurisdiction over the Premises that calls into question the appropriateness or sufficiency of the Premises for their intended purpose. The District, at its expense, shall remain responsible for compliance with all applicable laws regarding the Premises during the Term of this Agreement. Charter School, at its expense, shall comply with all applicable laws, regulations, rules and orders with respect to its use and occupancy of the Premises, including, without limitation, those relating to health, safety, noise, environmental protection, zoning compliance and approvals, waste disposal, and water and air quality. The Charter School shall not be responsible for any and all environmental conditions that existed prior to the Charter School's occupancy of the Premises, so long as such environmental conditions are not exacerbated by the Charter School's negligence or willful misconduct. Except as set forth in Section 6.1, the District shall remain responsible for compliance with the ADA, FEHA, and other applicable building code standards for any existing compliance issue prior to the date of execution of this Agreement or that are not triggered by any modifications or improvements made by the Charter School. Except as set forth in Section 6.1, the Charter School shall only assume responsibility for compliance with ADA and FEHA access rights to the extent of any modifications or improvement made by the Charter School. Should any modifications or improvements made by the Charter School change or affect the character of any existing

improvements, Charter School shall be responsible for bringing said existing improvements into compliance with ADA, FEHA, and other applicable building code standards. Charter School shall comply with all applicable licensing, payment and performance bond and prevailing wage laws with respect to all modifications.

6.3 Subject to Section 6.1, the Parties agree that if the structural elements of the Premises become damaged to a lesser condition than currently exists, and if the structural damage is due to no fault or negligence of Charter School, then District will repair the damage in order to bring it back to a condition which is similar to the condition which exists at the time Charter School takes possession of the Premises. District may, however, terminate this Agreement if the cost to repair the Premises exceeds Five Hundred Thousand dollars (\$500,000) per incident and/or the District does not receive insurance proceeds to cover the full cost of the repairs. District shall pro-rate the Rent during the "repair" period for the portion of the Premises made unavailable to the Charter School, if the resulting structural damage prohibits Charter School from carrying out its normal daily activities and if alternative District facilities are available, shall provide the Charter School with temporary facilities to house the portion of its population displaced by the repairs. If District elects not to perform a repair estimated to cost in excess of Five Hundred Thousand dollars (\$500,000), and the District does not receive insurance proceeds to cover the full cost of the repairs, Charter School may elect to remain in possession of the Premises and pay the Rent, unless revised through mutual agreement of the Parties, or Charter School may elect to terminate this Agreement. If either District or Charter School elects to terminate this Agreement pursuant to this Section, and if alternative District facilities are available, the District shall provide temporary facilities for the remainder of the school year to house the Charter School's entire student population, so as to avoid any interruption in the educational program of the Charter School.

6.4 As used in the Agreement, the term "structural elements of the building" are defined as and shall be limited to the foundation, footings, floor slab but not flooring, structural walls excluding glass and doors, and the roof excluding skylights. Plumbing, electrical and heating systems shall be considered "structural elements of the building" excluding, however, those repairs and maintenance items which can be completed without wall or floor removal in which case these repairs shall be the responsibility of Tenant unless they constitute major or deferred maintenance in which case these repairs are the responsibility of the District.

7. **Title to School Site(s) / Classroom Buildings.** The Parties acknowledge that title to the Premises is held by District.

8. **District's Entry and Access to Premises.** District and its authorized representatives shall have the right, after two school-days' prior written notice to Charter School, to enter the Premises during normal business hours for the purpose of inspection ("Inspection"); or to perform deferred maintenance in or on the Premises in a manner so as not to disrupt the normal classroom and school activities; provided, however, that in an emergency situation, no prior notice shall be required. In an emergency, District shall give notice to Charter School immediately upon District's receipt of notification of any emergency. If Charter School is not present to open and permit an entry into the Premises in an emergency situation as reasonably

determined by District, District may enter by means of a master key without liability to Charter School.

- 8.1. If Charter School is violating the use restrictions of the Agreement or is not in material compliance with any applicable law, then all reasonable costs and expenses reasonably and actually incurred by District in connection with any Inspection shall become due and payable by Charter School as additional sums due District, within ten (10) days of presentation by District of an invoice for the Inspection.
- 8.2. If Charter School fails to perform any covenant or condition to be performed by Charter School pursuant to the Agreement or the Charter School's charter, District and its authorized representative shall have the right, after reasonable prior written notice to Charter School, to enter the Premises during normal business hours for the purpose of performing the covenant or condition at District's option after thirty (30) days' written notice to and failure to perform by Charter School (provided, no written notice is required in the case of emergencies). All costs incurred by District in shall be reimbursed to District by Charter School within ten (10) days of written demand, together with interest at the Interest Rate computed from the date incurred by District until paid. Any performance by District of Charter School's obligations shall not waive or cure the default. All reasonable out-of-pocket costs and expenses actually incurred by District, including reasonable attorneys' fees (whether or not legal proceedings are instituted), in collecting the fees herein or enforcing the obligations of Charter School under the Agreement shall be paid by Charter School to District within ten (10) days of written demand.

District may, during the progress of such work, keep and store on the Premises all necessary materials, tools, supplies and equipment. District shall not be liable for inconvenience, annoyance, disturbance, loss of business or other damage to Charter School by reason of making the repairs or the performance of any work, but shall use reasonable efforts during the course of any access of the Premises to not disrupt Charter School's classroom and instructional activities.

- 8.3. Notwithstanding the foregoing and without further notice, District shall have the right to enter the Premises to conduct its own operations, to perform any routine or deferred maintenance, custodial services, or conduct inspections of the Premises. District will use reasonable efforts during the course of any access of the Premises to not disrupt Charter School's classroom and instructional activities.
- 8.4. Charter School expressly waives any claim for damages for any inconvenience to or interference with the Charter School's educational program, any loss or use of quiet enjoyment of the Premises related to District's entry into the Premises for the purposes identified in this Section.

9. Surrender of Premises.

- 9.1. On the last day of the Term, or on sooner termination of this Agreement, Charter School shall surrender the Premises to District and any existing improvements in good order, condition and repair, free and clear of all liens, claims and encumbrances. The condition

of the Premises when surrendered shall be similar to that existing as of the Commencement Date of this Agreement excepting normal ordinary wear and tear and any structural improvements made by District subsequent to the Commencement Date. This Agreement shall operate as a conveyance and assignment to District of any improvements identified by District to remain on the Premises.

- 9.2. Charter School shall remove from the Premises all of Charter School's personal property, trade fixtures, and any improvements made by Charter School which Charter School and District agreed would be removed by Charter School and which may be removed without irreparable or material damage to the Premises. Removal of Charter School's property shall be subject to all applicable laws, including any local permits and/or approval by the California Department of General Services, Division of the State Architect.
- 9.3. All property that is not removed on or before the end of the Term shall be deemed abandoned by Charter School. District, upon fifteen (15) days written notice, may either (1) accept ownership of Charter School's Improvements with no cost to District, or (2) remove Charter School's Improvements at Charter School's sole expense. If the District chooses to accept ownership of Charter School's Improvements, Charter School shall execute any necessary documents to effectuate the change in ownership of Charter School's Improvements. If the District removes Charter School's Improvements, Charter School shall pay all invoices for the removal of Charter School's Improvements within thirty (30) days of receipt of an invoice. If the Premises are not surrendered at the end of the Term or upon earlier termination of this Agreement, Charter School shall indemnify District against loss or liability resulting from delay by Charter School in surrendering the Premises including, without limitation, any claims made by any succeeding charter school or loss to District due to lost opportunities to timely obtain succeeding tenants.
- 9.4. **Holding Over.** If Charter School remains in possession of the Premises or any part thereof after the end of the Term or upon earlier termination of this Agreement without the express written consent of District, Charter School's occupancy shall be a tenancy on a month-to-month basis for a Rent equal to one hundred fifty percent (150%) of all monthly sums charged and owing the previous thirty (30) calendar day period.
- 9.5. No payment of money by Charter School after the termination of the Agreement, or after the giving of notice of termination by the District to the Charter School, shall reinstate, continue or extend the Term.

10. Potential Sale and Non-Disturbance.

- 10.1. **Sale of the Premises.** Should District ever seek to sell the fee interest in the Premises and the improvements thereon during the Term of this Agreement, Charter School shall be entitled to whatever priority that may exist under State law at that time for charter schools with respect to purchase of publicly-owned lands. Nothing in this Agreement shall be construed as providing Charter School with an option to purchase the Premises, or as providing Charter School with a priority to purchase the Premises contrary to any provision of State law.

- 10.2. **District's Right to Assign.** District's interest in this Agreement may be assigned to any mortgagee or trust deed beneficiary as additional security. Nothing in this Agreement shall empower Charter School to do any act without District's prior consent which can, shall or may encumber the title of District of all or any part of the Premises.
- 10.3. **Non-Disturbance.** In the event of the sale, encumbrance, hypothecation, conveyance or transfer of title to the Premises by District for any reason whatsoever (collectively "Transfer"), such Transfer shall be subject to the execution of a non-disturbance agreement reasonably acceptable to Charter School.
11. **Taxes; Assessments.** Charter School shall pay any assessment on any improvements which Charter School constructs or causes to be constructed on the Premises, whether real estate, general, special, ordinary or extraordinary, or rental levy or tax, improvement bond, and/or fee imposed upon or levied against Charter School's legal or equitable interest created by this Agreement, and the taxes assessed against and levied upon Charter School's alterations and utility installations that may be imposed by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Premises' address and where the proceeds so generated are applied by the city, county or other local taxing authority having jurisdiction. The provisions of this Section shall survive the expiration or earlier termination of this Agreement.
12. **Maintenance.**
- 12.1. **Routine Repair and General Maintenance.** Charter School shall be responsible for the routine repair and general maintenance of the Premises and any furnishing or equipment provided to Charter School. For purposes of the Agreement, "routine repair and general maintenance" shall mean the school facility component work performed on an annual basis each year to keep facilities in proper operating condition. The District will provide Charter School with access or reference to its Maintenance and Operations Policies and Procedure Manual, Integrated Pest Management Policy and any other policies, procedures or guidelines regarding standards for performing routine repair and general maintenance work.
- 12.2. **Deferred Maintenance.** District shall be responsible for the major and deferred maintenance of the Premises. For purposes of the Agreement, "major maintenance" includes, for example, 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 and shall be the responsibility of the Charter School. The District shall only be obligated to perform deferred maintenance on the Premises on an equivalent basis as that performed at other comparable District school sites.
- 12.3. Charter School shall comply with the District's Guide for Charter Schools in Oakland Unified School District Facilities attached hereto as Attachment "B," in making maintenance requests and/or meeting Charter Schools' maintenance obligations pursuant to this Agreement.

13. Title to and Removal of Charter School's Improvements / Premises; Equipment Requirements.

- 13.1. Except as otherwise contemplated under Section 6.1, Charter School shall not construct or cause to be constructed on the Premises any improvements ("Charter School's Improvements") without express prior written consent from District. For District consent and approval, Charter School's Improvements must be considered necessary to the operation of its educational program.
- 13.2. Charter School shall at its own expense obtain all necessary environmental and governmental approvals and permits, including, without limitation, the California Environmental Quality Act ("CEQA"), any necessary approvals from any local authority including any site, grading, zoning, design review and other required permits or approvals, if applicable, prior to commencing construction and shall provide District with evidence of approval by all applicable governmental agencies.
- 13.3. Any modifications to the Premises must be approved in writing in advance by District. Charter School's contractor must be approved in advance by District. All contractors and subcontractors of Charter School, if any, shall be duly licensed in the State of California. Charter School shall be solely responsible for maintaining the Premises and Charter School's Improvements installed thereon during the Term, including any extensions, and for compliance with all applicable laws or ordinances, rules and regulations.
- 13.4. Charter School must seek and receive approval from the Division of the State Architect for any Charter School Improvements that would require DSA approval if performed by the District.
- 13.5. Charter School shall not install any ovens, stoves, hot plates, toasters, or similar items (not including microwave ovens) without the prior written consent of the District.
- 13.6. Yu Ming shall indemnify and hold the District and its Board, administrators, employees, agents, volunteers, and subcontractors ("Indemnities") harmless against all liability, loss, damage and expense (including reasonable attorneys' fees) resulting from or arising out of the Letter of Intent dated July 6, 2014 a copy of which is attached hereto as Attachment C, and/or the maintenance, construction or repair work undertaken by Yu Ming or on behalf of Yu Ming prior to occupancy of the premises, to the extent that such loss, expense, damage or liability was caused by negligence or willful misconduct of Yu Ming, including, without limitation, its agents, employees, subcontractors or anyone employed directly or indirectly by Yu Ming (excluding Indemnities), except for any losses arising out of the active negligence of the District and its Board, administrators, employees, agents, volunteers, and subcontractors. Charter School shall provide District with at least ten (10) days written notice prior to commencement of any work which could give rise to a mechanics' lien or stop payment notice. District has the right to enter upon the Premises for the purpose of posting Notices of Non-responsibility. In the event a lien is imposed upon the Premises as a result of such construction, repair, alteration, or installation, Charter School shall either:

- 13.6.1. Record a valid Release of Lien; or
- 13.6.2. Deposit sufficient cash with District to cover the amount of the claim on the lien in question and authorize payment to the extent of the deposit to any subsequent judgment holder that may arise as a matter of public record from litigation with regard to the lien-holder claim; or
- 13.6.3. Procure and record necessary bonds that frees the Premises from the claim of the lien from any action brought to foreclose the lien.

If Charter School fails to accomplish one of these three optional actions within fifteen (15) days after the filing of any lien or stop payment notice and after receiving written notice from the District regarding the lien, the Agreement shall be in default and shall be subject to immediate termination.

14. **Fingerprinting and Criminal Background Verification.** Charter School shall be responsible for ensuring compliance with all applicable fingerprinting and criminal background investigation requirements described in California Education Code section 45125.1, which may be met under the fingerprinting provisions of Title 22 of the California Code of Regulations and applicable provisions of the California Health and Safety Code relevant to community care facility licensing (Health & Saf. Code, § 1500 et seq.). Charter School shall provide written verification of compliance with the fingerprinting and criminal background investigation requirements to District prior to Charter School taking possession of the Premises and prior to conducting its educational program on the Premises. District shall be responsible for ensuring compliance with all applicable fingerprinting and criminal background investigation requirements described in California Education Code section 45125.1 for all employees, contractors, agents or other individuals it sends to the Premises.

15. Default.

- 15.6. **Charter School's Default.** The occurrence of any one of the following events shall be considered a default of the Agreement by Charter School:

- 15.6.1. The failure of Charter School to promptly pay the Rent or other fees identified herein when due hereunder, which failure continues for fifteen (15) days after written notice thereof by District to Charter School; provided, however, that any notice shall be in lieu of, and not in addition to, any notice required under Code of Civil Procedure section 1161, and the three (3) day cure period shall run concurrently with any cure period required under California law, including Code of Civil Procedure section 1161;
- 15.6.2. The revocation or non-renewal of the Charter School's charter, but only after the Charter School has exhausted all appeals of any such revocation or non-renewal;
- 15.6.3. The failure of Charter School to observe or perform any of its other covenants or obligations hereunder, which failure continues for thirty (30) days after written notice thereof by District to Charter School (unless the nature of the default is such that more than thirty (30) days are required for its cure and Charter School

shall have commenced a cure within the thirty (30) day period and thereafter diligently prosecute the same to completion; provided, however, in no event shall the default continue for more than one hundred twenty (120) days after written notice thereof by District to Charter School); provided, however, that any notice shall be in lieu of, and not in addition to, any notice required under Code of Civil Procedure section 1161, and the thirty (30) day cure period shall run concurrently with any cure period required under California law, including Code of Civil Procedure section 1161;

15.6.4. Charter School's abandonment of the Premises for a period of fifteen (15) consecutive days (with or without the payment of fees), it being agreed that the fact that any of Charter School's property remains in the Premises shall not be evidence that Charter School has not vacated or abandoned the Premises; provided, however, any normal District or Charter School holidays or vacation days shall not constitute abandonment of the Premises;

15.6.5. The making by Charter School of any general assignment or general arrangement for the benefit of creditors; the filing by or against Charter School or any guarantor of the Agreement of a petition to have Charter School or any guarantor of the Agreement adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Charter School or any guarantor of the Agreement, the same is dismissed within sixty (60) days); the appointment of a trustee or receiver to take possession of substantially all of the Charter School's assets located at the Premises, or of Charter School's interest in the 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 Premises or of Charter School's interest in the Agreement, where such seizure is not discharged within thirty (30) days.

15.6.6. The assignment, subletting or other transfer, or any attempted assignment, subletting or other transfer, of the Agreement.

In the event of any default by Charter School, District shall have the right, in addition to all other rights available to District under the Agreement or now or later permitted by law or equity, to terminate the Agreement by providing Charter School with a notice of termination. Upon termination of the Agreement, District may recover from Charter School the worth at the time of award of the unpaid Rent and any other accrued fees which are due at the time of termination. In addition, upon termination, Charter School shall immediately vacate the Premises.

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

15.7. **District's Default.** District shall not be in default of any of its obligations hereunder, unless District fails to perform such obligations within a reasonable time, but in no

event less than thirty (30) days, after written notice by Charter School to District specifying that District has failed to perform its obligations; provided, however, that if the nature of District's default requires more than thirty (30) days to cure, District shall not be in default if District commences a cure within thirty (30) days and thereafter diligently prosecutes the same to completion.

Charter School shall have no rights as a result of any default by District until Charter School gives thirty (30) days' notice to District specifying the nature of the default. District shall then have the right to cure the default, and District shall not be deemed in default if it cures the default within thirty (30) days after receipt of the notice of the default, or within a longer period of time as may reasonably be necessary to cure the default; provided, however, in no event shall the default continue for more than one hundred and twenty (120) days after written notice thereof by Charter School to District.

16. Eminent Domain.

- 16.1 Termination of Agreement by Eminent Domain.** This Agreement shall terminate if the Premises is permanently taken under the power of eminent domain. If only a portion of the Premises is permanently taken under the power of eminent domain, the District or Charter School may elect to terminate this Agreement 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 this Agreement, the Rent shall be proportionately reduced based on the portion of the Premises rendered unusable, and the District shall restore the Premises by constructing a demising wall deemed necessary by the District to separate the Charter School Premises from the portion permanently taken. In the event the District terminates 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 Charter School's planned school year. If the District cannot house the Charter School's entire program in a single contiguous facility, the District shall make best efforts to provide Charter School with classrooms sufficient to house the Charter School's entire program across multiple facilities or by use of temporary modular classrooms.
- 16.2 Allocation of Condemnation Award.** In the event of a permanent condemnation or taking of all or part of the School Site, 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 School Site. Nothing contained in this Article 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's business, or (iii) amounts attributable to Charter School's relocation expenses.
- 16.3 Temporary Taking.** No temporary taking of the Premises or any part of the Premises and/or of Charter School's rights to the Premises 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 Charter School's personal property, (ii) interruption of or damage to Charter School's business, or (iii) amounts attributable to Charter School's temporary relocation expenses.

17 Indemnification.

The District and Charter School hereby agree and acknowledge that the relationship between the District and Charter School for purposes of this Agreement is solely a landlord/tenant relationship and not a principal/agent relationship or any other relationship. Charter School is acting on its own behalf in operating from the Premises any school thereon (or any other purpose(s) thereupon) and is not operating as an agent of the District.

To the fullest extent permitted by law, Charter School shall indemnify, defend, release and protect the District, its affiliates, successors and assigns, and its officers, directors, shareholders, board members, other members, partners, agents and employees (for purposes of this subsection, "Indemnified Party" or "Indemnified Parties") and hold the Indemnified Parties harmless from any and all losses, costs, damages, expenses and liabilities (including without limitation court costs and reasonable attorneys' fees) incurred in connection with or arising from any cause (i) in the use or occupancy by Charter School of the Premises (including without limitation, the operation by Charter School of the School from the Premises), or (ii) in connection with the operations by Charter School at the Premises, including without limiting the generality of the foregoing:

(a) Any default by Charter School in the observance or performance of any of the terms, covenants or conditions of the Agreement on Charter School's part to be observed or performed;

(b) The use or occupancy of the Premises by Charter School or any person claiming by, through or under Charter School or Charter School's employees, agents, contractors, licensees, directors, officers, partners, trustees, visitors or invitees, or any such person in, on or about the Premises either during the Term of the Agreement or after the expiration of the Term of the Agreement (singularly, "Liability"; collectively, "Liabilities"); and

(c) Any claim by a third party that the District is responsible for any actions by Charter School in connection with any use or occupancy of the Premises or in any way related to this Agreement.

This indemnity and hold harmless provision shall exclude actions brought against the District arising out of the negligence, intentional acts, misconduct, errors or omissions of the District and/or the District affiliates, successors and assigns, and its officers, directors, shareholders, board members, other members, partners, agents and employees.

The provisions of this Section shall survive the expiration or sooner termination of this Agreement.

18. Insurance.

18.1. Insurance is to be placed with insurers with a current A.M. Best Insurance rating of no less than A-minus: VII or self-insure as permitted by CA Gov't Code 990.4 and 990.8 as well as CA Education Code 17566 and subject to the approval of District. Charter School shall furnish District with the original certificates and amendatory endorsements effecting coverage required.

18.2. Charter School acknowledges that the insurance to be maintained by District on the School Site will not insure any of Charter School's property or improvements made by Charter School.

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

18.3.1. Not be canceled or altered without thirty (30) days prior written notice to Charter School who will in turn notify District;

18.3.2. State the coverage is primary and any coverage by District is in excess thereto;

18.3.3. Contain a cross liability endorsement; and

18.3.4. Include a separate endorsement naming District as an additional insured.

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

18.4. During the Term, District shall maintain at its cost a policy of standard fire and casualty insurance limited to the value of the buildings and improvements located on the School Site as of the Commencement Date. In the event of loss or damage to the School Site,

the buildings, the Premises or any contents, each Party, and all persons claiming under the Party, shall look first to any insurance in its favor before making any claim against the other Party, and to the extent possible without adding additional costs, each Party shall obtain for each policy of insurance provisions permitting waiver of any claim against the other Party for loss or damage within the scope of the insurance and each Party, to the extent permitted, for itself and its insurers, waives all such insurance claims against the other Party.

18.4.1. No use shall be made or permitted to be made of the Premises, nor acts done, that will increase the existing rate of insurance upon the building or buildings of the Premises or cause the cancellation of any insurance policy, covering same, or any part thereof, nor shall Charter School sell, or permit to be kept, used, or sold in or about the Premises any article that may be prohibited by the standard form of fire insurance policies. Charter School shall, at its sole cost and expense, comply with any and all requirements pertaining to the Premises, of any insurance organization or company, necessary for the maintenance of reasonable fire and casualty insurance, covering the Premises' buildings, or appurtenances. Fire and casualty insurance premium increases to District due to equipment and/or activities of Charter School shall be charged to Charter School.

18.5. During the Term, Charter School shall comply with all provisions of law applicable to Charter School with respect to obtaining and maintaining workers' compensation insurance. Prior to the commencement and any renewal of this Agreement and Charter School's occupancy of the Premises, Charter School shall provide District, as evidence of this required coverage, a certificate in a form satisfactory to District on or before the commencement or renewal date, providing that insurance coverage shall not be canceled or reduced without thirty (30) days prior written notice to District.

19. **Signs.** Charter School may, at Charter School's sole cost, have the right and entitlement to place an onsite sign on the Premise to advertise Charter School's educational program, provided Charter School obtains the prior written approval and consent of District. District's approval and consent shall not be unreasonably withheld. Any signs shall be at Charter School's cost and in compliance with the local ordinances pertaining thereto. In connection with the placement of Charter School's signs, District agrees to cooperate with Charter School in obtaining any governmental permits which may be necessary. Throughout the Term Charter School shall, at its sole cost and expense, maintain the signage and all appurtenances in good condition and repair. At the termination of the Agreement, Charter School shall remove any signs which it has placed on the Premises and School Site, and shall repair any damage caused by the installation or removal of Charter School's signs.

20. **Notice.** Any notice required or permitted to be given under the 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:

DISTRICT:
Office of Charter Schools
Tilden School, Room 9

4551 Steele Street
Oakland, CA 94619
Attn: Coordinator

Office of the General Counsel
1000 Broadway Suite 398
Oakland, CA 94607
510-879-8535

CHARTER SCHOOL:
Gloria Lee, Chair Board of Directors
Yu Ming Charter School
Golden Gate CDC
6232 Herzog Street
Oakland, CA

CHARTER SCHOOL:
Gloria Lee, Chair Board of Directors
Yu Ming Charter School
1086 Alcatraz Avenue
Oakland, CA

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 certified or registered mail shall be effective three (3) days after deposit in the United States mail.

21. Dispute Resolution.

- 21.1. 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, Proposition 39, or State Regulations shall be resolved using the dispute resolution process identified below.
- 21.2. 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 representatives from Charter School shall meet with representatives from the District in an informal setting to try to resolve the dispute.
- 21.3. 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 ("SMCS") to appoint a mediator within ten (10) business days to assist the parties in resolving the dispute (if the 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 thirty (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 (7) 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.

- 21.4. Either Party may seek equitable or injunctive relief prior to the mediation to preserve the status quo or prevent irreparable injury pending the completion of that process. Except for such an action to obtain equitable relief, 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 forty-five (45) 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.
22. **Subcontract, Assignment and Sublease.** Charter School shall not have the right, voluntarily or involuntarily, to assign, license, transfer or encumber the Agreement or sublet all or part of the Premises. Any purported transfer shall be void and shall, at District's election, constitute a default. No consent to transfer shall constitute a waiver of the provisions of this Section.
23. **Joint and Several Liability.** If Charter School is more than one person or entity, each person or entity shall be jointly and severally liable for the obligations of Charter School hereunder.
24. **Independent Contractor Status.** The 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.
25. **Entire Agreement of Parties.** The Agreement and the Letter of Intent dated July 6, 2014 attached hereto as Attachment C constitute the entire agreement between the Parties and supersedes all prior discussions, negotiations and agreements, whether oral or written. The Agreement may be amended or modified only by a written instrument executed by both Parties.
26. **California Law.** The Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of the Agreement shall be maintained in county in which the District's administrative offices are located.

27. Compliance with All Laws.

- 27.1. Charter School shall comply with all laws, regulations and ordinances of these authorities, in force either now or in the future including, without limitation, all applicable federal, state and local laws, regulations, and ordinances pertaining to air and water quality, hazardous material, waste disposal, air emission and other environmental matters (including the California Environmental Quality Act ("CEQA") and its implementing regulations in Charter School's use of the Premises, and all District policies, rules and regulations ("Environmental Laws") with regards to its use of the Premises. Charter School shall not be responsible for any clean up, remediation, removal, response, abatement or amelioration of any Hazardous Materials, discharge, leakage, spillage, emission, or pollution of any type that existed on the Premises prior to its occupancy, or that was not brought onto the Premises by the Charter School or its agents, employees, contractors, or invitees.
- 27.2. The judgment of a court of competent jurisdiction, or Charter School's admission in an action or a proceeding against Charter School, whether District be a party to it or not, that Charter School has violated any law or regulation or ordinance in Charter School's use of the Premises shall be considered conclusive evidence of that fact as between District and Charter School. If Charter School fails to comply with any law, regulation or ordinance, District reserves the right to take necessary remedial measures at Charter School's expense, for which Charter School agrees to reimburse District on demand.
- 27.3. Charter School shall not cause or permit any Hazardous Material to be generated, brought onto, used, stored, or disposed of in or about the Premises and any improvements by Charter School or its agents, employees, contractors, subtenants, or invitees, except for limited quantities of standard office, classroom and janitorial supplies (which shall be used and stored in strict compliance with Environmental Laws). Charter School shall comply with all Environmental Laws. As used herein, the term "Hazardous Materials" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California or the United States Government. The term "Hazardous Materials" includes, without limitation, petroleum products, asbestos, PCB's, and any material or substance which is (i) defined as hazardous or extremely hazardous pursuant to Title 22 of the California Code of Regulations, Division 4.5, Chapter 11, Article 4, section 66261.30 et seq. (ii) defined as a "hazardous waste" pursuant to section (14) of the federal Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq. (42 U.S.C. 6903), or (iii) defined as a "hazardous substance" pursuant to section 10 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et seq. (42 U.S.C. 9601). As used herein, the term "Hazardous Materials" shall mean any statute, law, ordinance, or regulation of any governmental body or agency (including the U.S. Environmental Protection Agency, the California Regional Water Quality Control Board, and the California Department of Health Services) which regulates the use, storage, release or disposal of any Hazardous Material.
- 27.4. **Notice of Hazardous Substance.** Charter School will promptly notify District in writing if Charter School has or acquires notice or knowledge that any Hazardous Substance

has been or is threatened to be, released, discharged, disposed of, transported, or stored on, in, under or from the Premises or School Site in violation of Environmental Laws. Charter School shall promptly provide copies to District of all written assessments, complaints, claims, citations, demands, fines, inquiries, reports, violations or notices relating to the conditions of the Premises or compliance with Environmental Laws. Charter School shall promptly supply District with copies of all notices, reports, correspondence, and submissions made by Charter School to the United States Environmental Protection Agency, the United States Occupational Safety and Health Administration, and any other local, state, or federal authority that requires submission of any information concerning environmental matters or Hazardous Substances pursuant to Environmental Laws. Charter School shall promptly notify District of any liens threatened or attached against the Premises pursuant to any Environmental Laws.

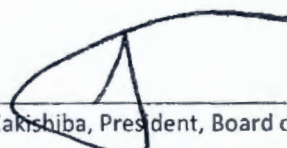
- 27.5. **Inspection.** District and District's agents, servants, and employees including, without limitation, legal counsel and environmental consultants and engineers retained by District, may (but without the obligation or duty to do so), at any time and from time to time, on not less than ten (10) business days' notice to Charter School (except in the event of an emergency, in which case, no notice will be required), inspect the Premises to determine whether Charter School is complying with Charter School's obligations set forth in this Section, and to perform environmental inspections and samplings, during regular business hours (except in the event of an emergency) or during such other hours as District and Charter School may agree.
- 27.6. **Indemnification.** Charter School's indemnification and defense obligations in this Agreement shall include any and all Claims arising from any breach of Charter School's covenants under this Section.
28. **Waiver.** The waiver by either 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.
29. **Successors and Assigns.** The Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors, and assigns.
30. **Counterparts.** The Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.
31. **Captions.** The captions contained in the Agreement are for convenience only and shall not in any way affect the meaning or interpretation hereof nor serve as evidence of the interpretation hereof, or of the intention of the Parties hereto.
32. **Severability.** Should any provision of the 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.
33. **Incorporation of Recitals and Exhibits.** The Recitals and each Attachment attached hereto are hereby incorporated herein by reference.

34. **Authorization to Sign Agreement.** Each individual executing the Agreement on behalf of a Party represents and warrants that he or she is duly authorized to execute and deliver the Agreement on behalf of Party that the individual is executing the Agreement and that the Agreement is binding upon that Party in accordance with its terms.

35. **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion:** The District certifies to the best of its knowledge and belief, that it and its principals: Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or CONTRACTOR according to Federal Acquisition Regulation Subpart 9.4, and by signing this contract, verifies that this vendor does not appear on the Excluded Parties List. <https://www.sam.gov/portal/public/SAM>

ACCEPTED AND AGREED on the date indicated below:

OAKLAND UNIFIED SCHOOL DISTRICT



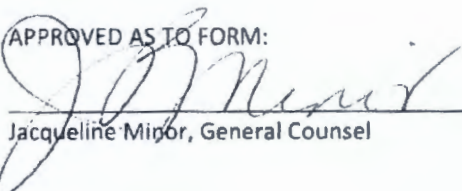
David Kakishiba, President, Board of Education

8-14-14
Date



Antwan Wilson, Secretary, Board of Education

8-14-14
Date

APPROVED AS TO FORM:


Jacqueline Miror, General Counsel

7/28/14
Date

CHARTER SCHOOL


By: _____
Title: Chair, Board of Directors

Date: 7/28/14

File ID Number: 14-1628
Introduction Date: 8-13-14
Enactment Number: 14-1495
Enactment Date: 8-13-14
Rv.

Attachment "A"

GOLDEN GATE CDC/6232 HERZOG TASK RESPONSIBILITY MATRIX

**GOLDEN GATE CDC / 6232 HERZOG
TASK RESPONSIBILITY MATRIX**

TASK	DESCRIPTION	RESPONSIBLE FOR WORK	RESPONSIBLE FOR COST	CURRENT ESTIMATE	STRATEGY FOR REDUCING COST	STRATEGY FOR TIME CONSTRAINT
Repair Heaters	Provide heat in all classrooms and Administration to replace abandoned radiant system.	OUSD	OUSD		NA	NA - to be completed soon
Repair water damage	Radiant heating system water damage repairs.	OUSD	OUSD		NA	NA - to be completed soon
Electrical	Upgrade electrical if required for new heating system &/or fire alarm system	OUSD	OUSD		NA	To be completed as part of heating system repair
Fire Alarm System	Provide compliant Fire Alarm System	YMCS	OUSD	\$20,000	Seek bid from Bay Alarm	Do not seek design review
Asbestos abatement	Asbestos mitigation where needed for floor repairs.	YMCS	OUSD	\$8,300	none	Select HazMat contractor ASAP
Flooring	Replace broken floor tiles and linoleum as needed	YMCS	YMCS	\$4,011	Seek bids from smaller contractors	Coordinate with Asbestos abatement
Asphalt Repair	Repair play yard asphalt cracks and buckles (safety hazard)	YMCS	OUSD	\$31,952	Limit scope of work to area near tree roots	Delay work until October break; fence off area
Gates & Fencing	Repair of gates and fencing to secure the site	YMCS	OUSD		none	None
Push Bars	Install exit push bars if required by fire marshal for exiting	YMCS	OUSD		none	Coordinate walk thru with FM this week
Emergency maps	Provide emergency egress maps per fire marshal request	YMCS	OUSD	\$1,000	none	None
Fire Extinguishers	Install fire extinguishers per Fire Code	YMCS	OUSD		none	None
Security System	Install Security System	?	?		none	none
Carpet	Replace carpet in Bldg B	YMCS	YMCS	\$7,865	Clean carpet only or seek additional bids	Clean carpet only
Paint	Paint all interior walls and millwork	YMCS	YMCS	\$36,420	Use parent volunteers to paint	Don't paint
Play structure	Repair or remove play structure	?	?		Fence off play structure	Fence off play structure
Toilets	Replace small toilets with larger ones and repair partition walls	YMCS	YMCS	\$3,000	Leave toilets as is	Leave toilets as is or replace at Fall Break
Sinks	Raise sinks for older students	YMCS	YMCS	\$500	Leave sinks as is	Leave sinks as is or replace at Fall Break
Partition wall	Provide temp partitions between classrooms	YMCS	YMCS	\$20,000	Leave open classroom	None

Potential areas of additional cost:

- Permit fees for Fire Alarm & electrical work
- ADA compliance for site/ building access
- Repair/ removal of kitchen infrastructure
- Skylight repair