

|   |           |
|---|-----------|
| Board Office Use: <b>Legislative File Info.</b> |           |
| File ID Number                                  | 14-1783   |
| Introduction Date                               | 8/27/2014 |
| Enactment Number                                | 14-1666   |
| Enactment Date                                  | 8-27-14   |



OAKLAND UNIFIED  
SCHOOL DISTRICT

Community Schools, Thriving Students

# Memo

**To** Board of Education

**From** Jacqueline Minor, General Counsel

**Board Meeting Date** August 27, 2014

**Subject** **APPROVAL OF AMENDMENT TO THE AMENDMENT 1 TO THE FACILITIES AND OPERATIONS AGREEMENT BY AND BETWEEN THE OAKLAND UNIFIED SCHOOL DISTRICT AND EDUCATION FOR CHANGE**

**Action Requested** **APPROVAL OF AMENDMENT TO THE AMENDMENT 1 TO THE FACILITIES AND OPERATIONS AGREEMENT BY AND BETWEEN THE OAKLAND UNIFIED SCHOOL DISTRICT AND EDUCATION FOR CHANGE**

**Background**  
*A one paragraph explanation of the MOU.*

By Enactment # 12-0836 approved on March 7, 2012, the Board approved the FACILITIES AND OPERATIONS AGREEMENT BY AND BETWEEN THE DISTRICT, AND THE OAKLAND UNIFIED SCHOOL DISTRICT PARTNER SCHOOLS, ASCEND AND LEARNING WITHOUT LIMITS AND EDUCATION FOR CHANGE ("EFC") (the "Agreement"). Under the terms of the amendment, EFC is eliminating most of the services initially agreed to for Ascend and LWL.

**Discussion**  
*One paragraph summary of the MOU.*

As a result of the reduced level of services, EFC will pay the District \$416,668 in 2014-15 (rather than \$774,704.00).

**Recommendation** **APPROVAL OF AMENDMENT TO THE AMENDMENT 1 TO THE FACILITIES AND OPERATIONS AGREEMENT BY AND BETWEEN THE OAKLAND UNIFIED SCHOOL DISTRICT AND EDUCATION FOR CHANGE**

**Fiscal Impact** Reduction in \$358,036 in revenues to the District

**Attachments**

- Memorandum of Understanding
- Amendment to the MOU

| Board Office Use: Legislative File Info. |           |
|--|-----------|
| File ID Number                           | 14-1783   |
| Introduction Date                        | 8/27/2014 |
| Enactment Number                         | 14-1614   |
| Enactment Date                           | 8-27-14   |

**AMENDMENT 1 TO THE FACILITIES AND OPERATIONS AGREEMENT  
BY AND BETWEEN  
THE OAKLAND UNIFIED SCHOOL DISTRICT  
AND  
EDUCATION FOR CHANGE**

By Enactment # 12-0836 approved on March 7, 2012, the Board of Education approved the FACILITIES AND OPERATIONS AGREEMENT BY AND BETWEEN THE DISTRICT, AND THE OAKLAND UNIFIED SCHOOL DISTRICT PARTNER SCHOOLS, ASCEND AND LEARNING WITHOUT LIMITS AND EDUCATION FOR CHANGE ("EFC") (the "Agreement"). The Parties hereby agree to amend said Agreement as follows:

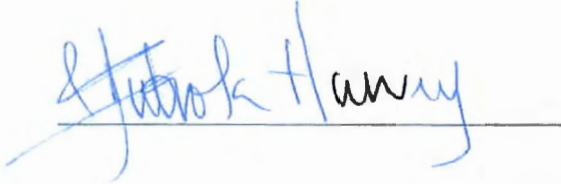
1. Section 2.1 is hereby deleted;
2. Section 2.3 is hereby deleted;
3. Section 2.7 is hereby deleted
4. Section 2.9 is hereby deleted;
5. Section 2.10 is hereby deleted;
6. Section 2.11 is hereby deleted;
7. Section 2.12 is hereby deleted
8. Section 2.14 and 2.15 are deleted;
9. Section 2.17 is hereby deleted;
10. Section 2.18 is hereby deleted

Section 7.1 [Payments] is reduced, such that for contracted services, EFC for the 2014-15 fiscal year shall pay the District \$416,668.00 for facility use, custodial services, and contracted services. Under this amendment, the total reduction in services is \$358,036.00. See Attachment A


11. Except as expressly provided above, the Agreement is unchanged.
12. This Amendment to the Agreement and the Agreement constitute the entire understanding and agreement between the Parties.
13. All understandings, agreements, covenants, and representations express or implied, oral or written between the Parties are contained and merged herein. No other agreements, covenants, or representations, express or implied, oral or written, have been made by or between the Parties concerning the subject of this Amendment. 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.

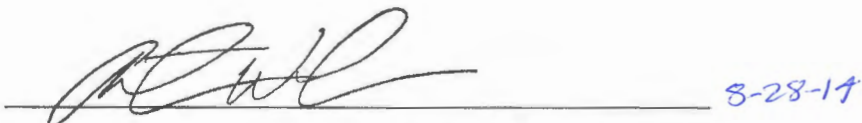
IN WITNESS WHEREOF, the parties hereto agreed to be bound and have executed this Amendment to the Agreement originally approved by the Oakland Unified School District Board of Education on March 7, 2012.

**EDUCATION FOR CHANGE**

  
\_\_\_\_\_

**OAKLAND UNIFIED SCHOOL DISTRICT**

  
\_\_\_\_\_ 8-28-14  
David Kakishiba, President, Board of Education

  
\_\_\_\_\_ 8-28-14  
Superintendent and Secretary, Board of Education

**APPROVED AS TO FORM:**

  
\_\_\_\_\_   
Jacqueline P. Minor  
General Counsel

File ID Number: 14-1783  
Introduction Date: 8-27-14  
Enactment Number: 14-1616  
Enactment Date: 8-27-14  
Bv:

# Attachment A

|  |           |                   |
|--|-----------|-------------------|
| Custodial Services                         | \$        | 223,875.00        |
| <b><u>Other Contracted Services:</u></b>   |           |                   |
| Prof. Development                          | \$        | 55,917.00         |
| Technology Services                        | \$        | 43,849.00         |
| Research & Assessment                      | \$        | 31,571.00         |
| Procurement                                | \$        | 8,301.00          |
| Complementary Learning                     | \$        | 6,752.00          |
| Human Resources                            | \$        | 1,271.00          |
| <b>Subtotal: Cost of District Services</b> | <b>\$</b> | <b>371,536.00</b> |
| Rent                                       | \$        | 274,997.00        |
| Contribution to State Loan                 | \$        | 128,171.00        |
| <b>TOTAL per original agreement</b>        | <b>\$</b> | <b>774,704.00</b> |
| Less: Reduced Services                     | \$        | (358,036.00)      |
| <b>NEW AGREEMENT TOTAL</b>                 | <b>\$</b> | <b>416,668.00</b> |



| Board Office Use: Legislative File Info. |         |
|--|---------|
| File ID Number                           | 12-0603 |
| Introduction Date                        | 3/7/12  |
| Enactment Number                         | 12-0836 |
| Enactment Date                           | 3-7-12  |



OAKLAND UNIFIED  
SCHOOL DISTRICT

Community Schools, Thriving Students

# Memo

To Board of Education

From Jacqueline Minor, General Counsel

Board Meeting Date March 14, 2012

Subject **Facilities and Operations Agreement By and Between The Oakland Unified School District, The Oakland Unified School District Partner Schools, Ascend and Learning Without Limits and Education For Change**

Action Requested **Approval of Facilities and Operations Agreement By and Between The Oakland Unified School District, The Oakland Unified School District Partner Schools, Ascend and Learning Without Limits and Education For Change**

## Background

In the fall of 2011, ASCEND and LWL submitted charter petitions to the Board of Education. The principal leaders of both schools, with the support of a large percentage of their teaching staffs, believed that in service of high standards and outcomes for students, becoming charter schools would, among other things, give the schools the desired flexibility to maximize school site decision-making. The Board denied both charter petitions in January 2012 because the progress in student achievement at both ASCEND and LWL is due to the extraordinary partnership between the District and the schools; strong, dedicated District teacher leadership at the schools; broad parental and community support; and the investment of more than \$35 Million dollars in Oakland citizens' approved bond monies in new school buildings for ASCEND and LWL. Both schools filed appeals to the County Board of Education seeking reversal of the Board's decision.

At the Board's December 14, 2011, the Board adopted a Theory of Action which among other things stated that "in service of high and equitable standards and outcomes for students, we [will] maximize school site-based decision-making regarding staffing, finances, calendars, and programs," and in order to "ensure high quality options in every neighborhood, we [will] partner with diverse providers."

In meetings with ASCEND and LWL, and eventually EFC, the Parties realized the opportunity to implement the Board's Theory of Action, by creating a win-win situation, by maximizing school based decision-



---

making and leveraging the District's strengths by the District contracting to provide certain services to the schools.

**Discussion**

Under the terms of this Agreement, ASCEND and LWL will become District partner schools; will have use of their existing school facilities that will continue to be maintained by District employed Custodians and the District's Building and Grounds Department; will share access to data systems, professional development, new teacher support, and testing data; and among other things, will use the District's nutrition services and technology support. Significantly, ASCEND and LWL will contribute their pro rata share to the payment of the State Emergency Loan. In addition, with the expectation that conditions for school success and accelerating student achievement will continue to improve, the Agreement gives District employees, both classified and certificated, who elect to transfer to the schools a two year leave of absence. As the Parties approach the two year anniversary of this five year agreement, it is the District's desire and expectation that ASCEND and LWL will reunite with the unified school district.

**Recommendation**

Approval by the Board of Education of the Facilities and Operations Agreement By and Between The Oakland Unified School District, The Oakland Unified School District Partner Schools, Ascend and Learning Without Limits and Education For Change

**Fiscal Impact**

Revenues to the District in the amount of \$774,704.00 per year

**Attachments**

Facilities and Operations Agreement By and Between The Oakland Unified School District, The Oakland Unified School District Partner Schools, Ascend and Learning Without Limits and Education For Change

**FACILITIES AND OPERATIONS AGREEMENT**

**BY AND BETWEEN**

**OAKLAND UNIFIED SCHOOL DISTRICT,**

**OAKLAND UNIFIED SCHOOL DISTRICT**

**PARTNER SCHOOLS,**

**AND**

**EDUCATION FOR CHANGE**



**FACILITIES AND OPERATIONS AGREEMENT  
 BY AND BETWEEN  
 THE OAKLAND UNIFIED SCHOOL DISTRICT,  
 THE OAKLAND UNIFIED SCHOOL DISTRICT PARTNER SCHOOLS,  
 AND  
 EDUCATION FOR CHANGE**

**TABLE OF CONTENTS**

Preamble

ARTICLE 1 - FACILITIES PROVISIONS..... 2

    Section 1.1. Use of Dedicated Space..... 2

    Section 1.1.1 Shared Space on the Jefferson Campus – Learning Without Limits and Global Family Elementary School ..... 3

    Section 1.1.2 Emergency Procedures for Shared Sites. .... 4

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

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

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

    Section 1.5. Modernization..... 6

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

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

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

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

    Section 1.10. Access..... 7

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

    Section 1.12. Holding Over. .... 8

    Section 1.13. Liens..... 8

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

    Section 1.15. Eminent Domain ..... 9

    Section 1.16. Fingerprinting ..... 10

ARTICLE 2 - OPERATIONS PROVISIONS..... 10

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

    Section 2.2. Custodial Services. .... 10

    Section 2.3. English Learner Services. .... 10

    Section 2.4. Nutrition Services and Farmers Markets. .... 10

    Section 2.5. Certificated Substitutes..... 11

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

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

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

    Section 2.9. Family, Community Partnership Services. .... 11

    Section 2.10. Purchasing. .... 11

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

    Section 2.12. Assessments..... 12

    Section 2.13. Student Records..... 12

    Section 2.14. E-rate. .... 13

    Section 2.15. District Website..... 13

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



|  |    |
|--|----|
| Section 2.17. Telecommunications.....  | 13 |
| Section 2.18. Leave of Absence.....  | 13 |
| Section 2.19. Other Services.....  | 14 |
| Section 2.20. District Services Available to EFC Schools in Addition to ASCEND and LWL ...                             | 14 |
| ARTICLE 3 - CONTRIBUTION TO PAYMENT OF DISTRICT EMERGENCY STATE LOAN.....  | 14 |
| ARTICLE 4 - DISTRICT OVERSIGHT AND CHARTER RESPONSIBILITIES.....   | 14 |
| Section 4.1. Oversight Obligations.....  | 14 |
| Section 4.2. Compliance with Generally Accepted Accounting Principles.....   | 16 |
| Section 4.3. Oversight Fees.....   | 17 |
| ARTICLE 5 - Legal Relationship and Compliance.....   | 17 |
| Section 5.1. Legal Relationship.....   | 17 |
| Section 5.2. No Liability for Debt; No Authority to Bind the District.....   | 17 |
| Section 5.3. Non-Discrimination.....   | 17 |
| Section 5.4. Drug-Free Workplace.....  | 18 |
| Section 5.5. Safety.....   | 18 |
| Section 5.6. Compliance with Laws.....   | 19 |
| ARTICLE 6 - INDEMNIFICATION, INSURANCE; DEFAULT; DISPUTE RESOLUTION; EARLY<br>TERMINATION.....                         | 19 |
| Section 6.1. Indemnification.....  | 19 |
| Section 6.2. Insurance.....  | 20 |
| Section 6.3. Default and Remedies.....   | 21 |
| Section 6.4. Dispute Resolution.....   | 23 |
| Section 6.5. Term; Option to Renew.....  | 24 |
| ARTICLE 7 - PAYMENTS.....  | 24 |
| Section 7.1. Payment.....  | 24 |
| ARTICLE 8 - POINT OF CONTACT; FUTURE RECONCILIATION; CONTINUOUS REVIEW; ANNUAL<br>QUALITY REVIEW; TWO YEAR REVIEW..... | 25 |
| Section 8.1. Point of Contact.....   | 25 |
| Section 8.2. Future Adjustments or Reconciliations; Annual Review; Quality Review<br>Committee.....                    | 26 |
| Section 8.3. Year Two Review.....  | 26 |
| ARTICLE 9 - GENERAL PROVISIONS.....  | 26 |
| Section 9.1. Subcontract and Assignment.....   | 26 |
| Section 9.2. Independent Status.....   | 26 |
| Section 9.3. Entire Agreement.....   | 27 |
| Section 9.4. California Law.....   | 27 |
| Section 9.5. Waiver.....   | 27 |
| Section 9.6. Successors and Assigns.....   | 27 |
| Section 9.7. Counterparts.....   | 27 |
| Section 9.8. Captions.....   | 27 |
| Section 9.9. Severability.....   | 27 |
| Section 9.10. Incorporation of Recitals and Exhibits.....  | 27 |
| Section 9.11. Notice.....  | 27 |
| Section 9.12. Modifications.....   | 28 |

Section 9.13. Force Majeure..... 28  
Section 9.14. Incorporation of Recitals and Exhibits. .... 28



**FACILITIES AND OPERATIONS AGREEMENT  
BY AND BETWEEN  
THE OAKLAND UNIFIED SCHOOL DISTRICT,  
THE OAKLAND UNIFIED SCHOOL DISTRICT PARTNER SCHOOLS,  
ASCEND AND LEARNING WITHOUT LIMITS  
AND  
EDUCATION FOR CHANGE**

THIS AGREEMENT ("Agreement") is effective on March 7, 2012 and is entered into by and between the Oakland Unified School District, a unified public school district organized and existing under the laws of the State of California (the "District"), ASCEND ELEMENTARY SCHOOL ("ASCEND"), LEARNING WITHOUT LIMITS ELEMENTARY SCHOOL ("LWL"), and EDUCATION FOR CHANGE ("EFC"), a non-profit public benefit corporation, Charter Management Organization which operates charter public schools in Oakland, California. After June 30, 2012, all references to ASCEND shall refer to ASCEND Charter School and all references to LWL shall refer to LWL Charter School. The District, ASCEND, LWL and EFC are collectively referred to as "the Parties."

**PREAMBLE**

This Agreement between the District, ASCEND, LWL and EFC represents a strategic collaboration and a commitment to work together to provide all children in Oakland with a public school education that prepares them with the skills and knowledge to succeed in college and career. The Agreement also represents a fundamental change in the way the District and charter schools have operated by identifying specific opportunities for the District and EFC to leverage each others' strengths and to work together toward the common goal of serving the children of Oakland. Ultimately, this Agreement should be seen as another example of the District's commitment to serve all the children of Oakland by harnessing all the resources of this community and using those resources in the most effective manner possible.

Since 2000, the District has undergone major transformations, including adoption by the Board of Education of the New Small Autonomous Schools Policy, which resulted in the incubation of forty-nine new small schools, including ASCEND and LWL. Over the last seven years, the District has been progressing steadily and has improved faster than all other urban districts in California. However, the changes that have occurred are not enough. Many children are still not being well served by the system of schools in Oakland, and many school leaders, teachers, families and communities are seeking more autonomy in order to continue to accelerate the District's student performance.

Two District schools, ASCEND and LWL, took the step in the fall of 2011 of submitting charter petitions to the District Board of Education. The principal leaders of both schools, with the support of a large percentage of their teaching staffs, believed that in service of high standards and outcomes for students, becoming charter schools would, among other things, give the schools the desired flexibility to maximize school site decision-making regarding staffing, finances, calendars, and programs. The Board of Education denied both charter petitions in January 2012 because the dramatic progress in student achievement at both ASCEND and LWL is due to the extraordinary partnership between the District and the schools; strong, dedicated District teacher leadership at the schools; broad parental and community support; and the investment of more than \$35 Million dollars in Oakland citizens' approved bond monies in new school buildings for ASCEND and LWL. Both schools filed appeals to the Alameda



County Board of Education seeking reversal of the charter denial decisions by the Board of Education.

At the December 14, 2011, meeting of the Board of Education, the Board adopted a Theory of Action which states that "based on the *Community Schools, Thriving Students* strategic plan, we want to move decisively and fundamentally to transform our district. We recognize that incremental changes will not create the conditions for success for all." The Board further stated that "in service of high and equitable standards and outcomes for students, we [will] maximize school site-based decision-making regarding staffing, finances, calendars, and programs," and in order to "ensure high quality options in every neighborhood, we [will] partner with diverse providers."

In meetings with ASCEND and LWL, and eventually EFC, the Parties realized the opportunity to implement the Board's Theory of Action, by creating a win-win situation and a contractual relationship which would create the conditions for success by maximizing school based decision-making and leveraging the District's strengths. Under the terms of this Agreement, ASCEND and LWL will become District partner schools; will have use of the school facilities that will continue to be maintained by District employed Custodians and the District's Building and Grounds Department; will share access to data systems, professional development, new teacher support, and testing data; and among other things, will use the District's nutrition services and technology support. Significantly, ASCEND and LWL will contribute their pro rata share to the payment of the State Emergency Loan. In addition, with the expectation that conditions for school success and accelerating student achievement will continue to improve, the Agreement gives District employees, both classified and certificated, who elect to transfer to the schools a two year leave of absence. As the Parties approach the two year anniversary of this five year agreement, it is the District's desire and expectation that ASCEND and LWL will reunite with the unified school district.

**NOW THEREFORE**, in consideration of the covenants and agreements set forth, and conditioned upon the approval by the District Board of Education of the revised charter petitions submitted by EFC on behalf of ASCEND and LWL on February 22, 2012, the Parties agree as follows:

## **ARTICLE 1 - FACILITIES PROVISIONS**

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

The District agrees to allow ASCEND and LWL exclusive use of the following Dedicated Space:

Ascend Elementary School  
3709 E 12<sup>th</sup> Street  
Oakland, CA 94601

Learning Without Limits Elementary School  
2035 40<sup>th</sup> Avenue  
Oakland, CA 94601

for the sole purpose of operating ASCEND and LWL educational programs in accordance with ASCEND and LWL's charters. The ASCEND and LWL's right to exclusive use of the Dedicated Space shall commence on July 1, 2012. Upon the termination of this Agreement, the right to exclusive use and occupation of the Dedicated Space and the facilities and equipment thereon shall revert to the District, subject to the parties' negotiation of a successor Agreement. As titleholder to the Dedicated Space and the facilities and equipment located thereon, the District reserves the right at the termination of this Agreement to recoup the full rights and benefits of



such ownership, including, but not limited to, use of such Dedicated Space, facilities and equipment for District use.

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

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

### **Section 1.1.1 Shared Space on the Jefferson Campus – Learning Without Limits and Global Family Elementary School**

LWL shares the following space with Global Family Elementary School, a District school, which is located on the Jefferson campus with LWL:

Cafeteria, library and produce market ("Shared Space")

The District hereby grants to LWL the right to joint use of the "Shared Space" solely for the purposes set forth in LWL's charter and on the terms and conditions set forth herein:  
**COMMON HALLWAYS:** The District shall allow LWL students to use common hallways, to the extent necessary, for ingress and egress to LWL Dedicated Space and to other shared spaces. Said use of common hallways by LWL students shall be pursuant to a set schedule and under the supervision of a LWL employee.

**PARKING:** The District shall allow LWL staff and faculty to access the employee parking at the Site on the same basis as that permitted to District employees. The District shall make parking available for LWL staff and visitors on the same basis as that permitted to other schools on the Site.

**LIBRARY/ATHLETIC FACILITIES:** The District shall allow LWL to schedule supervised student use of the Site's library, gymnasium, locker rooms, and basketball/blacktop area so that LWL will provide its own library and Physical Education programs within the school day using these shared spaces. LWL shall coordinate with the Shared Site Committee to schedule its use of said library and athletic facilities.

**DINING AREA/CAFETERIA:** The District shall allow LWL to schedule supervised student use of the Site's dining area.

**PRODUCE MARKET:** The District's Director of Nutrition Services shall coordinate and facilitate with LWL and Global Family School the continued operation of the shared Produce Market for the students, families and communities of both schools.

**COORDINATING SHARED USE:** LWL use of the Shared Space shall be coordinated through the Shared Site Committee. A clear and reasonable process shall be developed and adopted prior to the start of school in August 2012. The principal of the District School at the Site and principal of LWL may also, at their discretion, jointly refer other matters of shared site operations of the schools to the Shared Site Committee. The District shall provide LWL with



appropriate keys to access shared space no fewer than seven days prior to the start of school in August 2012. LWL will notify the District Office of Charter Schools in writing by August 15, 2012 of any concerns regarding either access to keys or coordination of use for the shared space.

**STUDENT DISCIPLINE:** The principal of the District School at the Site and principal of LWL will collaborate to resolve any student disciplinary issues that involve students and/or property of both LWL and other District programs. The District shall otherwise have no responsibility as it relates to student discipline of LWL students.

**BELL SCHEDULE/ALARMS/ANNOUNCEMENTS:** It is recognized that LWL may have a separate bell schedule from the District's programs. If deemed feasible, the dedicated space will have a separate intercom and bell system. If not feasible, the principal of LWL and the principal of the District School shall collaborate in the development of a plan for modification of the intercom and bell system.

### **Section 1.1.2 Emergency Procedures for Shared Sites.**

The principal of LWL and the principal of the District School shall immediately inform one another or their designees of any health and/or safety emergency as they relate to the safety of the schools on Site. This includes reports of any serious incident that takes place on the Site where the police, fire department, or paramedics are involved, including, but not limited to, incidents of physical or sexual abuse, bomb threats, weapons on the school Site, and the sale of narcotics on the school Site. LWL staff, faculty, and students shall cooperate with, and participate in, any lockdowns or exigent security procedures required by the District at the Site.

LWL will be notified two operating days in advance of scheduled fire drills and emergency drills on the Site which may disrupt LWL and its operations. LWL will provide notification two operating days in advance to the District School of scheduled fire drills and emergency drills on the Site which may disrupt the District School and its operations.

Fire and other security and emergency alarm testing will be limited to after-school hours or non-teaching/training days. The principal of LWL and the principal of the District School shall meet in September to identify appropriate dates and times through the year for these tests.

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

**FURNISHINGS AND EQUIPMENT:** At the time of the execution of this Agreement, ASCEND, LWL and EFC agree that the furnishings and equipment located at the Dedicated Space are owned by the District. The Parties shall, in cooperation, prepare a complete inventory of all furnishings and equipment at the Dedicated Space at the time this Agreement is executed.

Thereafter, ASCEND, LWL and EFC shall inventory all such property at the site on an annual basis and provide an inventory list to the District within thirty (30) days setting forth the property belonging to each party. The District may submit objections to the list within thirty (30) days of receipt of the list. The list shall be made available and maintained at ASCEND and LWL and in the District Fiscal Services Department. All parties shall meet in good faith to resolve any disputes about the ownership of property in accordance with the dispute resolution provisions in this Agreement.

**SECURITY:** The Dedicated Space shall be wired to each Dedicated Space's alarm system. ASCEND, LWL and EFC shall be responsible for costs incurred due to false alarms and security breaches that are related to the Dedicated Space. ASCEND and LWL shall operate a closed



campus and cooperate with the District on security issues. ASCEND and LWL may have a unique security code. If there is a fire at the property, ASCEND, LWL and EFC shall immediately notify the District but no later than within one business day.

**SCHOOL SAFETY OFFICER:** If School Safety Officer services are to be provided to ASCEND and LWL for the Dedicated Space, the District will be given the first opportunity to provide service. If the District deems it is unable to provide service, ASCEND and LWL may retain services from an external provider. ASCEND and LWL will be responsible for costs of on-site security staff, whether provided by the District or an external provider.

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

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

**MAINTENANCE AND OPERATION DEFINED.** Maintenance and Operations ("M&O") are broadly and generally defined as maintaining, repairing, and operating buildings (including the classrooms therein) and grounds efficiently on a regular basis, in a manner that promotes learning in a safe, clean, and healthy environment.

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

**DEFERRED MAINTENANCE PLAN AND SERVICES.** "Deferred Maintenance" shall mean facilities repair or replacement projects as described in Education Code section 17582(a) or additionally approved by the State Allocation Board; and further detailed by Office of Public School Construction Deferred Maintenance Program Handbook, as updated from time to time. Those projects include, but are not limited to, work necessary to restore or replace deteriorated or damaged building systems such as plumbing, heating, air conditioning, electrical, roofing, flooring, and wall systems. The exterior and interior painting of school buildings, asphalt paving, 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, or such other items as may be approved by the Board, to such condition that the school buildings may be effectively utilized for their designated purposes. The Parties acknowledge and agree that the District is responsible to deliver Deferred Maintenance to the Dedicated Space. The District acknowledges and agrees that it will carry out its responsibilities in a good and workmanlike manner by properly qualified and licensed personnel and in accordance with all applicable laws and District policies. The District further acknowledges and



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

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

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

#### **Section 1.5. Modernization.**

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

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

**Utilities.** ASCEND, LWL and EFC shall be solely responsible for the cost of all utilities used or consumed by ASCEND and LWL on the Dedicated Space, including charges for electricity, natural gas, water, sewer, and waste disposal.

**Custodial Services.** Ascend, LWL and EFC shall agree to the recommended level of custodial service identified by the District's Custodial Services Director; the recommended number of FTE, which includes custodial supplies, shall be comparable to that of other District school sites with the same or similar square footage. Throughout the term of this Agreement, unless subsequently modified, each site shall maintain the agreed number of custodians, who shall be District employees, and their salaries and benefits shall be reimbursed by EFC to the District. Substitutes for illness and other District Leave, such as vacation and personal leaves, and emergency cleaning shall be provided by the District but shall be paid for by EFC, provided however for the term of this Agreement the custodial costs are included in the payments set forth in Article 7 of this Agreement. ASCEND LWL and EFC may supplement the custodial services provided by District custodians with parent volunteers, or with prior written approval of the District, a third party vendor, provided there is no reduction in the number of agreed upon custodians provided by the District. Nothing in this section is intended to preclude ASCEND and LWL from holding parent led Work Days whereby parent volunteers assist with clean up of the Dedicated Space.

#### **Section 1.7. Installation of Improvements.**

**IMPROVEMENTS:** During the Term of this Agreement, ASCEND and LWL may not make alterations, additions, or improvements to the Dedicated Space ("Improvements"), without the prior written consent of the District, and if required, the Division of the State Architect ("DSA"). ASCEND and LWL may submit a request to make Improvements to the Dedicated Space and the District agrees to act upon such a timely and complete request within thirty (30) days. If the District fails to provide a response within thirty (30) days, the request shall be deemed approved. The District's approval of any Improvements, including the construction schedule, work hours, and modifications, shall be at District's sole and absolute discretion, and District may disapprove of such improvements without reason. Contractors retained by EFC shall be fully licensed and bonded as required by law and must maintain levels of casualty, liability and workers' compensation insurance and performance and payment bonds consistent with District construction requirements. The construction or installation of Improvements shall be performed in a sound and workmanlike manner, in compliance with all laws applicable to charter schools.



The District or the District's agent shall have a continuing right at all times during the period that Improvements are being constructed or installed to enter the premises and to inspect the work, provided that such entries and inspections do not unreasonably interfere with the progress of the construction or interrupt instruction to students.

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

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

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

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

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

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

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

The District and its authorized representatives shall have the right, after forty-eight (48) hours prior written notice to ASCEND, LWL and EFC, to enter the Dedicated Space during normal business hours for the purpose of inspection and audit ("Inspection"); or to perform Deferred Maintenance in or on the Dedicated Space. Nothing in this section shall prevent the District from entering the Dedicated Space to address an emergency nor shall this provision restrict the District's authority to enter the Dedicated Space without advanced notice to perform its general oversight responsibilities under the terms of charters and applicable law. An "emergency" shall be defined to include circumstances that risk the health and safety of students, personnel or other persons on the Dedicated Space, or circumstances that risk further imminent damage or destruction to the facilities or property located at the Dedicated Space, or



otherwise jeopardizes the operation of the Dedicated Space including, but not limited to, the safety and sanitary condition of the Dedicated Space.

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

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

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

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

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

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

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



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

NOTICE TO THE DISTRICT. ASCEND, LWL and EFC shall provide written notice to the District immediately of any casualty that wholly or partially damages or destroys ASCEND or LWL Dedicated Space.

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

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

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

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

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

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

ALLOCATION OF CONDEMNATION AWARD. In the event of a permanent condemnation or taking of all or part of the Dedicated Space, the District shall be entitled to any and all awards which may be made in such taking or condemnation relating to all interests, including the fee title, to the Dedicated Space. Nothing contained in this Section 1.15 shall be deemed to give the District any interest in or to require ASCEND, LWL or EFC to assign to the District any



separate award as designated by the condemning authority made to ASCEND, LWL or EFC for (i) the taking of ASCEND, LWL or EFC's personal property, (ii) interruption of or damage to ASCEND, LWL or EFC's business, or (iii) amounts attributable to ASCEND, LWL or EFC's relocation expenses.

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

#### **Section 1.16 Fingerprinting**

EFC shall be responsible for ensuring compliance with all applicable fingerprinting and criminal background investigation requirements described in Education Code Section 45125.1. In addition, the District shall be responsible for complying with all criminal background check laws for all employees or vendors that it directs to the Dedicated Spare for any work to be performed.

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

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

ASCEND and LWL shall participate as if a school of the District in student assignment, including but not limited to Options, student assignment, assignment lottery and recruitment, provided however, assignments to ASCEND and LWL shall not exceed class size ratios as provided in their charters.

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

See Article 1, Section 1.6 of this Agreement.

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

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

#### **Section 2.4. Nutrition Services and Farmers Markets.**

EFC will request the District to provide food services for ASCEND and LWL under the terms of the Food Service Agreement which is attached hereto as Exhibit B. The District shall retain state, federal, and local revenue for food services provided to EFC. Further, the District shall provide food services for EFC during the extended school year (i.e., summer school). The District will provide at minimum breakfast, lunch, and after school snack at all schools. Additional services that can be provided include salad bar, fresh fruit & vegetable snack, supper, and produce markets based on existing facilities and programs.



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

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

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

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

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

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

During the first year of this Agreement, ASCEND and LWL, not to exceed four participants per school, may participate in District provided BTSA training, programs and services and the cost of such participation is included in this Agreement. After the first year of the Agreement, the Parties shall meet and confer regarding the cost of continued participation in the program.

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

ASCEND, LWL and EFC, may at their option, participate in professional learning and development opportunities or events provided by the District. ASCEND LWL and EFC shall continue to obtain Full Option Science System ("FOSS") kits and live organism support. The cost of the initial system is included in this Agreement. Thereafter, the costs of damaged kits and replacement kits are estimated at \$150-250 per teacher.

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

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

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

ASCEND, LWL and EFC may access and order from the District E-Marketplace for custodial, office, and classroom supplies. These orders shall be delivered to ASCEND, LWL and



EFC directly. EFC shall be invoiced as provided in Article 7 of this Agreement for all purchases under this Section.

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

All students attending ASCEND and LWL shall be entered into the District's student information system (Aeries). ASCEND, LWL and EFC shall have the responsibility to maintain all student information in the District's format.

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

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

#### **Local**

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

#### **State**

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

#### **Assessment Platform**

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

#### **Data Reporting**

All data reports currently created by the Data Support Team will be available for ASCEND, LWL and EFC. Additional data requests may be available upon request at an additional fee.

#### **Training**

All State mandated training sessions will be available to ASCEND, LWL and EFC.

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

ASCEND and LWL student information shall be entered into the District student information system (Aeries) when a student enrolls. Each student shall be assigned a student ID number as well as a CSIS student ID number. If the student is new, then ASCEND and LWL



shall create a cum folder for the student. If a student is transferring from a District school to ASCEND and LWL, ASCEND and LWL shall send a request for records to the student's former school. Either the former school or the District's Student Records Department shall send the records to ASCEND or LWL office, as applicable. All student records shall to be maintained in accordance with applicable law. All immunization history, suspensions and retention information shall be entered into the District's student information system and also included in the student's cum record.

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

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

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

ASCEND and LWL shall be considered a school of the District for purposes of E-rate filing.

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

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

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

Authorized personnel of ASCEND, LWL and EFC may access District applications pertaining to ASCEND, LWL and EFC students and staff, including the Aeries student information system. ASCEND, LWL and EFC shall observe District policies and regulations, and state and federal laws, including the Family Education Rights and Privacy Act of 1974, commonly known as FERPA, related to the confidentiality of pupil and personnel records.

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

The District shall provide data network service and local and long distance phone service for ASCEND and LWL. For any problems with the service or special requests: ASCEND, LWL and EFC shall prepare a work order and submit it to the appropriate District department.

#### **Section 2.18. Leave of Absence.**

Any employees who transfers to ASCEND or LWL from the District will be granted, upon request, a leave of absence, not to exceed two years from July 1, 2012 to June 30, 2014. If an employee desires to return to the District after one year, (effective for the 2013-14 school), the employee must notify the District's Human Resources Department no later than February 28, 2013. At the end of the two year leave of absence, the employee shall 1) return to the District or 2) resign from the District, effective June 30, 2014. If an employee desires to return to the District after the second year, the employee must notify the District's Human Resources Department no later than February 28, 2014.

The employees who were granted a leave of absence shall have the right to return to the District, regardless of the reason that such employee leaves ASCEND or LWL **unless** the employee was terminated by EFC for a reason that would normally result in termination of the



employee by the District. If an employee granted a leave of absence from the District returns to the District, such employee will be considered by the District to have been employed continuously by the District while employed by EFC at ASCEND or LWL for purposes of calculating that employee's salary, tenure, or other District or state-wide benefits.

#### **Section 2.19. Other Services.**

Unless specified clearly in this Agreement as an obligation of the District, EFC shall be fully responsible for the operations of ASCEND and LWL.

#### **Section 2.20. District Services Available to EFC Schools in Addition to ASCEND and LWL.**

The following provisions of this Agreement, at EFC's option, apply to all EFC schools (Cox, World, Achieve, Ascend and LWL):

Sections 2.1, 2.3, 2.4, 2.5, 2.7, 2.8, 2.9, and 2.10

### **ARTICLE 3 - CONTRIBUTION TO PAYMENT OF DISTRICT EMERGENCY STATE LOAN**

EFC on behalf of ASCEND and LWL shall pay a prorated amount of the District's annual loan repayment. The prorated amount shall be determined by:

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

### **ARTICLE 4 - DISTRICT OVERSIGHT AND CHARTER RESPONSIBILITIES**

#### **Section 4.1. Oversight Obligations**

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

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

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

- Identifying at least one District staff member as a contact person for the charter school;

Visiting each charter school, ASCEND and LWL, at least once per year;

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

- Monitoring the fiscal condition of EFC and of each charter school;

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



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

d. Any process conducted in compliance with Education Code section 47607(c) through (k), related to the issuance of a notice to remedy or other corrective notice related to EFC's operations, including document requests, hearings, notices, and investigations, and monitoring efforts to remedy operational problems identified by the District.

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

(A) Student Data

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

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

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

(B) Personnel Data/Credential Data

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



### (C) Financial Reporting

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

September 1 – Final Unaudited Financial Report for Prior Year

December 1 – First Interim Financial Report for Current Year

March 1 – Second Interim Financial Report for Current Year

June 15 – Preliminary Budget for Subsequent Year

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

### (D) Audit

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

### (E) Governing Board

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

### (F) Policies and Implementation

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

### (G) Pupil Outcomes

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

## **Section 4.2. Compliance with Generally Accepted Accounting Principles**

EFC shall comply with Generally Accepted Accounting Principles (GAAP) applicable to public school finance and fiscal management. EFC shall maintain a minimum reserve for



economic uncertainties (designated fund balance) in an amount to be determined appropriate by the District but in no case less than 3 per cent of year end expenditures of EFC.

### **Section 4.3. Oversight Fees.**

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

## **ARTICLE 5 - Legal Relationship and Compliance**

### **Section 5.1. Legal Relationship.**

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

### **Section 5.2. No Liability for Debt; No Authority to Bind the District.**

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

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

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

### **Section 5.3. Non-Discrimination.**

EFC agrees it will comply with Title VII of the Civil Rights Act of 1964 and that no person shall, on the grounds of race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Agreement.



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

#### **Section 5.4. Drug-Free Workplace.**

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

#### **Section 5.5. Safety.**

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



### **Section 5.6. Compliance with Laws.**

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

## **ARTICLE 6 - INDEMNIFICATION, INSURANCE; DEFAULT; DISPUTE RESOLUTION; EARLY TERMINATION**

### **Section 6.1. Indemnification.**

EFC shall indemnify, hold harmless, and defend the District, its trustees, officers, employees and agents against and from any and all claims, demands, actions, suits, losses, liability, expenses and costs for any injury, death or damage to any person or property occurring in, on or about the Site after District delivers possession of the Dedicated Space to EFC, arising from EFC's use of the Dedicated Space or from the conduct of its business or from any activity, work, or other things done, permitted or suffered by EFC in or about the Dedicated



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

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

#### **Section 6.2. Insurance.**

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

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

(2) Property Insurance. Property insurance against fire, vandalism, malicious mischief and such other additional perils as now are or hereafter may be included in a standard "All Risks" coverage, including sprinkler leakage, insuring all of EFC's trade fixtures, furnishings, equipment, stock, loss of income or extra expense, and other items of personal property ("Charter's Property") in an amount not less than eighty hundred percent (80%) of fair market value.



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

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

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

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

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

### **Section 6.3. Default and Remedies.**

**EFC's DEFAULT.** The occurrence of any one of the following events shall be considered a default of this Agreement by EFC:

(1) The failure of EFC to pay any charges or fees due and payable hereunder twenty (20) business days after receipt of written notification of said failure to pay;

(2) The failure of EFC to observe or perform any of its covenants or obligations hereunder, which failure continues past the notice and cure period provided herein. The District shall provide EFC with written notice of default and EFC shall have twenty (20) business days to provide a response to the District either evidencing compliance with the terms of this Agreement or a plan to cure the default and a reasonable timeline acceptable by the District within which EFC will diligently prosecute the same to completion. In no event shall such default



continue for more than ninety (90) days after written notice thereof by the District to EFC without prior written agreement by the District. Any such notice shall be in lieu of, and not in addition to, any notice required under Code of Civil Procedure section 1161; and such cure period shall run concurrently with any cure period required under California law, including Code of Civil Procedure section 1161;

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

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

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

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

(2) In accordance with Civil Code section 1951.4 (or any successor statute), EFC acknowledges that in the event EFC has breached this Agreement and abandoned the Dedicated Space, this Agreement shall continue in effect for so long as the District does not terminate EFC's right to possession, and the District may enforce all its rights and remedies under this Agreement, including the right to recover fees as they become due under this Agreement and the reasonable costs incurred to preserve the property. Acts of maintenance or preservation of the Dedicated Space or the appointment of a receiver upon initiative of the District to protect the District's interest under this Agreement shall not constitute a termination of EFC's right to possession. In addition to its other rights under this Agreement, the District has the remedy described in Civil Code section 1951.4.

(3) If EFC fails to perform any covenant or condition to be performed by EFC within a the time period specified in this Agreement after EFC received written notice of such failure from the District, the District may perform such covenant or condition at its option, after notice



to EFC. In the event of an Emergency, the District has the right to perform such activity to mitigate the impact of the Emergency. All reasonable costs incurred by the District in so performing shall be reimbursed to the District by EFC in accordance with section 5.2 hereof. Any performance by the District of EFC's obligations shall not waive or cure such default. All out-of-pocket, reasonable costs and expenses actually incurred by the District in collecting payments due, or enforcing the obligations of EFC under this Agreement shall be paid by EFC to the District.

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

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

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

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

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

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

#### **Section 6.4. Dispute Resolution.**

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

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

If the informal meeting fails to resolve the dispute the party initiating the dispute resolution process shall notify the other party (the responding party) in writing that it intends to



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

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

**Section 6.5. Term; Option to Renew**

The Term of this Agreement shall be coterminous with the term of the ASCEND and LWL charters (i.e., ending June 30, 2017). Subject to modifications which the Parties may mutually negotiate, if the ASCEND or LWL charters are renewed by the District, EFC shall have the right to renew this Agreement for one five (5) year renewal term. To exercise this option, EFC shall provided written notice to the District no later than four months prior to the expiration of the term of this Agreement (i.e., no later than February 28, 2017). The Parties acknowledge and agree that the renewal term will be subject to the same terms and conditions, except as expressly mutually renegotiated by the Parties, including, but not limited to renegotiation of Article 7 of this Agreement.

**ARTICLE 7 - PAYMENTS**

**Section 7.1. Payment.**

In addition to the Oversight Fees provided in Section 4.3 of this Agreement, annually, during the term of this Agreement, EFC shall pay the District a total of \$774,704.00 for facility use, contribution to the payment of the emergency State loan and contracted services. The total amount includes the following costs:

|                                       |           |
|---------------------------------------|-----------|
| Facility Use                          | \$274,997 |
| Contribution to Payment of State Loan | \$128,171 |
| Contracted Services                   | \$371,536 |



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

25% by November 1;  
25% by February 1;  
25% by May1;  
25% by August 1.

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

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

If EFC disputes any fee or charge, it shall send written notification to the District. EFC 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, EFC 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. EFC withholding disputed funds in not grounds for revocation.

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

## **ARTICLE 8 - POINT OF CONTACT; FUTURE RECONCILIATION; CONTINUOUS REVIEW; ANNUAL QUALITY REVIEW; TWO YEAR REVIEW**

### **Section 8.1. Point of Contact.**

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

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



**Section 8.2. Future Adjustments or Reconciliations; Annual Review; Quality Review Committee.**

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

**Section 8.3. Year Two Review.**

Representatives from the Parties agree that 4 months prior to the end of the second year of the Agreement they will meet for a full review of the Agreement, the services provided under the Agreement and the relationship of the Parties. A key component of the Year Two Review is an assessment of conditions for school success and accelerating student achievement such that ASCEND and LWL will reunite with the unified school district. Recommendations for modifications or changes in the Agreement as a result of the year two review shall be incorporated into this Agreement by mutual agreement.

**ARTICLE 9 - GENERAL PROVISIONS**

**Section 9.1. Subcontract and Assignment.**

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

**Section 9.2. Independent Status.**

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



**Section 9.3. Entire Agreement.**

The Charter and this Agreement constitute the entire agreement between the District and EFC and supersede all prior discussions, negotiations and agreements, whether oral or written. This agreement may be amended or modified only by a written instrument executed by both the District and EFC expressly indicating the intent to modify or amend this Agreement.

**Section 9.4. California Law.**

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

**Section 9.5. Waiver.**

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

**Section 9.6. Successors and Assigns.**

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

**Section 9.7. Counterparts.**

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

**Section 9.8. Captions.**

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

**Section 9.9. Severability.**

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

**Section 9.10. Incorporation of Recitals and Exhibits.**

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

**Section 9.11. Notice.**

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

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

Ascend Elementary School  
3709 E 12<sup>th</sup> Street  
Oakland, CA 94601  
Attn: Principal

Learning Without Limits Elementary School  
2035 40<sup>th</sup> Avenue  
Oakland, CA 94601  
Attn: Principal

Education for Change  
303 Hegenberger Road  
Oakland, CA 94621  
Attn: Executive Director

Any notice personally given or sent by facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

**Section 9.12. Modifications.**

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

**Section 9.13. Force Majeure.**

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

**Section 9.14. Incorporation of Recitals and Exhibits.**

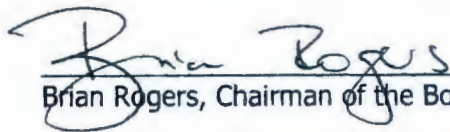
The Recitals and each exhibit attached hereto are incorporated herein by reference.

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

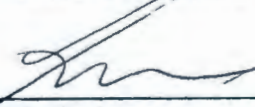
**EDUCATION FOR CHANGE**

  
Hae-Sin Kim Thomas, Executive Director



  
\_\_\_\_\_  
Brian Rogers, Chairman of the Board of Directors

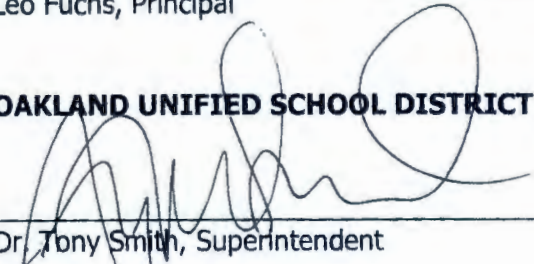
**ASCEND ELEMENTARY SCHOOL**

  
\_\_\_\_\_  
Larissa Adams, Principal

**LEARNING WITHOUT LIMITS ELEMENTARY SCHOOL**

  
\_\_\_\_\_  
Leo Fuchs, Principal

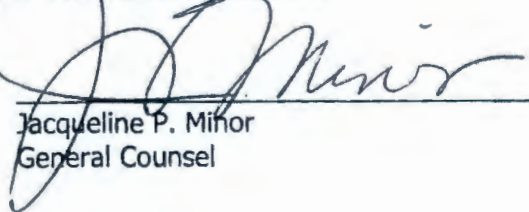
**OAKLAND UNIFIED SCHOOL DISTRICT**

  
\_\_\_\_\_  
Dr. Tony Smith, Superintendent

  
\_\_\_\_\_  
Jody London, President, Board of Education

  
\_\_\_\_\_  
Edgar Rakestraw, Jr., Secretary, Board of Education

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Jacqueline P. Minor  
General Counsel

File ID Number: 12-0603  
Introduction Date: 3/7/12  
Enactment Number: 12-0836  
Enactment Date: 3/7/12  
By: RD



Ascend and LWL MOU Updates for 2014-2015

Include the following services in the MOU:

| Service                         | Cost  |
|---------------------------------|---|
| Professional Development        | LCI (OUSD) will charge EFC directly per day/teacher as PD is utilized. No monies will be collected via the MOU for this service.  |
| Technology Services             | \$12,000 for Aeries hosting.  |
| Substitute Portal               | \$1,500   |
| Food Services                   | Unable to secure Revolution Foods due to bidding process that is required and Food Services does not have the bandwidth to execute as they are focused on internal innovations/improvements that are being made (ie District Garden etc). |
| Science Assessment Writing Task | Assessment cannot be sold a la carte at this time   |

So based upon the above, the MOU changes to services will be deletion of all district provided services except for:

- 1) PD (pay/get billed as you go directly through LCI)
- 2) Tech Services (Aeries Only-\$12,000)
- 3) Substitute Portal (\$1,500)
- 4) Food Services