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OAKLAND UNIFIED SCHOOL DISTRICT
Office of the Board of Education
March 27, 2013

To: Board of Education

From: Tony Smith, Ph. D, Superintendent,
Timothy E. White, Assistant Superintendent of Facilities Planning & Management, Buildings & Grounds and Custodial Services

Subject: Approval of the Facilities Use Agreement between Vincent and Oakland Unified School District for Real Property and Improvements at Ralph J. Bunche Academy School located at 1240 18th Street, Oakland CA 94607

ACTION REQUESTED

Approval by the Board of Education of the Facilities Use Agreement between Vincent Academy and Oakland Unified School District for Real Property and Improvements at Ralph J. Bunche Academy School located at 1240 18th Street, Oakland CA 94607 to provide school facilities to Vincent Academy, a charter school that provides public school instruction to school children residing in District's boundaries.

BACKGROUND

Pursuant to Proposition 39 (Ed. Code section 47614) ("Prop 39") and the State Board of Education's implementing regulations (Title 5, Section 11969.1 - 11969.9) ("Implementing Regulations") (Ed. Code section 47614 and the Implementing Regulations are collectively referred to as "Prop. 39") the District has certain obligations to provide reasonably equivalent school facilities to charter schools that are providing public school instruction to school children residing in District's boundaries. Vincent Academy is a charter school that provides instruction to children residing in District's boundaries.

As a result of mutual agreement and partnering, the District and Vincent Academy have agreed to provide facilities to Vincent Academy, and Vincent Academy intends to obtain its facilities from the District, by way of this Facilities Use Agreement and in lieu of an allocation of facilities pursuant to California Prop. 39.

In order to accommodate Charter School's projected growth expansion, the District will provide access to two (2) portable buildings to be located on the Ralph J. Bunche Academy School located at 1240 18th Street, Oakland CA 94607 and Vincent Academy will have use of the Facilities during the 2013/2014 and 2014/2015 school years.

FISCAL IMPACT

Vincent Academy will pay District a Use Fee in the amount Seventy Five Thousand Dollars (\$75,000) in eight (8) equal payments.

RECOMMENDATION

That the Board of Education approves the Facilities Use Agreement between the Vincent Academy and Oakland Unified School District for Real Property and Improvements at Ralph J. Bunche Academy School in order that Vincent Academy provide public school instruction to school children residing in District's boundaries.

ATTACHMENT

Facilities Use Agreement between the Vincent Academy and Oakland Unified School District for Real Property and Improvements at Ralph J. Bunche Academy School.

CHARTER SCHOOL FACILITIES USE AGREEMENT

BETWEEN

**OAKLAND UNIFIED SCHOOL DISTRICT,
and**

VINCENT ACADEMY, a California charter school

(Ralph J. Bunche Academy)

This Facilities Use Agreement ("Agreement") is made as of the _____ day of _____ 2013, ("Effective Date") by and between the Oakland Unified School District, a California public school district, ("District"), and Vincent Academy, a California charter school ("Charter School"). District and Charter School may be individually referred to herein as a "Party" or collectively referred to as "Parties".

RECITALS

WHEREAS, District owns certain real property and facilities held in trust for the State of California for the benefit of all school children residing in the District's boundaries; and

WHEREAS, Charter School is a charter school operating under the provisions of the Charter Schools Act of 1992, Education Code section 47600, et seq., and providing public school instruction to school children residing in District's boundaries; and

WHEREAS, pursuant to Proposition 39 (Ed. Code section 47614) ("Prop 39") and the State Board of Education's implementing regulations (Title 5, Section 11969.1 - 11969.9) ("Implementing Regulations") (Ed. Code section 47614 and the Implementing Regulations are collectively referred to as "Prop. 39") as may be amended by the State Board of Education from time to time, the District has certain obligations to provide reasonably equivalent school facilities to charter schools that are providing public school instruction to school children residing in District's boundaries; and

WHEREAS, as a result of Charter School's efforts in partnering with the District, the District intends to provide facilities to Charter School, and Charter School intends to obtain its facilities from the District, in lieu of an allocation of facilities pursuant to California Prop. 39; and

WHEREAS, District and Charter School agreed to an alternative agreement between the District and Charter School pursuant to California Code of Regulations, Title 5, section 11969.1(b); and

WHEREAS, in order to accommodate Charter School's projected growth expansion, the District will provide access to two (2) portable buildings ("Facilities") to be located on the Ralph J. Bunche Academy School located at 1240 18th Street, Oakland CA 94607; and

WHEREAS, Charter School shall have use of the Facilities during the 2013/2014 and 2014/2015 school years to terminate on August 15, 2015;

NOW THEREFORE, the Parties agree as follows:

AGREEMENT

1. Definitions.

- 1.1. Applicable Law. "Applicable Law" means and refers to all present and future, foreseeable and unforeseeable, laws (including, without limitation, the Education Code, the Public Contract Code, the California Building Standards Law and any requirements of the California Division of State Architect), ordinances, orders (including consent decrees), rules and regulations, and requirements of all federal, state, county and city government, courts, departments, commissions, boards and offices, any national or local Board of Fire Underwriters, and any other governmental body exercising jurisdiction over the Premises or exercising functions similar to those of any of the foregoing, foreseen or unforeseen, ordinary or extraordinary, and any covenants or conditions.
- 1.2. Deferred Maintenance. "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 during the term of this Agreement.
- 1.3. Environmental Laws. "Environmental Laws" means and refers to all federal, state and local laws, ordinances, court orders and administrative directives, rules and regulations now or hereafter in force, as amended from time to time, in any way relating to or regulating human health or safety, or industrial hygiene or environmental conditions, or protection of the environment, or pollution or contamination of the air, soil, surface water or groundwater, and includes, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq. ("CERCLA"); the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq.; the Clean Water Act, 33 U.S.C. § 1251 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Hazardous Substance Account Act, California Health & Safety Code § 25300 et seq.; the Hazardous Waste Control Act, California Health & Safety Code § 25100 et seq.; the California Underground Storage of Hazardous Substances Act, California Health & Safety Code § 25280 et seq.; the California Safe Drinking Water and Toxic Enforcement Act, California Health & Safety Code 25249.5 et seq.; the Medical Waste Management Act, California Health & Safety Code § 15015 et seq.; the Porter-Cologne Water Quality Control Act, California Water Code § 13000 et seq.; and California Education Code § 17210, et seq., and California Code of Regulations, Title 5, § 14010 et seq.
- 1.4. Hazardous Substance. "Hazardous Substance" means and refers to any substance, material, product or waste or other material of any nature whatsoever that is listed, regulated, or addressed in or pursuant to the Environmental Laws or which may give rise to liability under Environmental Laws or under any statutory or common law theory based upon negligence, trespass, intentional tort nuisance or strict liability or under any reported decisions of a state or federal court, which includes but is not

limited to asbestos, petroleum or petroleum products (including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or any mixture thereof), polychlorinated biphenyls, urea formaldehyde, radon gas, radioactive matter, medical waste, and chemicals which may cause cancer or reproductive toxicity.

- 1.5. Release. "Release" means and refers to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing, including continuing migration, into the environment of Hazardous Substance into or through soil, air, surface water or groundwater.
- 1.6. Routine Repair and General Maintenance. "Routine Repair and General Maintenance" (or "RRGM") means and refers to school facility component work performed on an annual or on-going basis each year to keep building facilities in proper operating condition. District will provide Charter School with access or reference to its Maintenance and Operations Policies and Procedures Manual, Integrated Pest Management Policy, and any other policies, procedures and guidelines regarding RRGGM.
- 1.7. Statutory References. The specific statutory references in this Agreement are to the Codes and Regulations of the State of California unless otherwise specified.
- 1.8. Charter Revenues. "Charter Revenues" mean and refer to Charter's general purpose entitlement revenues (under Education Code section 47612) and categorical block grant revenues (as identified in Education Code section 47633 et seq.).

2. PREMISES

- 2.1. Use of Premises. Charter School shall have use of two (2) portable buildings ("Premises") to be located on the Ralph J. Bunche Academy School located at 1240 18th Street, Oakland CA 94607 ("School Site"), and as more specifically identified in **Exhibit "A"** attached hereto and incorporated by reference. Charter School's use of the Premises shall be exclusive. Charter School's use of other portions of the School Site shall be shared as more specifically identified in **Exhibit "A"** attached hereto and incorporated by reference.
- 2.2. Charter School shall use the Premises for purposes of operating a public school providing educational instruction to public school students consistent with the terms of the Charter School's Charter Petition, and incidental related uses. The Premises shall not be used for any lewd, lascivious, immoral or illegal purpose.
- 2.3. Charter School shall, at its sole cost and expense, be responsible for ensuring compliance with all Applicable Laws and the District's policies, as may be amended during the Term of this Agreement that may apply to the Premises, or the use and occupancy of the Premises by Charter School. Charter School acknowledges and agrees that it has a continuing obligation to maintain the Premises in accordance with all Applicable Laws including, without limitation, Environmental Laws and the ADA.
- 2.4. Delivery of Premises. District shall deliver the Premises to Charter School on August 15, 2013 ("Commencement Date").

2.5. Condition of Premises. District makes no representations or warranties, express or implied, as to the condition of the Premises or the suitability of the Premises for use by Charter School for Charter School's intended purposes. District is not aware of any defect in or condition of the Premises that would prevent the Premises from being used as a public school facility. With prior written notice to and approval from District, Charter School, at its sole costs and expense may conduct any and all inspections of the Premises to its full and complete satisfaction.

2.6. Telecommunications. The Premises are wired for telephone and computer data connectivity. Charter School shall provide all communication equipment, software and services necessary for communications requirement as deemed necessary by Charter School for its school operations and use of the Premises.

3. TERM

3.1. Unless otherwise terminated earlier, the term of this Agreement shall commence on the Commencement Date and shall terminate on August 15, 2015 ("Term"). Unless cured pursuant to the terms of this Agreement, this Agreement shall automatically terminate if Charter School loses its charter or ceases to exist or is no longer operated by Charter School.

4. FEES

4.1. Use Fee. Charter School shall pay District a Use Fee in the amount Seventy Five Thousand Dollars (\$75,000), which shall be paid as follows:

Date	Amount
September 1, 2013	\$9375
December 1, 2013	\$9375
March 1, 2014	\$9375
June 1, 2014	\$9375
September 1, 2014	\$9375
December 1, 2014	\$9375
March 1, 2015	\$9375
June 1, 2015	\$9375

If Charter School fails to either make a timely payment, District shall provide Charter School with a notice of non-payment and Charter School shall have ten (10) business days from the date of receipt of the District's notice to respond. If Charter School fails to make payment or dispute the payment, Charter School agrees that District is automatically authorized to deduct the outstanding Use Fee from the Revenue of the Charter School Account.

5. EXPENSES OF CHARTER SCHOOL

5.1. Taxes; Assessments. Charter School shall pay any assessment on the Premises, including any improvements which Charter School constructs or causes to be constructed on the Premises, whether real estate, general, special, ordinary or extraordinary, or rental levy or tax, improvement bond, and/or fee imposed upon or levied against the Premises or Charter School's legal or equitable interest created by

this Agreement, and the taxes assessed against and levied upon Charter School's alterations and utility installations that may be imposed by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Premises address and where the proceeds so generated are applied by the city, county or other local taxing authority having jurisdiction.

5.2. Utility Services. Charter School shall pay all utility costs and charges for the Premises, including gas, water, electricity, light, heat, power used, rendered or supplied upon or in connection with the Premises throughout the Term of this Agreement.

6. Fingerprinting and Criminal Background Verification. Charter School shall be responsible for ensuring compliance with all applicable fingerprinting and criminal background investigation requirements described in Education Code section 45125.1, which may be met under the fingerprinting provisions of Title 22 of the California Code of Regulations and applicable provisions of the California Health and Safety Code relevant to community care facility licensing (Health & Saf. Code, § 1500 et seq.). Charter School shall provide in writing verification of compliance with the aforementioned fingerprinting and criminal background investigation requirements to District prior to the commencement of Charter School's Program on the Premises, and prior to permitting contact with any students.

7. MAINTENANCE AND OPERATIONS

7.1. Maintenance and Operations Services. Charter School shall maintain and operate the Premises in a good, safe and sanitary condition. Charter School shall observe all Applicable Laws. Charter School shall submit and keep current its policies, practices and procedures for the maintenance and operation of the Premises for the Term of this Agreement. Maintenance and operations are defined as maintaining, repairing, and operating the Premises and grounds efficiently on a regular basis, in a manner that promotes learning in a safe, clean and healthy environment.

7.2. Charter School may request District provide Maintenance and Operations services to Charter School in accordance with District's standards and policies and District may agree to provide. District and Charter School shall mutually agree to the scope of the Maintenance and Operations services and the fees and payment for the services.

8. INSURANCE

8.1. Insurance is to be placed with insurers with a current A.M. Best Insurance rating of no less than A-minus: VII and subject to the approval of District. Charter School shall furnish District with the original certificates and amendatory endorsements effecting coverage required.

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

8.3. Charter School shall, at Charter School's expense, obtain and keep in force during the term of this Agreement a policy of commercial general liability insurance and a comprehensive auto liability policy insuring District and Charter School against claims and liabilities arising out of the operation, condition, use, or occupancy of the Premises and all areas appurtenant thereto, including parking areas. Charter

School's comprehensive auto liability policy shall insure all vehicle(s), whether hired, owned or non-owned. Charter School 's commercial general insurance shall be at least as broad as the Insurance Service Office (ISO) CG 00-01 form and in an amount of not less than Two Million dollars (\$2,000,000) for bodily injury or death and property damage as a result of any one occurrence and a Two Million dollar (\$2,000,000) general aggregate policy limit. In addition, Charter School shall obtain a products/completed operations aggregate policy in the amount of Two Million dollars (\$2,000,000). The insurance carrier, deductibles and/or self insured retentions shall be approved by District, which approval shall not be unreasonably withheld.

8.4. Professional Educators' Errors and Omissions. Professional educators' errors and omissions liability coverage including sexual molestation and abuse coverage (if that coverage is not afforded elsewhere in the commercial general liability policy), with minimum limits of \$3,000,000 per occurrence.

8.5. Prior to the Commencement Date, Charter School shall deliver to District a certificate of insurance evidencing the existence of the policies required hereunder and copies of endorsements stating that such policies shall:

8.5.1. Not be canceled or altered without thirty (30) days prior written notice to District;

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

8.5.3. Contain a cross liability endorsement; and

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

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

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

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

9. IMPROVEMENTS

- 9.1. Charter School may at its sole cost and expense, make or perform improvements, alterations, or additions to the Premises ("Improvements") upon prior written notice and approval of District. Improvements shall comply with all legal requirements relating to construction of the Improvements, including, without limitation, Title 24 of the California Code of Regulations, the Education Code (including the Field Act, Education Code §17280, et seq.), the Americans with Disabilities Act, the California Environmental Quality Act and regulations promulgated thereunder.
- 9.2. All contractors and subcontractors of Charter School, if any, shall be duly licensed in the State of California. Under all circumstances, Charter School, must seek and receive approval from the Division of the State Architect for all of Charter School's Improvements.
- 9.3. Charter School shall at its own expense obtain all necessary environmental and governmental approvals and permits, including, without limitation, the California Environmental Quality Act ("CEQA"), any necessary approvals from any local authority including any site, grading, zoning, design review and other required permits or approvals, if applicable, prior to commencing construction and shall provide District with evidence of approval by all applicable governmental agencies.
- 9.4. Charter School shall be solely responsible for maintaining the Premises and Vincent Academy's improvements installed thereupon during the Term, including any extensions, and for compliance with all applicable laws or ordinances, rules and regulations.
- 9.5. Charter School shall be solely responsible to make payment for any service or work performed in connection with the design and construction of the Improvements. Charter School shall administer and resolve any claims or disputes that may arise in connection with the design and construction of the Improvements.
- 9.6. Charter School and any person performing work for construction of the Improvements, shall exercise reasonable precautions to avoid damage and protect persons or property while on the School Site and any adjacent staging area. District assumes no liability for loss or damage to property or injuries to or deaths of agents, contractors, or employees of the Charter School by reason of the exercise of privileges given in this section. Charter School shall indemnify and hold District harmless from any damage caused by the Charter School's activities authorized in this section. Charter School shall either reimburse the District for any damage or destruction to the District's School Site, Premises, or other property, occurring by reason of the exercise of rights granted, or to replace or restore said property to its preexisting condition.
- 9.7. The Improvements shall be made by Charter School at its sole expense.
- 9.8. In the event that Charter School intends to replace the locks and/or rekey the Premises, Charter School shall first coordinate with the District so that District may approve and authorize lock style and key code authorizations.
- 9.9. Charter School shall coordinate the work of the Improvements with the District. Charter School shall provide notice to District in writing of the status of the

Improvement projects and notify the District when the Improvements are completed. District shall have the right to inspect and reject the Improvements.

- 9.10. Signs. Charter School shall at Charter School's sole cost and expense have the right and entitlement to place Charter School's signs on the Premises, provided Charter School obtains the approval and consent of District. The approval and consent shall not be unreasonably withheld. Any signs placed on the Premises shall comply with any local ordinances pertaining thereto. In connection with the placement of such signs, District agrees to cooperate with Charter School in obtaining any governmental permits which may be necessary. Throughout the Term of this Agreement Charter School shall, at its sole cost and expense, maintain the signage and all appurtenances in good condition and repair. At the termination of this Agreement, Charter School shall remove any signs which it has placed on the School Site, and shall repair any damage caused by the installation or removal of those signs.

10. SURRENDER; END OF THE TERM

- 10.1. Surrender of Premises. On the last day of the Term, Charter School shall surrender to District the Premises, vacant and in the same condition as when received or made, ordinary wear and tear excepted, free and clear of any liens or encumbrances. All Improvements made by or for Charter School, whether temporary or permanent in character, made either by District or Charter School, shall be District's property, and shall be surrendered to District in good condition upon expiration of the Term or termination of this Agreement without compensation to Charter School; provided however, that at the election of District, exercisable by written notice to Charter School, Charter School shall, at Charter School's sole cost and expense, prior to the expiration of the Term, remove from the Premises all Improvements (or that portion of Improvements required to be removed by District) and repair all damage to the Premises caused by such removal. By the last day of the Term, Charter School shall remove completely all of Charter School's personal property, including moveable furniture, trade fixtures, and equipment not attached to the Premises, and repair all damage caused by such removal. Any of Charter School's personal property not so removed shall, at the option of District, automatically become the property of District upon the expiration or termination of this Agreement. Thereafter, District may retain or dispose of in any manner the personal property not removed, without any notice or liability whatsoever to Charter School.
- 10.2. Removal of Property. Charter School's machinery, furniture, equipment and trade fixtures (including utility installations) which may be removed without irreparable or material damage to the Premises shall remain the property of Charter School and shall be removed by Charter School the last day of the Term, as it may be extended or sooner terminated pursuant to the terms herein. Charter School shall repair any damage to the Premises occasioned by the removal of Charter School's furnishings, machinery, equipment and trade fixtures, which repair shall include the patching and filling of holes and repair of structural damage. Any machinery, furniture, equipment and trade fixtures not removed by Charter School from the Premises upon the end of the Term shall be conclusively presumed to have been abandoned by Charter School.

- 10.3. Compliance with Applicable Law. All removal of property is subject to Applicable Law, including any local permits and/or approval by the Division of State Architect of the State Department of General Services ("DSA").

11. HOLDING OVER

- 11.1. Holding Over. Charter School shall surrender possession of the Premises immediately upon the expiration of the Term or earlier termination of this Agreement. Charter School will not be permitted to hold over possession of the Premises after the expiration or earlier termination of the Term without the express written consent of District, which consent District may withhold in its sole and absolute discretion. Any holdover by Charter School shall constitute a material breach of this Agreement by Charter School entitling District to pursue any and all remedies available at law and in equity, including without limitation consequential damages resulting therefrom.

- 11.2. No Extension of Agreement. No payment of money by Charter School to District after the termination of the Agreement by District, or after the giving of any notice of termination to Charter School by District which District is entitled to give Charter School under the Agreement, shall reinstate, continue or extend the Term of the Agreement or shall affect any such notice given to Charter School prior to the payment of such money, it being agreed that after the service of such notice or the commencement of any suit by District to obtain possession of the Premises, District may receive and collect when due any and all payments owed by Charter School under the Agreement, and otherwise exercise its rights and remedies. The making of any such payments by Charter School shall not waive such notice, or in any manner affect any pending suit or judgment obtained.

12. DISTRICT'S ACCESS

- 12.1. Entry. District and its authorized representatives shall have the right, after two school-days' prior written notice to Charter School, to enter the Premises during normal business hours for the purpose of inspection ("Inspection"); or to perform deferred maintenance in or on the Premises in a manner so as not to disrupt the normal classroom and school activities; provided, however, that in an emergency situation, no prior notice shall be required. In such emergency situations, District shall give telephonic notice to Charter School at 510-452-2100 immediately upon District's receipt of notification of any such emergency. If Charter School is violating the use restrictions of this Agreement or is not in material compliance with Applicable Law, then all reasonable costs and expenses reasonably and actually incurred by District in connection with any Inspection shall become due and payable by Charter School as additional payment due District, within ten (10) days of presentation by District of an invoice therefor. If Charter School shall not be present to open and permit an entry into the Premises in an emergency situation as reasonably determined by District, District may enter by means of a master key without liability to Charter School and without affecting this Agreement.

- 12.2. Right to Perform. If Charter School fails to perform any covenant or condition to be performed by Charter School pursuant to this Agreement or the Charter School Petition, District and its authorized representative shall have the right, after reasonable prior written notice to Charter School, to enter the Premises during normal business hours for the purpose of performing such covenant or condition at District's option after thirty (30) days' written notice to and failure to perform by

Charter School (provided, no written notice is required in the case of emergencies). All costs incurred by District in so performing shall be reimbursed to District by Charter School within ten (10) days of written demand therefor, together with interest at the Interest Rate computed from the date incurred by District until paid. Any performance by District of Charter School's obligations shall not waive or cure such default. District may perform Charter School's defaulted obligations at Charter School's sole cost and expense without notice in the case of any emergency. All reasonable out-of-pocket costs and expenses actually incurred by District, including reasonable attorneys' fees (whether or not legal proceedings are instituted), in collecting the fees herein or enforcing the obligations of Charter School under the Agreement shall be paid by Charter School to District within ten (10) days of written demand therefor.

District may, during the progress of such work, keep and store on the Premises all necessary materials, tools, supplies and equipment. District shall not be liable for inconvenience, annoyance, disturbance, loss of business or other damage to Charter School by reason of making such repairs or the performance of any such work.

12.3. Other. District shall have the right upon giving forty-eight (48) hours telephonic notice, to enter the Premises at a mutually agreed upon time between 8:00 a.m. and 5:00 p.m. for the purpose of exhibiting the same to prospective purchasers or mortgagees or tenants thereof during the last six (6) months of the Term or any extension thereof.

12.4. Routine Access. Notwithstanding the foregoing and without further notice, District shall have the right to enter the Premises to conduct its own compatible operations, to perform any routine or deferred maintenance, custodial services, or conduct inspections of the Premises during usual business hours in order to insure that proper pest management control is being conducted on the Premises. District will endeavor during the course of any access of the Premises to not disrupt Charter School's classroom and instructional activities.

13. LIENS

13.1. Liens. Charter School shall not suffer or permit any liens to stand against the Premises, or any part thereof, by reason of any work, labor, services or materials done, supplied, or claimed to have been done or supplied. If any such lien shall at any time be filed against the Premises, Charter School shall provide District written notice thereof as soon as notice of such lien or action comes to the knowledge of Charter School. Charter School shall commence appropriate action to remove any lien or action and diligently pursue discharged of record within sixty (60) 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 District to subject its estate in the Premises to liability under any mechanics' lien law or to any contractor or laborer for work performed.

13.2. Release of Liens by District. If any such liens are not so discharged within sixty (60) days after the date of the filing of the same, District may, without waiving its rights and remedies based on such breach by Charter School and without releasing Charter School from any of its obligations, cause such liens to be released by any reasonable means, including payment in satisfaction of the claim giving rise to such lien. Charter School shall pay to District within sixty (60) days of written demand therefor, any sum paid by District to remove such liens, together with

interest at the Interest Rate from the date of such payment by District. Charter School shall indemnify, defend and protect against (by counsel reasonably approved in writing by District), and keep District free and harmless from, all liability, loss, damage, costs, attorneys' fees and any other expense incurred on account of claims by any person performing work or furnishing materials or supplies for Charter School or any person claiming under Charter School.

14. ALLOCATION OF RISK

14.1. Indemnity. District shall not be liable for and Charter School hereby waives all claims against District for damage to any property, or injury, illness or death of any person in, upon or about the Premises arising at any time and from any cause whatsoever, and District shall not be liable for and Charter School hereby waives all claims against District arising in any way due to, in connection with or related to, directly or indirectly, the operation by Charter School of a school or any other operations by Charter School at the Premises. District and Charter School hereby agree and acknowledge that the relationship between District and Charter School for purposes of this Agreement is solely a landlord/tenant relationship and not a principal/agent relationship or any other relationship. Charter School is acting on its own behalf in operating from the Premises any school thereon (or any other purpose(s) thereupon) and is not operating as an agent of District.

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

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

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

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

14.3. To the fullest extent permitted by law, District ("Indemnifying Party") shall indemnify, defend, release and protect Charter School, its affiliates, successors and assigns, and its officers, directors, shareholders, board members, other members, partners, agents and employees ("Indemnified Party" or "Indemnified Parties") and

hold the Indemnified Parties harmless from any and all losses, costs, damages, expenses and liabilities (including without limitation court costs and reasonable attorneys' fees) incurred in connection with or arising from any cause (i) in the use or occupancy by District of the Premises (including without limitation, the operation by District of operations on the Premises), or (ii) in connection with the operations by District at the Premises, including without limiting the generality of the foregoing:

14.3.1. Any default by District in the observance or performance of any of the terms, covenants or conditions of the Agreement on District's part to be observed or performed;

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

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

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

14.5. An Indemnifying Party shall, upon request by an Indemnified Parties, undertake the defense of any Liabilities threatened or asserted against such Indemnified Party on the following terms and conditions:

14.5.1. Notice of the assumption of such defense ("Notice") shall be delivered to such Indemnified Party within fifteen (15) days after transmittal by the Indemnified Party of a request that Indemnifying Party defend such Liability;

14.5.2. Such defense shall be conducted by reputable attorneys retained by Indemnifying Party and approved by the other Party, and with the prior written approval of all the Indemnified Parties against whom such Liability has been asserted or threatened, which approval shall not be unreasonably withheld, delayed or conditioned, all at Indemnifying Party's sole cost and expense. In the event the interests of Indemnifying Party and any such Indemnified Parties in the action conflict in such manner and to such an extent as to require, consistent with applicable standards of professional responsibility, the retention of separate counsel for any of the Indemnified Parties involved in the action, Indemnifying Party shall pay all fees and costs charged or incurred by separate counsel chosen by such Indemnified Parties.

14.5.3. Indemnifying Party agrees to promptly notify the other Party of the commencement of any litigation or proceedings pending, threatened or commenced (whether or not served) against Indemnifying Party, or any of the directors, officers, agents or employees of Indemnifying Party, in connection with the matters set forth in this Use Agreement.

- 14.6. Civic Center Exception. Notwithstanding the foregoing, Charter School acknowledges that District is obligated to honor the Civic Center Act, which permits third parties to use the Premises from time to time for lawful activities during non-operational hours. District has no control over these activities and the provisions of this Section do not apply to damages to Charter School which may result therefrom.

15. DAMAGE AND DESTRUCTION

- 15.1. Loss Covered by Insurance. If, at any time prior to the expiration or termination of this Agreement, the Premises is wholly or partially damaged or destroyed by a casualty, the loss to District from which is (except for any applicable deductible) fully covered by insurance maintained by District or for District's benefit, and which casualty renders the Premises totally or partially inaccessible or unusable by Charter School in the ordinary conduct of Charter School's business, then:
- 15.1.1. Repairs Which Can Be Completed Within One Year. Within sixty (60) days of notice to District of the damage or destruction, District shall provide Charter School with notice of its determination of whether the damage or destruction can be repaired within one (1) year of the damage or destruction without the payment of overtime or other premiums. If all repairs to the Premises can, in District's reasonable judgment, be substantially completed within one (1) year following the date of notice to District of the damage or destruction without payment of overtime or other premiums (or with the overtime or premiums, but only if Charter School agrees to reimburse District for the same), District shall, at District's expense, repair the same and this Agreement shall remain in full force and effect.
- 15.1.2. Repairs Which Cannot Be Completed Within One Year. If all such repairs to the Premises cannot, in District's reasonable judgment, be substantially completed in the time specified in Section 15.1 (a), District shall notify Charter School of such determination. In such event, either District or Charter School may, by written notice to the other no later than ninety (90) days after the occurrence of the damage or destruction elect to terminate this Agreement as of the date of the occurrence of the damage or destruction. In this event, Charter School shall be prorated any Use Fee previously paid for the period Charter School no longer occupies the Premises.
- 15.2. Loss Not Covered by Insurance. If, any time prior to the expiration or termination of this Agreement, the Premises is totally or partially damaged or destroyed by a casualty and the loss to District not fully covered by insurance maintained by District or for District's benefit, and which casualty renders the Premises inaccessible or unusable by Charter School in the ordinary conduct of its business, District may, at its option, upon written notice to Charter School within sixty (60) days after the date of notice to District of the occurrence of the damage or destruction, elect to repair or restore such damage or destruction, or District may elect to terminate this Agreement. If District elects to repair or restore the damage or destruction, this Agreement shall continue in full force and effect. If District does not elect by notice to Charter School to repair the damage, or if the damage cannot, in District's reasonable judgment, be completed within one (1) year following the date of notice to District of the damage or destruction, Charter School shall have the option of repairing the damage providing written notice to District within forty-five (45) days after the date that District notifies Charter School that District has

reasonably determined that the damage cannot be completed within one (1) year following the date of notice to District of the damage.

If Charter School opts to repair damage, all costs and expenses incurred by Charter School in repairing or restoring the Premises shall be the sole obligation of Charter School unless, following the loss, the Parties agree to an alternate allocation between them of such repair costs and expenses. No alternate allocation of repair costs and expenses shall be valid unless in writing, signed by all Parties to this Agreement, and approved by District's governing board. If Charter School does not opt to repair damage, then this Agreement shall terminate.

- 15.3. Destruction During Term. If the Premises is wholly or substantially damaged or destroyed during the Term of this Agreement, District may, at its option, by giving Charter School notice within sixty (60) days after notice to District of the occurrence of the damage or destruction, elect to terminate this Agreement.
- 15.4. Destruction of Charter School's Property. In the event of any damage to or destruction of the Premises, under no circumstances shall District be required to repair any injury or damage to, or replace, Charter School's Property, except for the gross negligence or willful misconduct of District or District Parties.
- 15.5. Exclusive Remedy. This Section shall be Charter School's sole and exclusive remedy in the event of damage or destruction to the Premises, and Charter School, as a material inducement to District entering into this Use Agreement, irrevocably waives and releases Charter School's rights under Civil Code sections 1932(2) and 1933(4). No damages, compensation or claim shall be payable by District for any inconvenience, any interruption or cessation of Charter School's business, or any annoyance, arising from any damage to or destruction of, all or any portion of the Premises.

16. EMINENT DOMAIN

- 16.1. Termination of Use Agreement. This Agreement shall terminate if all of the Premises is permanently taken under the power of eminent domain. This Agreement shall not terminate if only a part of the Premises is permanently taken under the power of eminent domain. If only a portion of the Premises is permanently taken, this Agreement shall continue; provided, however, if such portion of the Premises is permanently taken such that the Charter School can no longer be operated in the manner and to the standards of District prior to the condemnation, either Party may elect to terminate this Agreement on sixty (60) days prior written notice to the other. In the event of a permanent partial taking which does not result in termination of this Agreement, the Use Fee shall be proportionately reduced based on the portion of the Premises rendered unusable, and District shall restore the Premises by constructing the repairs deemed necessary by District and Charter School to separate the Premises from the portion permanently taken.
- 16.2. Allocation of Condemnation Award. In the event of a permanent condemnation or taking of all or part of the Premises, 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 Premises. Nothing contained in this Section shall be deemed to give District any interest in or to require Charter School to assign to District any separate award as designated by the condemning authority.

Charter School shall be able to retain any separate award as designated by the condemning authority, made to Charter School for (i) the taking of Charter School's personal property, (ii) interruption of or damage to Charter School's business, or (iii) amounts attributable to Charter School's relocation expenses.

16.3. Temporary Taking. With the exception of temporary takings which render the Premises totally or partially inaccessible or unusable by Charter School in the ordinary conduct of Charter School's activities, no temporary taking of the Premises or any part of the Premises and/or of Charter School's rights to the Premises or under this Agreement shall terminate this Agreement or give Charter School any right to any abatement of any payments owed to District pursuant to this Agreement. Any award made by reason of such temporary taking shall belong entirely to District, except as to compensation for (i) the temporary taking of Charter School's personal property, (ii) interruption of or damage to Charter School's activities, or (iii) amounts attributable to Charter School's temporary relocation expenses.

16.4. Exclusive Remedy. This Section shall be Charter School's sole and exclusive remedy in the event of a taking or condemnation. Charter School hereby waives the benefit of Code of Civil Procedure section 1265.130.

17. CHARTER SCHOOL'S DEFAULT; DISTRICT'S REMEDIES

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

17.1.1. The failure of Charter School to promptly pay the Use Fee when due hereunder, which failure continues for fifteen (15) days after written notice thereof by District to Charter School; provided, however, that 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 three (3) day cure period shall run concurrently with any cure period required under California law, including Code of Civil Procedure section 1161;

17.1.2. The failure of Charter School to observe or perform any of its other covenants or obligations hereunder, which failure continues for thirty (30) days after written notice thereof by District to Charter School (unless the nature of the default is such that more than thirty (30) days are required for its cure and Charter School shall have commenced such cure within thirty (30) day period and thereafter diligently prosecutes the same to completion; provided, however, in no event shall the default continue for more than ninety (90) days after written notice thereof by District to Charter School); provided, however, that any notice shall be in lieu of, and not in addition to, any notice required under Code of Civil Procedure section 1161, and the thirty (30) day cure period shall run concurrently with any cure period required under California law, including Code of Civil Procedure section 1161;

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

- 17.1.4. The making by Charter School of any general assignment or general arrangement for the benefit of creditors; the filing by or against Charter School or any guarantor of this Agreement of a petition to have or any guarantor of this Agreement adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Charter School or any guarantor of this Agreement, the same is dismissed within sixty (60) days; the appointment of a trustee or received to take possession of substantially all of the Charter School's assets located at the Premises, or of Charter School's interest in this Agreement, where possession is not restored to Charter School within thirty (30) days; or the attachment, execution or other judicial seizure of substantially all of Charter School's assets located at the Premises or of Charter School's interest in this Agreement, where the seizure is not discharged within thirty (30) days.
- 17.1.5. The making or furnishing by Charter School of any warranty, representation or statement to District in connection with this Agreement, or any other agreement to which Charter School and District are parties; which is false or misleading in any material respect when made or furnished; and
- 17.1.6. The assignment, subletting or other transfer, or any attempted assignment, subletting or other transfer, of this Agreement in violation this Agreement.
- 17.2. District's Remedies.
- 17.2.1. In the event of any default by Charter School, District shall have the right, in addition to all other rights available to District under this Agreement or now or later permitted by law or equity, to terminate this Agreement by providing Charter School with a notice of termination. Upon termination of this Agreement, District may recover from Charter School the worth at the time of award of the unpaid Use Fee which had been earned at the time of termination. In addition, upon termination, Charter School shall immediately vacate the Premises.
- 17.2.2. If Charter School fails to perform any covenant or condition to be performed by Charter School, District may perform such covenant or condition at its option, after notice to Charter School. All costs incurred by District in so performing shall be reimbursed to District by Charter School within ten (10) days of written demand therefor, together with interest at the Interest Rate computed from the date incurred by District. Any performance by District of Charter School's obligations shall not waive or cure such default. In the case of any emergency as reasonably determined by District, District may perform Charter School's obligations at Charter School's sole cost and expense without notice and without waiting thirty (30) days for Charter School to perform such obligation. All out-of-pocket, reasonable costs and expenses actually incurred by District, including reasonable attorneys' fees (whether or not legal proceedings are instituted), in collecting payments due, or enforcing the obligations of Charter School, under this Agreement shall be paid by Charter School to District within ten (10) days of written demand therefor.

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

18. DISTRICT'S DEFAULT; CHARTER SCHOOL'S REMEDIES

- 18.1. District's Default. District shall not be in default of any of the obligations of District under this Agreement unless District fails to perform such obligations within a reasonable time, but in no event less than thirty (30) days, after written notice by Charter School to District specifying wherein District has failed to perform such obligations; provided, however, that if the nature of District's default is such that more than thirty (30) days are required for its cure, District shall not be in default if District commences such cure within such thirty (30) day period and thereafter diligently prosecutes the same to completion.
- 18.2. Charter School's Remedies. Charter School shall have no rights as a result of any default by District until Charter School gives thirty (30) days' notice to District specifying the nature of the default. Such person shall then have the right to cure such default, and District shall not be deemed in default if such person cures such default within thirty (30) days after receipt of notice of the default, or within such longer period of time as may reasonably be necessary to cure the default.

19. ASSIGNMENT AND SUBLETTING

- 19.1. No Assignment or Subletting. Charter School shall not have the right, voluntarily or involuntarily, to assign, license, transfer or encumber this Agreement or sublet all or part of the Premises. District and Charter School acknowledge and agree that this Agreement is not a lease and is being entered into so that Charter School may operate a school. But for District's implementation of section 47614 of the Education Code, District would not be entering into this Agreement with Charter School. Thus, Charter School acknowledges and agrees that it has no right to assign or sublease this Agreement. Any purported transfer shall be void and shall, at District's election, constitute a default. No consent to transfer shall constitute a waiver of the provisions of this Section.
- 19.2. Civic Center Act. Without limiting the generality of the foregoing, Charter School shall make available the Premises to the public pursuant to the Civic Center Act, Education Code section 38130 et seq. (the "Civic Center Act"). District will continue to administrate all such requests and obligations, and shall promptly notify Charter School of any such requirements of compliance.

20. HAZARDOUS SUBSTANCES

- 20.1. Compliance with Laws. Charter School shall comply with all applicable Environmental Laws relating to industrial hygiene and environmental conditions on, under or about the Premises, including but not limited to, air, soil and ground water conditions. Charter School shall not use Hazardous Substances on, under or about the Premises; provided, however, that Charter School may use normal and customary cleaning solutions and office supplies so long as the use of those solutions and supplies are in quantities and in a manner wholly consistent with all applicable Environmental Laws; and further provided that Charter School may use normal and customary chemicals for classroom use so long as the use of those chemicals are in quantities and in a manner wholly consistent with all applicable

school standards. Charter School shall not, nor shall Charter School allow any party to, transport, use, store, maintain, generate, manufacture, handle, dispose, release or discharge any Hazardous Substance upon or about the Premises in violation of Environmental Laws, nor permit any subtenant, employee, agent, invitees or contractor to engage in such activities in violation of Environmental Laws upon or about the Premises, during the Term of the Agreement.

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

20.3. Inspection. District and District's agents, servants, and employees including, without limitation, legal counsel and environmental consultants and engineers retained by District, may (but without the obligation or duty to do so), at any time and from time to time, on not less than ten (10) business days' notice to Charter School (except in the event of an emergency, in which case, no notice will be required), inspect the Premises to determine whether Charter School is complying with Charter School's obligations set forth in this Section, and to perform environmental inspections and samplings, during regular business hours (except in the event of an emergency) or during such other hours as District and Charter School may agree.

20.4. Indemnification. Charter School shall indemnify, defend (by counsel reasonably approved in writing by District), protect, release, save and hold harmless District and District Parties from and against any and all Claims arising from any breach of Charter School's covenants under this Section.

21. NOTICE

21.1. **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:

DISTRICT

Attn: Superintendent
Oakland Unified School District
Telephone: 510-434-7790
Facsimile: 510-

VINCENT ACADEMY

Attn: Kate Nicol
1911 Union Street
Oakland, CA 94607
Telephone: 510-452-2100
Facsimile: 510-452-2101

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

22. POTENTIAL SALE AND NON-DISTURBANCE

- 22.1. Sale of the Premises. Should District ever seek to sell the fee interest in the Premises and the improvements thereon during the Term of this Agreement, Charter School shall be entitled to whatever priority that may exist under State law at that time for Charter School Schools with respect to purchase of publicly-owned lands. Nothing in this Agreement shall be construed as providing Charter School with an option to purchase the Premises, or as providing Charter School with a priority to purchase the Premises contrary to any provision of State law.
- 22.2. District's Right to Assign. District's interest in this Agreement may be assigned to any mortgagee or trust deed beneficiary as additional security. Nothing in this Agreement shall empower Charter School to do any act without District's prior consent which can, shall or may encumber the title of District of all or any part of the Premises.
- 22.3. Non-Disturbance. In the event of the Sale, encumbrance, hypothecation, conveyance or transfer of title to the Premises by District for any reason whatsoever (collectively "transfer"), such transfer shall be subject to the execution of a non-disturbance agreement reasonably acceptable to Charter School.

23. MISCELLANEOUS

- 23.1. Merger. The voluntary or other surrender of this Agreement by Charter School, or a mutual cancellation of this Agreement, shall not work a merger, and shall, at the option of District, terminate all or any existing subleases or subtenancies, or may, at the option of District, operate as an assignment to it of Charter School's interest in any or all such subleases or subtenancies.
- 23.2. Relationship. The relationship between District and Charter School is not and shall not be deemed or construed either as a partnership or as a joint venture.
- 23.3. Quiet Enjoyment. Provided Charter School has performed all of the terms, covenants, agreements and conditions of this Agreement, including the payment of the Use Fee and all other sums due hereunder, Charter School shall peaceably and quietly hold and enjoy the Premises for the Term hereof, but subject to the provisions and conditions of this Agreement, against District and all persons claiming by, through or under District. Charter School's right to use the Premises as herein provided shall be subject to restrictions or other limitations or prohibitions resulting from any Applicable Law now in force or which may hereafter be in force and no such event shall in any way affect this Agreement, abate the Use Fee, relieve Charter School of any liabilities or obligations under this Agreement or give rise to an claim whatsoever against District.
- 23.4. 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.

- 23.5. Captions. The captions and headings of this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this Agreement of the intent of any provision hereof.
- 23.6. Amendment. No amendment or modification to this Use Agreement shall be effective for any purpose unless in a Writing signed by District and Charter School.
- 23.7. California Law. This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in the county in which the District's administrative offices are located.
- 23.8. Interpretation. This Use Agreement shall be deemed to be jointly prepared by both Parties hereto, and any ambiguities or uncertainties herein shall not be construed for or against either of the Parties.
- 23.9. Attorneys' Fees. If either Party files any action or brings any proceedings against the other arising out of this Agreement, the prevailing party shall be entitled to recover, in addition to its costs of suit and damages, reasonable attorneys' fees to be fixed by the court. The "prevailing party" shall be the Party who is entitled to recover its costs of suit, whether or not suit proceeds to final judgment. No sum for attorneys' fees shall be counted in calculating the amount of a judgment for purposes of determining whether a Party is entitled to its costs or attorneys' fees.
- 23.10. Counterparts. This Agreement may be executed in one or more counterparts, each of which may be deemed an original, but all of which together shall constitute one and the same instrument.
- 23.11. Entire Agreement. This Agreement contains the complete and full agreement of the Parties concerning the matters set forth in this Agreement. Any prior agreements, oral or written, or understandings or representations of any nature whatsoever pertaining to the same matters as set forth in this Agreement shall not be effective for any purpose unless expressly incorporated into the provisions of this Agreement. The provisions of this Agreement shall not be amended or altered except by a writing signed by both Parties.
- 23.12. Successors and Assigns. Subject to the provisions hereof relative to assignment, this Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, transferees, successors and assigns of the respective Parties hereto.
- 23.13. Time Is of the Essence. Time is of the essence with respect to the performance or observance of each of the obligations, covenants and agreements under this Use Agreement.
- 23.14. Confidentiality. The terms of this Agreement, and the covenants, obligations, and conditions contained in this Agreement shall not be considered confidential and may be subject to disclosure to the public upon appropriate request.
- 23.15. Waiver. No waiver of any provision hereof shall be deemed a waiver of any other provision hereof. Consent to or approval of any act by one of the Parties hereto shall not be deemed to render unnecessary the obtaining of such Party's

consent to or approval of any subsequent act, nor shall any custom or practice which may grow between the Parties in the administration of the terms hereof be deemed a waiver of, or in any way affect, the right of District to insist upon the performance by Charter School in strict accordance with said terms. The acceptance of the any fees hereunder by District shall not be a waiver of any preceding breach by Charter School of any provision hereof, other than the failure of Charter School to pay the particular fee so accepted, regardless of District's knowledge of such preceding breach at the time of acceptance of any such fees.

23.16. Cumulative Remedies. No remedy herein shall be considered exclusive of any other remedy, but the same shall be cumulative and shall be in addition to every other remedy given hereunder now or hereafter existing at law or in equity or by statute, and every power and remedy given by this Use Agreement may be exercised from time to time and as often as occasion may arise or as may be deemed expedient.

23.17. Authorization to Sign Agreement. If Charter School is a corporation, each individual executing this Agreement on behalf of Charter School represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of Charter School in accordance with a duly adopted resolution of Charter School's Board of Directors, and that this Agreement is binding upon Charter School in accordance with its terms, and Charter School shall, concurrently with its execution of the Agreement, deliver to District upon its request a certified copy of a resolution of its Board of Directors authorizing the execution of this Agreement. If Charter School is a partnership or trust, each individual executing this Agreement on behalf of Charter School represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of Charter School in accordance with the terms of such entity's partnership agreement or trust agreement, respectively, and that this Agreement is binding upon Charter School in accordance with its terms, and Charter School shall, concurrently with its execution of the Agreement, deliver to District upon its request such certificates or written assurances from the partnership or trust as District may request authorizing the execution of this Agreement. Each individual executing this Agreement on behalf of District represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of District and this Agreement is binding upon District in accordance with its terms.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement as of the day and year first above written.

ACCEPTED AND AGREED on the date indicated below:

OAKLAND UNIFIED SCHOOL DISTRICT

David Kakashiba, President, Board of Education

Date: 3/27/13

Edgar Rakestraw, Jr., Secretary, Board of Education

Date: 3/27/13

VINCENT ACADEMY

By: Jean Driscoll

Print Name: JEAN DRISCOLL

Print Title: PRESIDENT

APPROVED AS TO FORM:

Jacqueline Minor, General Counsel

Date: _____

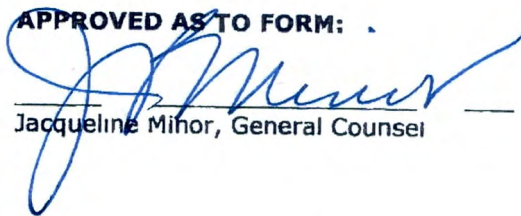
VINCENT ACADEMY

By:

Print

Print Title: PRESIDENT

APPROVED AS TO FORM:



Jacqueline Minor, General Counsel

Date: 4/02/2013

Exhibit "A"
Premises

[The final placement and identification of the portables to be allocated to Vincent Academy will be determined as soon as practicable after consultation with design team professionals and OUSD facilities staff]