

<b>Board Office Use: Legislative File Info.</b>	
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# Memo

**To** Board of Education

**From** Kyla Johnson-Trammell, Superintendent  
Sonali Murarka, Director – Office of Charter Schools

**Board Meeting Date** June 5, 2019

**Subject** Prop 51 Long-term Facilities Use Agreement: LPS Oakland R&D

**Action** First Read

**Background** As described to the Board at the Board retreat on December 5, 2018, Prop 51 allows charter schools to apply for funding of new construction and/or rehabilitation projects of district-owned facilities that are at least 15 years old. Through Prop 51, LPS Oakland R&D was awarded ~\$28 million to invest in the Castlemont campus. As a requirement of Prop 51, the District must sign a long-term lease with the charter school.

The primary terms of the lease are as follows:

- LPS will receive a long-term lease of the following duration: July 1, 2019 through June 30, 2039
- LPS plans to use Prop 51 funds to (a) build an independent classroom building, and (b) create an Early College Center to house college classes for Castlemont and LPS Oakland students.
- LPS will return Building 100 to Castlemont HS for continued Castlemont enrollment and program growth
- LPS will cap charter enrollment at the current charter authorized limit, and agrees not to request a material revision for enrollment growth throughout the duration of this lease unless mutually agreed upon by the District and LPS
- LPS will not submit a Prop 39 request for classroom space once the school has occupied their newly-constructed space
- Final design approval for construction/rehabilitation must be given by the State, LPS, and District Superintendent or designee before the Prop 51 project can move forward and construction can begin

The anticipated date for completion of the Prop 51 construction is Fall 2022.

**Discussion**

For the Board’s discussion at the First Read, two potential areas to focus on:

- Given this first application of the long-term lease criteria, does LPS Oakland R&D reflect the Board’s intention behind approving that criteria?
- What clarification does the Board seek on any specific terms of the lease?

**Fiscal Impact**

Through Prop 51, the charter school will be investing up to \$28 million in rehabilitation and new construction on the Castlemont site. The charter school will receive half of this money as a grant, and the other half as a loan to be paid back to the State over 30 years. The District will hold title to the increased value of this property.

The Facilities Use Agreement also includes a payment structure for additional fees to be paid to the District. In addition to the annual 1% oversight fee, LPS will pay fees to the District according to the below schedule:

<b>Term</b>	<b>Fees Paid to District</b>
Years 1-5	0.5% of revenue, or Prop 39 override
Years 6-15	0.5% of revenue
Years 16-25	0.75% of revenue
Years 26-35	1.0% of revenue
Years 36+	2.0% of revenue

LPS will assume all maintenance and other facilities costs for the Prop 51 facility.

**Attachment**

Presentation  
Facilities Use Agreement with Exhibit A

**CHARTER SCHOOL FACILITIES AGREEMENT  
FOR A TERM OF July 1, 2019 through June 30, 2039**

THIS CHARTER SCHOOL FACILITIES AGREEMENT (hereinafter referred to as this “Agreement”) is made and entered into as of \_\_\_\_\_, 2019 (hereinafter referred to as the “Date of this Agreement”), by and between the Oakland Unified School District, a California Public School district (hereinafter referred to as the “District”) and Leadership Public Schools (“LPS”), a California non-profit public benefit corporation that operates LPS Oakland R&D (hereinafter referred to as “CHARTER SCHOOL”), for use of a portion of the facilities located at the Castlemont High School campus, located at 8601 MacArthur Boulevard, Oakland, CA 94605, as more fully described in Exhibit “A” attached hereto (hereinafter referred to as “Site”).

**RECITALS**

WHEREAS, the District intends to provide facilities to the CHARTER SCHOOL, and the CHARTER SCHOOL intends to obtain its facilities from the District for the operation of the LPS Oakland R&D in lieu of an allocation of facilities pursuant to California Proposition 39 (Education Code section 47614) and its implementing regulations, as may be amended from time to time (“Proposition 39”).

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

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

NOW, THEREFORE, for and in consideration of the facilities use payments and of the covenants and agreements hereinafter set forth to be kept and performed by the CHARTER SCHOOL, the District hereby grants use to the CHARTER SCHOOL of the Site, subject to and upon all of the terms, covenants, and agreements hereinafter set forth. It is the intent of the parties that this written agreement supersede all previous agreements, written or unwritten, related to the use and occupation of the Site by the CHARTER SCHOOL.

**APPLICABILITY**

This Agreement shall only relate to District’s provision of facilities for the LPS Oakland R&D. However, for purposes of this Agreement, the terms Charter School and Non-Profit may be used interchangeably with the duties and responsibilities of the Charter School and Non-Profit being the same under this Agreement.

**1. SITE**

The CHARTER SCHOOL currently shares some portions of the Site with Castlemont High School (“Shared Space”), and has exclusive use of other portions of the Site (“Dedicated Space”) (including, without limitation, all Eligible Improvements, as defined below, located thereon) located at 8601 MacArthur Boulevard, Oakland, CA 94605. The terms of Education Code section 17078.52 *et seq.* (“Proposition 51”), and the Charter School’s “Right to Make Improvements” under Section 3(B) of this Agreement, shall only apply to the Castlemont site (“Proposed Site Development Area”) and the facilities contained therein. **Nothing in this Agreement shall be construed to give the CHARTER SCHOOL any rights conferred under Proposition 51 to, or any rights to make improvements to, any area outside of the Proposed Site Development Area. The District Superintendent, on behalf of the District, is hereby authorized to revise the Proposed Site Development Area by mutual agreement with the CHARTER SCHOOL.**

Prior to and during construction of the Eligible Improvements, as defined in Provision 3(B) below, CHARTER SCHOOL shall have use and occupation of the following Dedicated Space:

- Building D
- Building E Room 25
- Portable 1
- Portable 2
- Portable 3A
- Portable 3B

Terms and conditions of the occupancy of the facilities by the CHARTER SCHOOL prior to the occupancy of the Eligible Improvements may be dictated by an annual Proposition 39 or in-lieu of Proposition 39 agreement between the Parties. Facilities fees charged to the CHARTER SCHOOL prior to the occupancy of the Eligible Improvements shall be outlined in the Proposition 39 or in-lieu of Proposition 39 agreement, and may supersede the terms outlined in Provision 3(A) of this agreement.

Immediately upon the occupancy of the Eligible Improvements, CHARTER SCHOOL, shall vacate Building D and Building E, and relocate into the newly constructed Eligible Improvements to the Site. These Eligible Improvements shall be the Dedicated Space for the remainder of the Agreement.

The District hereby grants to the CHARTER SCHOOL the right to joint use of the following spaces solely for the purposes to perform Charter School’s activities on the terms and conditions set forth herein:

**PARKING:** CHARTER SCHOOL shall have non-exclusive use of the parking lot located on site. CHARTER SCHOOL shall abide by District’s policies concerning the use of the lot, including the District policy relating to the drop-off and pick-up of students. CHARTER SCHOOL’s use of the parking lot shall be on a first come, first-serve basis but shall not unreasonably impact other occupants with similar access rights to the parking lot. Charter School shall not abandon any inoperative vehicles or equipment on any portion of the School Site. District shall not be liable for LPS R&D: In-Lieu Facilities Agreement 2019-2020 through 2038-2039

any personal injury suffered by CHARTER SCHOOL or CHARTER SCHOOL's visitors, invitees and guests, except where such damage is caused by the District's negligence or misconduct. CHARTER SCHOOL acknowledges that District has not made and is not making any warranties whatsoever with respect to parking.

**ATHLETIC FACILITIES:** The District shall allow the CHARTER SCHOOL to schedule supervised student use of the School Site's gymnasium, and athletic facilities so that the CHARTER SCHOOL may provide its own Physical Education programs within the school day using the Shared Space. The CHARTER SCHOOL shall coordinate with the District to schedule its use of the athletic facilities.

**AUDITORIUM:** The CHARTER SCHOOL shall coordinate with the District to schedule supervised student use of the School Site's auditorium, to allow for proportional access for special events and other needs, including use during the school day.

**BATHROOMS:** CHARTER SCHOOL students and staff shall have equal access to bathrooms located in Shared Space.

**COMMON HALLWAYS:** The District shall allow CHARTER SCHOOL students to use common hallways, as may be necessary, for ingress and egress to the Dedicated and Shared Space.

**DINING AREA/CAFETERIA:** The CHARTER SCHOOL shall coordinate with the District to schedule supervised student use of the School Site's dining area.

**COORDINATED SHARED USE:** CHARTER SCHOOL use of the Shared Space shall be coordinated through the District. The District shall provide CHARTER SCHOOL with sufficient keys to access Shared Space.

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

**BELL SCHEDULE/ALARMS/ANNOUNCEMENTS:** It is recognized that the CHARTER SCHOOL may have a separate bell schedule from the District's programs. If deemed feasible, following coordination between the Parties, the Dedicated Space will have a separate intercom and bell system.

## **2. TERM**

The term of this Agreement shall be for twenty (20) consecutive school years, commencing on July 1, 2019 and ending on June 30, 2039, subject to earlier termination as set forth in this Agreement ("Initial Term"). The CHARTER SCHOOL shall have the right to renew this Agreement for two additional terms of ten (10) years each ("Extension Term", and the Initial Term and Extension Term(s) together are referred to as the "Term") by giving the District written

notification of its desire to do so no later than July 1 of the last year of the Agreement and/or renewal term. At the time CHARTER SCHOOL gives the District its written notification to exercise one of the option terms, the District or CHARTER SCHOOL may indicate its desire to meet and confer regarding the potential renegotiation of the terms of this Agreement and the parties shall meet and confer in good faith regarding whether there are revisions to terms of the Agreement that both Parties agree to. If both Parties agree to revisions to the terms of the Agreement, the Parties shall execute an amendment to this Agreement memorializing same.

This Agreement terminates automatically if CHARTER SCHOOL's program ceases to operate after a revocation, nonrenewal or surrender of the charter, and all statutory administrative, and non-judicial appeals have been exhausted. CHARTER SCHOOL shall quit the Dedicated Space, Shared Space, and/or Eligible Improvements and remove its possessions therefrom as of the effective date of termination, or upon the expiration of this Agreement. CHARTER SCHOOL shall have no obligations under this Agreement as of the effective date of the termination, except for those obligations that expressly or impliedly survive the termination of this Agreement.

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

If deemed necessary by the Parties, or the Office of Public School Construction, the DISTRICT and CHARTER SCHOOL shall, upon mutual written agreement, execute an amendment to this Agreement to include all terms required by virtue of Charter School's receipt of funding under Charter School Facilities Program (Proposition 51) for the construction or rehabilitation of facilities during the term of this Agreement.

### **3. CHARTER SCHOOL'S OBLIGATIONS**

#### **A. Rent.**

In recognition of the substantial financial commitment that CHARTER SCHOOL is making to improve the District's asset, as well as the long-term debt being incurred by the CHARTER SCHOOL for same, the CHARTER SCHOOL shall pay an additional yearly fee pursuant to Education Code Section 47613(b), in addition to the 1% oversight fee charged by DISTRICT pursuant to Education Code Section 47613(a), payable to the District's general fund.

For Years 1-5 of the Term, the CHARTER SCHOOL shall pay an additional yearly fee in the amount of 0.5% of CHARTER SCHOOL's revenue, as defined in Education Code Section 47613(b) and (f).

For Years 6-15 of the Term, the CHARTER SCHOOL shall pay an additional yearly fee in the amount of 0.5% (a total 1.5% fee).

For Years 16-25 of the Term, the CHARTER SCHOOL shall pay an additional yearly fee in the amount of 0.75% (a total 1.75% fee).

For Years 26-35, the CHARTER SCHOOL shall pay an additional yearly fee in the amount of 1% (a total 2% fee).

After the CHARTER SCHOOL has repaid its debt to the State of California through the Charter School Facilities Program through the remainder of the Term, the CHARTER SCHOOL shall pay an additional yearly fee of 2% (a total 3% fee).

Payments shall be made quarterly upon invoice by the District. If payment is made more than fifteen (15) days late, District shall notify the CHARTER SCHOOL and may assess a late fee of 1% (one percent) of the installment payment due. Interest shall accrue after the installment payment is thirty (30) days late at the rate of 5% (five percent) per annum. The payment of late fees and/or interest shall not by itself excuse or cure any default by CHARTER SCHOOL, and shall not stop the District from commencing legal action to regain possession of the facilities based on default by CHARTER SCHOOL under Section 11 of this Agreement.

The above payment terms shall pertain to the entire duration of the Agreement.

B. Charter School's Right to Make Improvements on the Proposed Site Development Area.

1. CHARTER SCHOOL shall have the right, with the exceptions set forth herein, to make the following improvements (collectively "Eligible Improvements") only on the Proposed Site Development Area at its own expense:
  - a. Build a stand alone classroom building and return the "Dedicated Space" in Buildings D and E to Castlemont High School. Rehabilitation funds will be used to raze the three existing portables adjacent to the athletic field identified as P-1, P-2 and P-3.
  - b. Create an Early College Center, housing college classes for Castlemont and CHARTER SCHOOL students.
2. The District Superintendent or his/her designee may approve revisions to the Eligible Improvements as described herein.
3. CHARTER SCHOOL Option to Terminate. At any time within the first five (5) years of this Agreement, CHARTER SCHOOL at its option, and without any penalties, damages or other compensation to the District, may abandon or elect not to proceed with the Project if CHARTER SCHOOL is unable to obtain approval for Proposition 51 funding, and alternate financing is not available on terms acceptable to both Parties, or CHARTER SCHOOL has reasonably determined that the Project is not feasible, in which case the Term of this Agreement shall automatically terminate on

June 30 of the following school year. If the CHARTER SCHOOL elects to abandon or not to proceed with the Project, the CHARTER SCHOOL may submit a request for Prop. 39 facilities during the school year that begins in the fall as per the Prop. 39 implementing regulations for an allocation of facilities from the District for the following school year.

4. The Eligible Improvements, if made, shall become the property of the District at the end of the term of this Agreement (or any options or mutually agreed to extensions).

All improvements, including Eligible Improvements, are subject to the following procedures and requirements:

- a. CHARTER SCHOOL must bear financial responsibility for all improvements, and must hold the District harmless for claims for payment by any contractors, subcontractors or other parties, as well as any liens assessed as result of work performed. CHARTER SCHOOL agrees to defend and indemnify the District against any claims arising out of or related to performance of the work related to the improvements, subject to Section 8 (“Indemnification”) of this Agreement.
- b. CHARTER SCHOOL agrees to bear responsibility for paying for and performing any required unanticipated upgrades related to disability access triggered by the performance of any work done by CHARTER SCHOOL.
- c. CHARTER SCHOOL must follow all applicable procurement laws with respect to the Eligible Improvements; issue requests for proposals for all projects to obtain competitive pricing ; adhere to prevailing wage laws; and shall make best efforts to comply with the local hiring requirements in accordance with District Administrative Regulation and Board Policy 7115 (“Capital Program / Construction Related Local, Small Local and Small Local Resident Business Enterprise Program, and Board Policy”); and adhere to all applicable minimum wage requirements.
- d. CHARTER SCHOOL’s contractors shall be duly licensed in the State of California.
- e. The District reserves the right to review CHARTER SCHOOL’s selection of contractors. Contract prices are subject to District approval, which shall not be unreasonably withheld. Contractors retained by CHARTER SCHOOL with respect to the construction or installation of improvements 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 District shall be named as an additional insured on any applicable insurance policies and bonds. CHARTER SCHOOL shall bear full responsibility for ensuring that the construction or installation of improvements shall be performed in a sound and workmanlike manner, in compliance with all laws applicable to public schools including building codes and prevailing wage laws.

- f. The CHARTER SCHOOL agrees to provide a copy of documentation related to the work upon request, including requests for proposals, bids/proposals, schematic designs, specifications, work plans, work schedules, change orders, etc.
- g. All work performed, including designs (if applicable), specifications, work plans and work schedules, are subject to prior approval by the District, which shall not be unreasonably withheld, and periodic inspection by the District. CHARTER SCHOOL shall comply with all DISTRICT facilities design standards to the extent reasonably feasible and as required by the Division of State Architect ("DSA").
- h. CHARTER SCHOOL shall provide and pay for project management for all work performed, subject to compliance and progress reports to the District as requested by the District.
- i. CHARTER SCHOOL shall bear the exclusive responsibility, and bear the exclusive cost for, full compliance with any and all improvements or modifications made under this Agreement with all legal requirements, including but not limited to the Field Act (Education Code section 17280 et seq.); all requirements of DSA ; any other applicable Building Code requirements; the California Environmental Quality Act (Government Code section 21000 et seq.) ("CEQA"); Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 and applicable State law governing access to facilities; and any federal, local and state requirements governing building construction, building occupancy, fire safety, food storage and preparation. Notwithstanding the foregoing, District assumes full responsibility for all DSA tickets that were open as of the date the Agreement was executed.
- j. CHARTER SCHOOL shall be responsible for maintaining required fire and smoke detection/alarm systems and all telephone and data communication lines.

- k. CHARTER SCHOOL shall pay for its proportional share (based on square footage) of utilities charges for the Site. For purposes of this Agreement, utilities include water, irrigation, gas, electricity, telephone, security and fire alarm monitoring, data and communication lines and service, trash pick-up, and sewage fees. CHARTER SCHOOL shall be responsible, at its sole cost and expense, for the furnishing of all services and utilities to the Site, including, but not limited to heating, ventilation and air-conditioning, gas, electricity, water, telephone, trash collection, sewage disposal, and interior and exterior Site security services. CHARTER SCHOOL shall pay the cost of all utilities and other services directly to the applicable utility or service provider.

CHARTER SCHOOL agrees that the District shall not be liable for damages, by abatement of rent or otherwise, for the discontinuance, failure or interruption of any utility or other service (including telephone and telecommunication services), or for any diminution in the quality or quantity thereof; and such discontinuance, failure or interruption shall never be deemed to constitute an eviction or disturbance of CHARTER SCHOOL's use and possession of the Site or Proposed Site Development Area or relieve CHARTER SCHOOL from paying rent or other fees, costs or other amounts due and owing under this Agreement.

- l. CHARTER SCHOOL shall pay any assessment on the Dedicated Facilities, including any improvements which CHARTER SCHOOL constructs or causes to be constructed under this Agreement, whether real estate, general, special, ordinary or extraordinary, or rental levy or tax, improvement bond, and/or fee imposed upon or levied against the Site 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 Site address and where the proceeds so generated are applied by the city, county or other local taxing authority having jurisdiction. The provisions of this Section shall survive the expiration or earlier termination of this Agreement.
- m. Subject to and in accordance with Section 8 of this Agreement, CHARTER SCHOOL agrees to defend and indemnify the District against any and all claims arising out of any and all improvements that it makes under this Agreement in accordance with Section 8 ("Indemnification") of this Agreement.

- n. Section 6.B of this Agreement (“Alterations and Additions”) shall apply to any and all improvements performed by CHARTER SCHOOL under this Agreement, provided that if there is a conflict between Section 6.B. and this Section 3.B., the provisions of this Section 3.B. shall prevail.
- o. CHARTER SCHOOL shall keep the Dedicated Space, Shared Space, and/or Proposed Site Development Area and any facilities built thereon free from any liens arising out of any work performed, materials furnished or obligations incurred by or on behalf of CHARTER SCHOOL. Notwithstanding anything stated herein to the contrary, if CHARTER SCHOOL fails to promptly release and remove any such lien, District, at its sole option, may immediately (but shall not be obligated to) take all action necessary to release and remove such lien, without any duty to investigate the validity thereof, and all sums, costs and expenses, including reasonable attorneys’ fees and costs, incurred by District in connection with such lien shall be immediately due and payable by CHARTER SCHOOL.
- p. CHARTER SCHOOL shall not uninstall or remove any fixtures or improvements made at the Proposed Site Development Area or Site, if such removal or de-installation will materially adversely affect the structure of any of the Buildings, without prior written approval of the District.
- q. CHARTER SCHOOL may only make improvements to facilities within the Proposed Site Development Area. CHARTER SCHOOL shall be expressly prohibited from making alternation, addition, improvement, or modification not exclusively contained within CHARTER SCHOOL’s Proposed Site Development Area. Notwithstanding the foregoing, District acknowledges and agrees that certain improvements may be required to the road owned by the City of Oakland, and the District agrees to reasonably cooperate with CHARTER SCHOOL to obtain any approvals required with respect to such improvements, all in accordance with Section 3.B.3.g. of this Agreement.
- r. CHARTER SCHOOL acknowledges that the District holds title to the Site, the Proposed Site Development Area, and all existing facilities, structures, fixtures, and appurtenances thereto. The District shall hold title to any Eligible Improvements made by CHARTER SCHOOL, including but not limited to those that are constructed with Proposition 51 funds. All Eligible Improvements at the expiration or earlier termination of the term of this Agreement, or any options or mutually agreed to extensions, shall become

District's property. Except as set forth herein with respect to the Eligible Improvements, CHARTER SCHOOL expressly waives any liens, encumbrances, rights in equity, or any other claim of ownership or title thereto based upon any improvements made by CHARTER SCHOOL.

- s. Within 30 days of the completion of work, CHARTER SCHOOL shall cause a Notice of Completion to be recorded in the office of the Recorder of Alameda County in accordance with Section 3093 of the Civil Code of the State of California or any successor statute, and CHARTER SCHOOL shall deliver to the District within 30 days of the recordation of the Notice of Completion a reproducible copy of the "as built" drawings, which will be prepared by the architect to include the initial drawings stamped by the California Division of State Architect plus any subsequent field changes, plus any subsequent approvals from the California Division of State Architect, if applicable.

5. Approvals.

CHARTER SCHOOL shall submit all requests for approval under this Section 3.B.4. to the Office of the General Counsel by email. District shall respond to the request for approval within ten (10) business days. If District fails to respond to the request for approval within ten (10) business days, a District employee with the approval authority will attend a meeting or conduct a conference call with CHARTER SCHOOL within five (5) business days to review and approve the requests.

6. Compliance with California Environmental Quality Act.

District agrees to act as "lead agency" for any required compliance with the California Environmental Quality Act (Pub. Resources Code, §§ 21000, *et seq.*, Cal. Code Regs., tit. 14, §§ 15000, *et seq.* ("CEQA")), including any determination that the Project qualifies for an exemption from CEQA, using all appropriate and necessary documents which will be prepared by CHARTER SCHOOL or its consultants. District shall retain authority over review and approval of such documents, and shall not be responsible or liable for errors in and/or omissions from such documents by CHARTER SCHOOL or its consultants. CHARTER SCHOOL agrees to enter into a reimbursement agreement with the District, if necessary, and fund all reasonable costs of third party professionals and consultants necessary to comply with CEQA. In the event of any legal challenge to the Project under CEQA, District agrees to tender its defense of such challenge to CHARTER SCHOOL and to cooperate promptly thereafter as requested by CHARTER SCHOOL. Except where caused by the District's negligence or misconduct,

CHARTER SCHOOL agrees to indemnify, defend by counsel approved by the District in writing (such approval not being unreasonably withheld or delayed), and hold harmless the District, its employees, officers, governing board and members thereof, agents, and representatives, from and against any claims, liabilities, losses, costs, or damages arising out of or resulting from any claim or contention arising out of this Agreement, or CHARTER SCHOOL's use of the Site or construction of any Improvements thereon, including but not limited to, any third party challenge or contention based on CEQA.

7. District Cooperation.

District will reasonably and timely cooperate with CHARTER SCHOOL in connection with the processing by District of all third party and governmental approvals and permits required in order to construct the Eligible Improvements. District acknowledges that District's agreement to provide such cooperation is a material inducement to CHARTER SCHOOL's agreement to enter into this Agreement and that such cooperation shall include timely, reasonable, and prompt actions as may be reasonably required to enable CHARTER SCHOOL to process such approvals and permits. Such cooperation shall include, without limitation, executing, as may be requested by any governmental authority having jurisdiction over the Site or Proposed Site Development Area, applications, permits or approvals required for the construction of the Eligible Improvements.

4. USE

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

B. Use. The facilities on the Dedicated Space, Shared Space, and/or Eligible Improvements shall be used and occupied by CHARTER SCHOOL for the sole purpose of operating a California public charter school and all its related school activities and for no other purpose without the prior written consent of District. CHARTER SCHOOL's compliance with the provisions of the Civic Center Act (Education Code Section 38131, et seq.) in making use of the Facilities accessible to members of the community shall be included in the permissible uses of the Dedicated Space, Shared Space, and/or Eligible Improvements under this Agreement. CHARTER SCHOOL ACKNOWLEDGES AND AGREES (I) THAT, EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH HEREIN, IN ENTERING INTO THIS AGREEMENT, THE CHARTER SCHOOL HAS NOT RELIED ON ANY REPRESENTATION, STATEMENT, OR WARRANTY BY DISTRICT, OR ANYONE ACTING FOR OR ON BEHALF OF DISTRICT, AND THAT ALL MATTERS CONCERNING THE SITE AND PROPOSED SITE

DEVELOPMENT AREA HAVE BEEN INDEPENDENTLY VERIFIED BY CHARTER SCHOOL; (II) THAT CHARTER SCHOOL IS TAKING/CONTINUING POSSESSION OF THE DEDICATED SPACE, SHARED SPACE, AND/OR PROPOSED SITE DEVELOPMENT AREA BASED ON ITS OWN INSPECTION AND EXAMINATION THEREOF AND ON AN "AS IS" BASIS; AND (III) THAT DISTRICT MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF CONDITION, HABITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE WITH RESPECT TO THE DEDICATED SPACE, SHARED SPACE, AND/OR PROPOSED SITE DEVELOPMENT AREA.

C. Restrictions. CHARTER SCHOOL shall have no rights to the air above or the subjacent terrain below any area of the Site or Proposed Site Development Area outside of CHARTER SCHOOL's Site or Proposed Site Development Area.

D. Uses Prohibited.

1. CHARTER SCHOOL shall not do or permit anything to be done in or about the Site or Proposed Site Development Area nor bring or keep anything therein which would fall under an exclusion from coverage or cause a cancellation of any insurance policy covering said Site or Proposed Site Development Area or any part thereof or any of its contents, nor shall CHARTER SCHOOL sell or permit to be kept, used, or sold in or about said Site or Proposed Site Development Area any articles which may be prohibited by a standard form policy of fire insurance.
2. Neither party shall do or permit anything to be done in or about the Site or Proposed Site Development Area that will in any way obstruct or interfere with the rights of the other party or injure or annoy the other party or use or allow the Site or Proposed Site Development Area to be used for any unlawful or objectionable purpose nor shall either party cause, maintain or permit any nuisance in or about the Site or Proposed Site Development Area. Neither party shall not commit or suffer to be committed any waste in or upon the Site or Proposed Site Development Area.
3. CHARTER SCHOOL shall not use the Site or Proposed Site Development Area or permit anything to be done in or about the Site or Proposed Site Development Area that will in any way conflict with any applicable law, statute, ordinance or governmental rule, or regulation now in force or which may hereafter be enacted or promulgated, or with CHARTER SCHOOL's charter. CHARTER SCHOOL shall comply with District policies and/or procedures or practices regarding plant operations at the Site or Proposed Site Development Area. District will provide CHARTER SCHOOL with copies of all relevant written plant operations policies. District will provide any such written policies that are amended during the term of the Agreement.

E. No Increases in Enrollment. The Parties enter this Agreement with the intent to provide safe facilities to the CHARTER SCHOOL and to ensure that the CHARTER SCHOOL's facilities are safely occupied and not at over-capacity. Therefore, the CHARTER SCHOOL will not exceed the authorized enrollment projected in the charter petition. The CHARTER SCHOOL will not seek to revise its charter petition for the purpose of requesting an increase in enrollment during the term of this Agreement unless mutually agreed upon by the Parties.

F. Remedies for Overallocation of Facilities. Once the Eligible Improvements are constructed and occupied by CHARTER SCHOOL students, if CHARTER SCHOOL's total enrollment at P-2 in any given year drops more than 20% below the target enrollment in CHARTER SCHOOL's current approved charter petition, CHARTER SCHOOL shall make all excess space not constructed or improved using Proposition 51 funding available to the DISTRICT for DISTRICT use, including for allocation to other charter schools pursuant to Prop. 39. For the purposes of this subdivision, any reclamation of facilities shall take place in the following school year. If this provision is triggered, for the following school year, the DISTRICT and CHARTER SCHOOL shall calculate the amount of space to be made available to the DISTRICT in the following year as follows:

- a. The DISTRICT and CHARTER SCHOOL shall calculate the number of teaching stations, and the total square footage of specialized classroom and non-teaching station space, which the CHARTER SCHOOL would be entitled to pursuant to Title 5, California Code of Regulations Section 11969.3(a) and (b), using the CHARTER SCHOOL's P-2 ADA and the District's P-2 ADA and comparison school usage information for that year ("Facility Entitlement").
- b. The DISTRICT and CHARTER SCHOOL shall compare the Facility Entitlement to the number of teaching stations, and the total square footage of specialized classroom and non-teaching station space allocated to CHARTER SCHOOL under this Agreement ("Facility Allocation"), and subtract the Facility Entitlement from the Facility Allocation ("Overallocation Facilities").
- c. The CHARTER SCHOOL shall be required to make available for DISTRICT use, including for allocation to other charter schools pursuant to Prop. 39, all teaching stations, and all specialized classroom and non-teaching station space square footage, that is 10% above the Overallocation Facilities. As an example but not a limitation, if the DISTRICT and CHARTER SCHOOL determine that the Overallocation Facilities includes ten (10) teaching stations and 5,000 square feet of specialized classroom space, the DISTRICT shall be entitled to reclaim for its use nine (9) teaching stations and 4,500 square feet of specialized classroom space.
- d. If the District elects to place another charter school on the Site, the co-located charter school shall pay the pro rata share for its use of the space, calculated pursuant to Title 5, California Code of Regulations Section 11969.7, directly to the CHARTER SCHOOL.

e. For the purposes of implementing this Overalllocation provision:

i. For the purposes of determining whether an overalllocation exists under this provision, the parties shall use all facilities occupied by the CHARTER SCHOOL, whether or not they were subsidized by Proposition 51 funding. **In the event that the District reclaims facilities under this provision, the District may only reclaim space that was not constructed or improved using Proposition 51 funding.**

f. The CHARTER SCHOOL and the DISTRICT, and any co-located charter school if applicable, shall work together collaboratively to identify the facilities to be reclaimed with the goal of minimizing the disruption to both programs.

g. If the CHARTER SCHOOL's total enrollment at P-2 in any subsequent year rises to less than **20%** below the target enrollment in CHARTER SCHOOL's current approved charter petition, the CHARTER SCHOOL shall be entitled to reclaim the space used by the DISTRICT for its use until and if its total enrollment at P-2 in any subsequent year again falls to **20%** below the target enrollment in CHARTER SCHOOL's current approved charter petition, in which case the process set forth in this Section shall be triggered. It is the intent of the Parties that this analysis will be performed on a yearly basis, such that any reclamation of space by the DISTRICT shall be in one year increments.

G. Representations and Covenants. CHARTER SCHOOL represents and covenants that, as of the date hereof and during the entire term hereof:

(1) Organization. It is and shall remain a California non-profit public benefit corporation, duly organized, qualified to do business and in good standing in California and any other jurisdiction where the nature of its operations require it to be so qualified.

(2) Tax-Exempt Status. It has obtained, and shall maintain in full force and effect, all required approvals, consents and qualifications to be a not for profit entity under Section 501(c)(3) of the Internal Revenue Code and comparable provisions of California law.

(3) Charter. It has obtained and shall maintain a valid charter to operate the charter school to be operated pursuant to this Agreement.

## 5. FURNISHINGS AND EQUIPMENT

CHARTER SCHOOL shall be solely responsible for providing its own furnishings and equipment at its Dedicated Space and Shared Space, except that all furnishing and equipment at the Dedicated Space and Shared Space previously provided by the District shall not be removed



by the District. District shall have no obligation to provide additional furnishings or equipment to CHARTER SCHOOL.

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

A. Maintenance and Repairs. The ongoing daily operations and routine maintenance of the facilities and equipment on the Dedicated Space is the responsibility of the CHARTER SCHOOL during the design and construction of the Eligible Improvements; major maintenance of the facilities on the Dedicated Space is the responsibility of the District. Upon occupancy of the Eligible Improvements, the ongoing daily operations and both routine and major maintenance of the Eligible Improvements is the responsibility of CHARTER SCHOOL. CHARTER SCHOOL and CHARTER SCHOOL's agents and employees shall observe and comply fully and faithfully with all policies, rules, and regulations adopted by the District for the maintenance, care, protection, and cleanliness, and operation of the Site (except where the District's practice is different from its policies, rules and regulations, in which case the CHARTER SCHOOL will comply with the District's practice), and the facilities, furnishings and equipment thereon, and shall comply with all applicable laws. CHARTER SCHOOL's students, visitors, and invitees shall observe and comply fully and faithfully with all policies, rules, and regulations adopted by the District for the use and care of the Site. The District will provide CHARTER SCHOOL with copies of all relevant written use, care, maintenance and operations policies. The District will provide any such written policies that are amended during the term of the Agreement.

B. Alterations and Additions.

1. CHARTER SCHOOL must obtain prior written consent of District Superintendent or designee for any alterations, additions or improvements that exceed \$50,000 or that involve "major repair or replacement of plumbing, heating, air conditioning, electrical, roofing, and floor systems, the exterior and interior painting of school buildings, the inspection, sampling, and analysis of building materials to determine the presence of asbestos-containing materials, the encapsulation or removal of asbestos-containing materials, the inspection, identification, sampling, and analysis of building materials to determine the presence of lead-containing materials, the control, management, and removal of lead-containing materials" under Education Code section 17582. Alterations, additions, or improvements are defined as changes that would be deemed to be a "fixture" (in accordance with California Civil Code section 660) to the Site, Proposed Site Development Area, or any part thereof without obtaining the prior written consent of District. Civil Code section 660 defines a fixture as follows: "A thing is deemed to be affixed to land when it is attached to it by roots, as in the case of trees, vines, or shrubs; or imbedded in it, as in the case of walls; or permanently resting upon it, as in the case of buildings; or permanently attached to what is thus permanent, as by means of cement, plaster, nails, bolts, or screws; except that for the purposes of sale, emblements, industrial growing crops and things attached to or forming part of the land, which are agreed to be severed before sale or under the contract of sale, shall be treated

as goods and be governed by the provisions of the title of this code regulating the sales of goods.”

2. Consent for alterations, additions, or improvements may not be unreasonably withheld. District has the sole discretion to impose as a condition to the aforesaid consent any reasonable requirements the District may deem necessary, including but not limited to, the manner in which the work is done, a right of approval of the contractor by whom the work is to be performed, the times during which the work is to be accomplished, the manner in which the work is inspected, and the requirement that upon written request of District prior to the expiration or earlier termination of the Agreement, CHARTER SCHOOL will remove any and all alterations, additions or improvements installed by CHARTER SCHOOL pursuant to this provision, except for the Eligible Improvements, and only if such removal requirement is set forth in writing at the time of District’s approval of the addition, alteration or improvement to be removed. District reserves the right to require approval of all terms, including but not limited to construction schedule, work hours, and modifications, as well as requiring licensing and bonding of contractors (including performance and payment bonds covering 100% of contract price), as well as compliance with applicable prevailing wage laws in relation to public works projects, all required approvals shall not be unreasonably withheld. CHARTER SCHOOL agrees to name District as an intended third party beneficiary of any contract for the construction of alterations, additions, or improvements made by CHARTER SCHOOL.
3. CHARTER SCHOOL is encouraged to incorporate Collaborative for High-Performance Schools standards into the design of all improvements made under this Agreement and is encouraged to incorporate all editions of the California Green Building Standards Code. In addition to the public notice and participation requirement of CEQA, CHARTER SCHOOL agrees to use reasonable efforts to promote community knowledge and participation in the project and improvements described herein and to designate a community liaison for the project. In order to provide economic opportunity for residents and businesses and stimulate economic development, CHARTER SCHOOL shall make its best efforts to comply with District Administrative Regulation and Board Policy 7115 (“Capital Program / Construction Related Local, Small Local and Small Local Resident Business Enterprise Program, and Board Policy,” though it shall adopt a local hiring and local small business participation program, and agree to at least 25% local hiring/local business participation for all improvements under this Agreement. CHARTER SCHOOL is encouraged to incorporate all sustainability guidelines under the Division of the State Architect’s 7x7x7: Design Energy Water sustainability initiative.

4. All such alterations, additions or improvements that were permitted to be made consistent with Section 6.A and 6.B shall at the expiration or earlier termination of the Agreement become the property of District and remain upon and be surrendered with the Site, unless the District requests its removal as specified in Section 6.B above.
5. All articles of personal property owned by CHARTER SCHOOL or installed by CHARTER SCHOOL at its expense on the Site shall be and will remain the property of CHARTER SCHOOL and may be removed by CHARTER SCHOOL at any time during the Agreement term.
6. CHARTER SCHOOL shall be allowed to post signs that identify its location and name on the Site in a manner that is customary and equivalent to what other District school sites have established, and subject to District's prior approval.

**7. ENTRY BY DISTRICT**

District reserves the right to enter CHARTER SCHOOL's Dedicated Space, Shared Space, and/or Eligible Improvements to inspect the same, to supply any service to be provided by District to CHARTER SCHOOL hereunder, to submit said Dedicated Space, Shared Space, and/or Eligible Improvements to prospective purchasers or future tenants to post notices of non-responsibility and "for lease" signs, providing always that the entrance to the Dedicated Space, Shared Space, and/or Eligible Improvements shall not be blocked thereby, and further providing that the business of CHARTER SCHOOL shall not be unreasonably interfered with. Except in an emergency or a situation involving a threat to health and safety, the District will provide the CHARTER SCHOOL with at least 24 hours notice prior to entering on the Dedicated Space, Shared Space, and/or Eligible Improvements, and shall comply with the CHARTER SCHOOL's visitor policies when entering upon the Dedicated Space, Shared Space, and/or Eligible Improvements, CHARTER SCHOOL hereby waives any claim for damages for any injury or inconvenience to or interference with CHARTER SCHOOL's business, any loss or occupancy or quiet enjoyment of the Dedicated Space, Shared Space, and/or Eligible Improvements. For each of the aforesaid purposes District shall at all times have and retain a key with which to unlock all of the doors in, upon and about the Dedicated Space, Shared Space, and/or Eligible Improvements, excluding CHARTER SCHOOL's vaults and safes, and District shall have the right to use any and all means which District may deem proper to open said doors in an emergency, in order to obtain entry to the Dedicated Space, Shared Space, and/or Eligible Improvements, and any entry to the Dedicated Space, Shared Space, and/or Eligible Improvements obtained by District by any of said means, or otherwise, shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into or a detainer of the Dedicated Space, Shared Space, and/or Eligible Improvements, or an eviction of CHARTER SCHOOL from the Site or any portion thereof.

**8. INDEMNITY**

A. CHARTER SCHOOL shall indemnify, hold harmless, and defend the District, its Board Members, trustees, officers, administrators, attorneys, volunteers, employees and agents

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

B. District shall indemnify, hold harmless, and defend CHARTER SCHOOL, its Board Members, trustees, officers, administrators, attorneys, volunteers, employees and agents against and from any and all claims, demands, actions, suits, losses, liability, loss, expenses and costs related to or resulting from or arising from District's negligence or misconduct in connection with the conduct of its business or from District's negligence or misconduct in connection with the any activity, work, or other things done, permitted or suffered by District, its trustees, officers, employees and agents in or about the Site; provided, however, that District shall not have any obligation to indemnify, hold harmless or defend the CHARTER SCHOOL, its trustees, officers, employees and agents against and from any and all claims, demands, actions, suits, losses, liability, expenses and costs for any injury, death or damage to any person or property occurring in, on or about the Site resulting from or arising out of the negligence or misconduct of the CHARTER SCHOOL, its trustees, officers, employees and agents.

## 9. INSURANCE

Without in any way limiting CHARTER SCHOOL's liability pursuant to the "Indemnification" section of this Agreement, CHARTER SCHOOL shall procure and maintain during the full term of this Agreement the following insurance amounts and coverage:

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

1. Comprehensive or commercial general liability insurance with limits not less than Ten Million Dollars (\$10,000,000) each occurrence and \$20,000,000 (twenty million dollars) in the aggregate for bodily injury and property damage.
2. Comprehensive or Business Automobile Liability Insurance with limits not less than Two Million Dollars (\$2,000,000) each occurrence Combined Single Limit for Bodily Injury and Property Damage including coverage for Owned, Non-owned and Hired Vehicles, as applicable. District reserves the right to require CHARTER SCHOOL to maintain limits required of other tenants on District property.

3. Workers' Compensation as required by law, with Employer's Liability limits not less than One Million Dollars (\$1,000,000) each.
4. Professional Liability (Errors and Omissions or Directors and Officers) Insurance with limits not less than Two Million Dollars (\$2,000,000) each occurrence.
5. Crime coverage for losses resulting from employee dishonesty naming the District as a loss payee with limits of no less than \$1,000,000 (one million dollars) per occurrence. Such coverage should be primary and noncontributory to any other coverage available to the District with respect to claims arising out of CHARTER SCHOOL's performance under this Agreement.
6. If any policies are written on a claims-made form, CHARTER SCHOOL agrees to maintain such insurance continuously in force for three years following termination or revocation or termination of the Charter or extend the period for reporting claims for three years following the termination or revocation of the Charter to the effect that occurrences which take place during this time frame shall be insured.
7. CHARTER SCHOOL shall be responsible, at its sole expense, for separately insuring its personal property.
8. CHARTER SCHOOL shall add the District as a named additional insured on its insurance policies related to the Dedicated Space, Shared Space, and/or Proposed Site Development Area, or those potentially covering any risk arising out of CHARTER SCHOOL's improvement of the Dedicated Space, Shared Space, and/or Proposed Site Development Area under this Agreement, to the extent permissible, and shall provide the District with certificates of insurance and endorsement page no later than 30 days prior to the commencement of instruction.

CHARTER SCHOOL bears exclusive responsibility for procuring insurance with respect to the improvements set forth in Section 3.B of this Agreement, including but not limited to liability, automotive, workers compensation, professional liability, and property insurance for any and all personal property and structures erected by the CHARTER SCHOOL.

B. District's Coverage. The District shall maintain the same levels of insurance on the Site (except for the Eligible Improvements) as it would maintain on the Site if it was an existing District school. The District is permissibly self-insured for all losses pursuant to California Education Code Section 17566. The District's election in this regard is sufficient to satisfy any and all legal obligations that require it to provide evidence of liability or property damage.

## **10. ASSIGNMENT AND SUBLETTING**

CHARTER SCHOOL may not assign its rights or sublet any portion of the Dedicated Space, Shared Space, and/or Proposed Site Development Area without the written consent of the District. CHARTER SCHOOL shall not have the right to assign, mortgage, pledge, hypothecate, encumber, or permit any lien to attach to, or otherwise transfer, this Agreement or any interest hereunder, permit any assignment, or other transfer of this Agreement or any interest hereunder by operation of law, sublet the Site or any portion or improvements or any part thereof, or otherwise permit the occupancy or use of the Dedicated Space, Shared Space, and/or Proposed Site Development Area or improvements or any part thereof by any persons other than CHARTER SCHOOL and its employees and contractors (all of the foregoing are hereinafter sometimes referred to collectively as “Transfers” and any person to whom any Transfer is made or sought to be made is hereinafter sometimes referred to as a “Transferee”), without first procuring the written consent of the District. Any Transfer made without the prior written consent of the District shall be null, void and of no effect, and shall constitute a default by CHARTER SCHOOL under this Agreement. Any Transferee approved by the District shall agree at all times to comply with the terms of this Agreement, including, without limitation, the continuous use of the Dedicated Space, Shared Space, and/or Proposed Site Development Area for the purposes set forth in this Agreement. Notwithstanding anything in this Section to the contrary, (i) CHARTER SCHOOL shall have the right to enter into license or concession agreements for the provision of services or goods to the students of CHARTER SCHOOL and/or to the educational programs operated by CHARTER SCHOOL, and (ii) CHARTER SCHOOL shall only have the right to assign this Agreement and all of its rights with respect to the Dedicated Space, Shared Space, and/or Proposed Site Development Area to an affiliate of CHARTER SCHOOL, in each case under clause (i) and (ii) above (A) with the consent of the District and (B) such license or concession agreement or assignment to an affiliate shall not be deemed a Transfer to the extent necessary to obtain funding under the Charter School Facility Grant program under Education Code section 47614.5. CHARTER SCHOOL shall receive approval of any such assignment from the DISTRICT either through a written amendment to this Agreement or a material revision to its Charter, which shall not be unreasonably withheld or delayed.

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

## **11. DEFAULT; REMEDIES**

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

1. Any failure by CHARTER SCHOOL to make payments required to be paid hereunder, where such failure continues for thirty (30) days after receiving written notice of the failure to make payment.
2. Any failure by CHARTER SCHOOL to use and occupy the Dedicated Space, Shared Space, and/or Eligible Improvements for the operation of a charter school as required by this Agreement and/or the authorized charter petition.
3. Any failure by CHARTER SCHOOL to maintain insurance on the Dedicated Space, Shared Space, and/or Eligible Improvements as outlined herein or to provide evidence of insurance as required by this Agreement, and where the failure continues for thirty (30) days after receiving written notice of the failure to make payment or cancellation of insurance.
4. Any failure by CHARTER SCHOOL to observe and perform any other provision of this Agreement to be observed or performed by CHARTER SCHOOL, where such failure continues for thirty (30) days after receipt of written notice thereof by District to CHARTER SCHOOL, unless, however, the nature of the default is such that the same cannot reasonably be cured within said thirty (30) day period. CHARTER SCHOOL shall not be deemed to be in default if CHARTER SCHOOL shall within the thirty (30) day period commence such cure, and by determination of the District, diligently prosecute the cure to completion. In the event that the District has to issue written notice to CHARTER SCHOOL for violation of the same material obligation or provision of this Agreement on three or more occasions in the same fiscal year, the District may commence legal proceedings to terminate this Agreement, or take any other remedy provided in this Agreement, without the necessity of providing written notice to CHARTER SCHOOL.
5. The making by CHARTER SCHOOL of any general assignment or general arrangement for the benefit of creditors; the filing by or against CHARTER SCHOOL of a petition to have CHARTER SCHOOL adjudged bankrupt or of a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against CHARTER SCHOOL, the same is dismissed within 60 days); the appointment of a trustee or receiver to take possession of substantially all of CHARTER SCHOOL's assets located at the Dedicated Space, Shared Space, and/or Proposed Site Development Area or of CHARTER SCHOOL's interest in this Agreement, where possession is not restored to CHARTER SCHOOL within 30 days; or the attachment execution or other judicial seizure of substantially all of CHARTER SCHOOL's assets located at the Dedicated Space, Shared Space, and/or Proposed Site Development Area or of CHARTER SCHOOL's interest in this Agreement, where such seizure is not discharged within 30 days.

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

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

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

1. Maintain this Agreement in full force and effect and recover use payments and other monetary charges as they become due, without terminating CHARTER SCHOOL's right to possession irrespective of whether CHARTER SCHOOL shall have abandoned the Dedicated Space, Shared Space, and/or Proposed Site Development Area. If District elects not to terminate the Agreement, then District shall have the right to attempt to lease the Dedicated Space, Shared Space, and/or Proposed Site Development Area at such rent and upon such conditions and for such a term, and to do all acts necessary to maintain or preserve the Dedicated Space, Shared Space, and/or Proposed Site Development Area as District deems reasonable and necessary without being deemed to have elected to terminate the Agreement, including removal of all persons and property from the Dedicated Space, Shared Space, and/or Proposed Site Development Area; such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of CHARTER SCHOOL. If any such re-letting occurs, then this Agreement shall terminate automatically.
2. Terminate CHARTER SCHOOL's right to possession by any lawful means, in which case this Agreement shall terminate and CHARTER SCHOOL shall immediately surrender possession of the Dedicated Space, Shared Space, and/or Proposed Site Development Area to District. In such event District shall be entitled to recover from CHARTER SCHOOL all damages incurred by District by reason of CHARTER SCHOOL's default, including without limitations thereto, the following: (i) the worth at the time of award of any unpaid use payments which had been earned at the time of such termination; plus (ii) any other damages to which the District would be



entitled under the law. Upon any such re-entry District shall have the right to make any reasonable repairs, alterations or modifications to the Dedicated Space, Shared Space, and/or Proposed Site Development Area, which District in its sole discretion deems reasonable and necessary. As used in (i) above, the “worth at the time of award” is computed by allowing interest at the rate of 10% per year from the date of default. As used in (ii) and (iii) the “worth at the time of award” is computed by discounting such amount at the discount rate of the U.S. Federal Reserve Bank at the time of award plus 1%. The term “use payments”, as used in this Section 11.C.2., shall be deemed to be and to mean the payments to be paid pursuant to Section 3 and all other monetary sums required to be paid by CHARTER SCHOOL pursuant to the terms of this Agreement.

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

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

## **12. CONDEMNATION**

The rights and obligations of the parties shall be determined as follows: If the Dedicated Space, Shared Space, and/or Eligible Improvements are totally taken by condemnation; this Agreement shall terminate on the date of taking. If any portion of the Dedicated Space, Shared Space, and/or Eligible Improvements is taken by condemnation, CHARTER SCHOOL shall have the right to either terminate this Agreement or to continue in possession of the remainder of the Dedicated Space, Shared Space, and/or Eligible Improvements under the terms of this Agreement, provided that the rent shall be reduced on an equitable basis, taking into account the relative value of the portion of the Dedicated Space, Shared Space, and/or Eligible Improvements taken as compared to the portion of the Dedicated Space, Shared Space, and/or Eligible Improvements remaining. Such right to terminate must be exercised by notifying District within ninety (90) days after possession of the part taken by eminent domain. All damages awarded for such taking shall belong to and is the property of District; provided, however, that CHARTER SCHOOL, not District, shall be entitled to any portion of the award to which it is entitled under applicable law.

### **13. DESTRUCTION**

A. If any of the improvements made by CHARTER SCHOOL are damaged by any casualty, CHARTER SCHOOL shall bear exclusive financial responsibility for replacement, but only to the extent that Proceeds (as defined below) are available to pay the costs of rebuilding, storing, repairing and replacing such improvements. CHARTER SCHOOL shall obtain adequate insurance pursuant to Section 9 of this Agreement to cover all structures, and CHARTER SCHOOL's personal property. If the DISTRICT obtains any property insurance for any facility on the Site but outside of the Eligible Improvements, in the event of any act or event damaging or destroying all or a portion of outside of the Eligible Improvements, all proceeds recovered on account of damage or destruction to any facility outside of the Eligible Improvements from said the DISTRICT-acquired insurance shall be considered the property of the DISTRICT, and the DISTRICT shall determine the use of such proceeds, except that if the District elects not to use the proceeds to repair the damaged or destroyed facilities on the Site, CHARTER SCHOOL may elect to terminate this Agreement.

B. The District shall not be liable for any inconvenience or annoyance to CHARTER SCHOOL or its visitors, or injury to CHARTER SCHOOL's business resulting in any way from such damage or the repair thereof provided, that the foregoing sentence shall not apply to the extent the District's negligence or willful misconduct is the cause of such damage or destruction. CHARTER SCHOOL shall not be entitled to any compensation or damages from the District for loss of use of any part of the Site, or CHARTER SCHOOL's personal property used or located at the Dedicated Space, Shared Space, and/or Eligible Improvements, or for any inconvenience or annoyance occasioned by such damage or destruction, provided, that the foregoing sentence shall not apply to any damage or destruction caused by the negligence or willful misconduct of the District or limit the provisions of Section 19 below.

C. Disbursement of Insurance Proceeds. All property insurance proceeds, from policies obtained and maintained by CHARTER SCHOOL, recovered on account of damage or destruction to the improvements made in the Proposed Site Development Area ("the Proceeds") shall be applied to the payment of the cost of repairing, restoring, and replacing the improvements so damaged or destroyed (the "Reconstruction"). All Proceeds shall be deposited with a depository selected by CHARTER SCHOOL and reasonably acceptable to the District and under the exclusive control of CHARTER SCHOOL ("the Depository"). If the Proceeds are insufficient to cover the anticipated cost of Reconstruction, then prior to the commencement of any Reconstruction work CHARTER SCHOOL may deposit with the Depository funds in the amount of such deficiency ("CHARTER SCHOOL's Funds"), or re-scope the repairs so that they can be covered by Proceeds. The Depository shall disburse the Proceeds and CHARTER SCHOOL's Funds, if applicable, during the course of reconstruction in accordance with customary construction disbursements, including a percentage retention that CHARTER SCHOOL and the District shall mutually agree upon.

D. If there are funds remaining after the completion of the Reconstruction work in accordance with the terms of this Agreement, then such funds (after first deducting from such funds the fees and expenses of the Depository) shall be delivered to CHARTER SCHOOL.

If the District voluntarily obtains any of the property insurance on behalf of CHARTER SCHOOL for facilities within the Proposed Site Development Area, or CHARTER SCHOOL is paying or has paid the District for said property insurance policy(ies), all insurance proceeds recovered on account of damage or destruction to the improvements from said insurance policies shall be placed into the Depository for application towards the costs and expenses of Reconstruction. If there are not sufficient funds remaining to pay for the Depository's fees and expenses, CHARTER SCHOOL shall be responsible for the payment of same. The rights hereunder shall be subject to and subordinate to the rights of a Leasehold Mortgagee with regard to rebuilding and insurance proceeds.

E. Waiver of Statutory Provisions. The provisions of this Agreement, including this Section, constitute an express agreement between the District and CHARTER SCHOOL with respect to any and all damage to, or destruction of, all or any part of the improvements, and any statute or regulation of the State of California, including, without limitation, Sections 1932(2) and 1933(4) of the California Civil Code, with respect to any rights or obligations concerning damage or destruction in the absence of an express agreement between the parties, and any other statute or regulation, now or hereafter in effect, shall have no application to this Agreement or any damage or destruction to all or any part of the improvements.

#### **14. HAZARDOUS MATERIALS DISCLOSURE**

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

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

indemnify the District against all claims arising therefrom, subject to and in accordance with Section 8 of the Agreement.

C. CHARTER SCHOOL, at its expense, shall comply with all applicable laws, regulations, rules and orders with respect to its use and occupancy of the Dedicated Space, Shared Space, and/or Proposed Site Development Area, including, without limitation, those relating to health, safety, noise, environmental protection, waste disposal, and water and air quality. The CHARTER SCHOOL shall be responsible for any and all environmental conditions proximately caused by the CHARTER SCHOOL's occupancy of the Dedicated Space, Shared Space, and/or Eligible Improvements.

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

D. 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 Dedicated Space, Shared Space, and/or Proposed Site Development Area 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 Dedicated Space, Shared Space, and/or Proposed Site Development Area, during the Term of the Agreement. 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 Dedicated Space, Shared Space, and/or Proposed Site Development Area 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 Dedicated Space, Shared Space, and/or Proposed Site Development Area 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 Dedicated Space, Shared Space, and/or Proposed Site Development Area pursuant to any Environmental Laws.

## **15. SURRENDER**

A. Surrender of Site. No act or thing done by the District or any agent or employee of District during the Agreement Term shall be deemed to constitute an acceptance by District of a surrender of the Dedicated Space, Shared Space, and/or Proposed Site Development Area.

B. Removal of Personal Property by CHARTER SCHOOL. Upon the expiration of the Term, or upon any earlier termination of this Agreement, CHARTER SCHOOL shall, subject to the provisions of this Article, quit and surrender possession of the Dedicated Space, Shared Space, and/or Proposed Site Development Area to the District in as good order and condition as when CHARTER SCHOOL completed its initial construction, rehabilitation or modernization, reasonable wear and tear excepted. Upon such expiration or termination, CHARTER SCHOOL shall, without expense to the District, remove or cause to be removed from the Dedicated Space, Shared Space, and/or Proposed Site Development Area all debris and rubbish, and such items of furniture, equipment, business and trade fixtures, free-standing cabinet work, movable partitions and other articles of personal property (including those items attached to the Dedicated Space, Shared Space, and/or Proposed Site Development Area but that can easily be removed and the area of attachment repaired) owned by CHARTER SCHOOL.

C. If CHARTER SCHOOL holds over after the expiration of the Term or earlier termination thereof, without the express or implied consent of the District, such holding over shall not constitute a renewal hereof or an extension for any further term, and in such case the CHARTER SCHOOL shall pay during such hold over period 150% of the then current rent for the Dedicated Space, Shared Space, and/or Eligible Improvements (the "Hold Over Rent") as liquidated damages, as the District's damages under such an occurrence would be difficult to ascertain. Nothing contained in this Section shall be construed as consent by the District to any holding over by CHARTER SCHOOL, and the District expressly reserves the right to require CHARTER SCHOOL to surrender possession as provided in this Agreement upon the expiration or other termination of this Agreement. If CHARTER SCHOOL fails to surrender the Dedicated Space, Shared Space, and/or Eligible Improvements upon the expiration or earlier termination of this Agreement, in addition to any other liabilities to the District accruing therefrom, CHARTER SCHOOL shall protect, defend, indemnify and hold the District harmless from all loss, costs (including reasonable attorneys' fees) and liability resulting from such failure, including, without limiting the generality of the foregoing, any claims made by any succeeding CHARTER SCHOOL founded upon such failure to surrender and any losses to the District resulting therefrom subject to and in accordance with Section 8 of this Agreement.

## **16. DISPUTE RESOLUTION**

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

## **17. FINGERPRINTING**

CHARTER SCHOOL and the District, their employees, agents, contractors and subcontractors shall comply with the requirements of Education Code Sections 45125.1 and 45125.2 related to access to the Dedicated Space, Shared Space, and/or Proposed Site Development Area and protection of minor students. CHARTER SCHOOL shall not be required to have volunteers fingerprinted if they are directly supervised at all times by a CHARTER SCHOOL employee with proper criminal background check clearance. Any volunteer or visitor having unsupervised student contact is required to undergo a fingerprint scan and criminal background check under the supervision and/or responsibility (financial and otherwise) of

CHARTER SCHOOL. CHARTER SCHOOL shall also ensure that its employees are in compliance with the tuberculosis testing requirements set forth in Section 49406 of the California Education Code.

**18. SECURITY**

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

**19. WAIVER**

CHARTER SCHOOL agrees to waive its right to seek and/or obtain facilities from the District under Proposition 39, or any other provision of law, beginning at such time as the CHARTER SCHOOL's students occupy the Eligible Improvements, unless the CHARTER SCHOOL is not able to construct the Eligible Improvements, in which case the CHARTER SCHOOL shall still be entitled to request facilities from the District pursuant to Proposition 39. If (i) the CHARTER SCHOOL can no longer utilize some or all of the Dedicated Space, Shared Space, and/or Eligible Improvements for school instruction as intended by the Agreement due to damage, destruction or condemnation, or (ii) this Agreement is terminated for any reason other than a default by CHARTER SCHOOL, CHARTER SCHOOL may exercise all rights under Proposition 39, and the District shall use best efforts to provide facilities under the terms of Proposition 39. In the case where the CHARTER SCHOOL seeks Prop. 39 facilities pursuant to (i), any rights exercised under Prop. 39 are limited to the number of in-District students displaced by said damage, destruction or condemnation. Moreover, if the CHARTER SCHOOL can no longer utilize some or all of the Dedicated Space, Shared Space, and/or Eligible Improvements for school instruction as intended by the Agreement due to damage, destruction or condemnation, District shall make best efforts to provide temporary space for the operation of CHARTER SCHOOL for those students displaced. Except as otherwise stated herein, CHARTER SCHOOL agrees to waive any and all claims, causes of action, and other legal actions against the District arising out of CHARTER SCHOOL's occupation of the Dedicated Space, Shared Space, and/or Eligible Improvements based on Proposition 39. Nothing in this provision shall bar the application of Section 8 ("Indemnification") of this Agreement.

Waiver and Release. With regard to the waiver of CHARTER SCHOOL's right to seek and/or obtain facilities from the District for LPS Oakland R&D under Proposition 39 for the Term except under certain circumstances as set forth in this Section 19, LPS, its affiliated entities and supporting organizations, and its respective present and former officers, directors, employees, agents, representatives, successors and assigns, and each of them does hereby fully and finally

settle, release, relieve, acquit and forever discharge the District and the directors, employees, administrators, assigns, agents, representatives, attorneys, and insurers, from any and all claims, claims for indemnification or contribution, complaints, causes of action, demands, liabilities, losses, or damages, including attorneys' fees and costs, experts' and consultants' fees and costs, known or unknown, which LPS may now or hereafter have against the District and the directors, employees, administrators, assigns, agents, representatives, trustees, attorneys, insurers, experts and consultants, arising out of the District's obligations to provide LPS with reasonably equivalent facilities except as set forth herein. LPS acknowledges that they are familiar with Section 1542 of the California Civil Code which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her, must have materially affected his or her settlement with the debtor.

Except as provided for specifically in this Agreement, LPS waives and relinquishes any and all rights and benefits which they may have under, or which may be conferred upon them by the provisions of Section 1542 of the California Civil Code, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the subject matter of this Agreement. In connection with such waiver and relinquishment, LPS hereby acknowledges that it is aware that it or its attorneys may hereafter discover claims or facts in addition to or different from those which they now know or believe to exist with respect to the subject matter of this Agreement, but that it is the intention of the Parties to this Agreement to hereby fully, finally and forever waive said claims, whether known or unknown, suspected or unsuspected, which concern or arise out of the District's obligations, to provide Proposition 39 facilities to LPS except as set forth herein.

## **20. MISCELLANEOUS**

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

B. Captions; Attachments; Defined Terms, Amendments.

1. The captions of the paragraphs of this Agreement are for convenience only and shall not be deemed to be relevant in resolving any question of interpretation or construction of any section of this Agreement.
2. Exhibits attached hereto, and addenda and schedules initialed by the parties, are deemed by attachment to constitute part of this Agreement and are incorporated herein.
3. This Agreement may only be amended in a writing that specifically indicates its intent to modify and/or amend this Agreement. All amendments shall only be effective if executed by both parties.

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

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

E. Binding Effect; Choice of Law. The parties hereto agree that all provisions hereof are to be construed as both covenants and conditions as though the words importing such covenants and conditions were used in each separate paragraph hereof. Subject to any provisions hereof restricting assignment or subletting by CHARTER SCHOOL, all of the provisions hereof shall bind and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns. The laws of the State of California shall govern this Agreement. In the event of any suit or proceeding arising out of or related to this Agreement, Alameda County Superior Court of California will have exclusive venue and the parties will submit to the jurisdiction of that court.

F. 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.

No provision of this Agreement shall be deemed waived by either party hereto unless expressly waived in a written instrument signed by a person on behalf of the party waiving the provision. The waiver by either party hereto of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of same or any other term, covenant or condition herein contained.



The subsequent acceptance of any fee or other amounts due and owing under this Agreement by the District shall not be deemed to be a waiver of any preceding breach by CHARTER SCHOOL of any term, covenant or condition of this Agreement. No receipt of monies by the District from CHARTER SCHOOL after the termination of this Agreement shall in any way alter the length of the Term or of CHARTER SCHOOL's right of possession hereunder, or after the giving of any notice shall reinstate, continue or extend the Term or affect any notice given CHARTER SCHOOL prior to the receipt of such monies, it being agreed that after the service of notice or the commencement of a suit, or after final judgment for possession of the Site, the District may receive and collect any fees or other amounts due and owing under this Agreement, and the payment of said amount(s) shall not waive or affect said notice, suit or judgment.

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

H. Notices. All Notices or demands of any kind required or desired to be given by District or CHARTER SCHOOL hereunder shall be in writing and shall be deemed delivered three (3) business days after depositing the notice or demand in the United States mail, certified or registered, postage prepaid, addressed to the District or CHARTER SCHOOL respectively at the following addresses:

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

Chief Business Officer  
Leadership Public Schools  
99 Linden Street  
Oakland, CA 94607  
Telephone: (510) 830-3780  
Fax: (510) 225-2575

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

J. Contract Contingent on Governing Board Approval. District shall not be bound by the terms of this Agreement until it has been formally approved by District's Governing Board.

This Agreement shall be deemed to be approved by the District when it has been signed by the Board of Education, and/or the Superintendent as its designee.

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

OAKLAND UNIFIED SCHOOL DISTRICT

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Superintendent  
Oakland Unified School District  
Date: \_\_\_\_\_, 2019

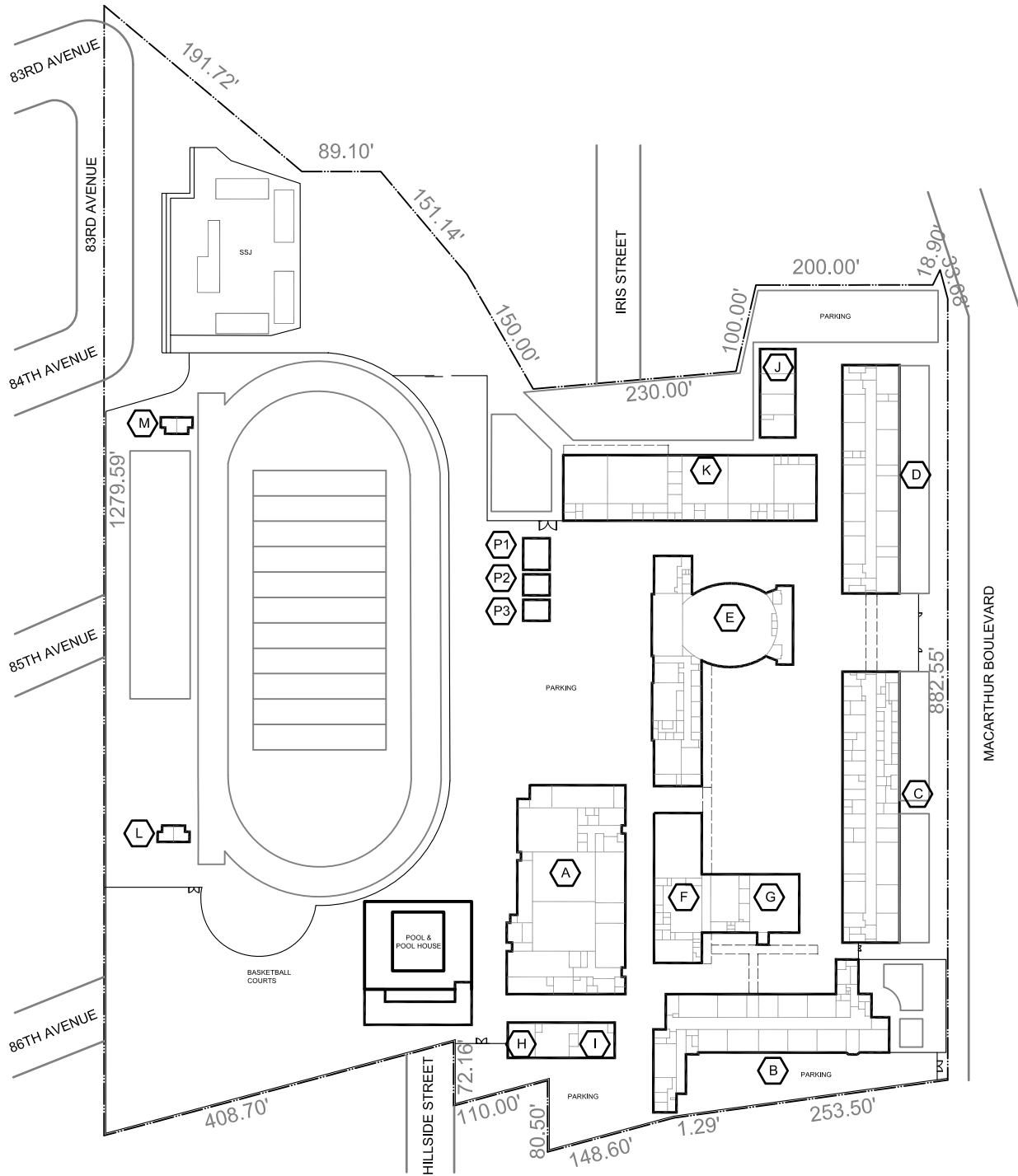
LEADERSHIP PUBLIC SCHOOLS

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Superintendent  
Leadership Public Schools  
Date: \_\_\_\_\_, 2019

Attachment: Exhibit "A"

# Exhibit A



## SITE PLAN 301 - CASTLEMONT COMMUNITY OF SMALL SCHOOLS

8601 MACARTHUR BOULEVARD, OAKLAND, CA 94605

**2ND READING  
DOCUMENTS  
(6/12/19)**

Board Office Use: Legislative File Info.	
File ID Number	19-1274
Introduction Date	6-5-19
Enactment Number	
Enactment Date	



# Memo

**To** Board of Education

**From** Kyla Johnson-Trammell, Superintendent  
Sonali Murarka, Director – Office of Charter Schools

**Board Meeting Date** June 12, 2019

**Subject** Prop 51 Long-term Facilities Use Agreement: LPS Oakland R&D

**Action** Second Read and Vote

**Background** As described to the Board at the Board retreat on December 5, 2018, Prop 51 allows charter schools to apply for funding of new construction and/or rehabilitation projects of district-owned facilities that are at least 15 years old. Through Prop 51, LPS Oakland R&D was awarded ~\$28 million to invest in the Castlemont campus. It is an expectation of Prop 51 that the District would sign a long-term lease with the charter school.

The primary terms of the lease are as follows:

- LPS will receive a long-term lease of the following duration: July 1, 2019 through June 30, 2034
- LPS plans to use Prop 51 funds to (a) build an independent classroom building, and (b) create an Early College Center to house college classes for Castlemont and LPS Oakland students.
- LPS will return Building 100 to Castlemont HS for continued Castlemont enrollment and program growth
- LPS will cap charter enrollment at the current charter authorized limit, and agrees not to request a material revision for enrollment growth throughout the duration of this lease unless mutually agreed upon by the District and LPS
- LPS will not submit a Prop 39 request for classroom space once the school has occupied their newly-constructed space
- Final design approval for construction/rehabilitation must be given by the State, LPS, and District Superintendent or designee before the Prop 51 project can move forward and construction can begin

The anticipated date for completion of the Prop 51 construction is Fall 2022.

**Discussion**

For the Board’s discussion at the First Read, two potential areas to focus on:

- Given this first application of the long-term lease criteria, does LPS Oakland R&D reflect the Board’s intention behind approving that criteria?
- What clarification does the Board seek on any specific terms of the lease?

**Fiscal Impact**

Through Prop 51, the charter school will be investing up to \$28 million in rehabilitation and new construction on the Castlemont site. The charter school will receive half of this money as a grant, and the other half as a loan to be paid back to the State over 30 years. The District will hold title to the increased value of this property.

The Facilities Use Agreement also includes a payment structure for additional fees to be paid to the District. In addition to the annual 1% oversight fee, LPS will pay fees to the District according to the below schedule:

<b>Term</b>	<b>Fees Paid to District</b>
Years 1-5	0.5% of revenue, or Prop 39 override
Years 6-15	0.5% of revenue
Years 16-25	0.75% of revenue
Years 26-35	1.0% of revenue
Years 36+	2.0% of revenue

LPS will assume all maintenance and other facilities costs for the Prop 51 facility.

**Attachment**

Facilities Use Agreement with Exhibit A

**CHARTER SCHOOL FACILITIES AGREEMENT  
FOR A TERM OF July 1, 2019 through June 30, 2034**

THIS CHARTER SCHOOL FACILITIES AGREEMENT (hereinafter referred to as this “Agreement”) is made and entered into as of \_\_\_\_\_, 2019 (hereinafter referred to as the “Date of this Agreement”), by and between the Oakland Unified School District, a California Public School district (hereinafter referred to as the “District”) and Leadership Public Schools (“LPS”), a California non-profit public benefit corporation that operates LPS Oakland R&D (hereinafter referred to as “CHARTER SCHOOL”), for use of a portion of the facilities located at the Castlemont High School campus, located at 8601 MacArthur Boulevard, Oakland, CA 94605, as more fully described in Exhibit “A” attached hereto (hereinafter referred to as “Site”).

**RECITALS**

WHEREAS, the District intends to provide facilities to the CHARTER SCHOOL, and the CHARTER SCHOOL intends to obtain its facilities from the District for the operation of the LPS Oakland R&D in lieu of an allocation of facilities pursuant to California Proposition 39 (Education Code section 47614) and its implementing regulations, as may be amended from time to time (“Proposition 39”).

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

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

NOW, THEREFORE, for and in consideration of the facilities use payments and of the covenants and agreements hereinafter set forth to be kept and performed by the CHARTER SCHOOL, the District hereby grants use to the CHARTER SCHOOL of the Site, subject to and upon all of the terms, covenants, and agreements hereinafter set forth. It is the intent of the parties that this written agreement supersede all previous agreements, written or unwritten, related to the use and occupation of the Site by the CHARTER SCHOOL.

**APPLICABILITY**

This Agreement shall only relate to District’s provision of facilities for the LPS Oakland R&D. However, for purposes of this Agreement, the terms Charter School and Non-Profit may be used interchangeably with the duties and responsibilities of the Charter School and Non-Profit being the same under this Agreement.

1. **SITE**

The CHARTER SCHOOL currently shares some portions of the Site with Castlemont High School (“Shared Space”), and has exclusive use of other portions of the Site (“Dedicated Space”) (including, without limitation, all Eligible Improvements, as defined below, located thereon) located at 8601 MacArthur Boulevard, Oakland, CA 94605. The terms of Education Code section 17078.52 *et seq.* (“Proposition 51”), and the Charter School’s “Right to Make Improvements” under Section 3(B) of this Agreement, shall only apply to the Castlemont site (“Proposed Site Development Area”) and the facilities contained therein. **Nothing in this Agreement shall be construed to give the CHARTER SCHOOL any rights conferred under Proposition 51 to, or any rights to make improvements to, any area outside of the Proposed Site Development Area. The District Superintendent, on behalf of the District, is hereby authorized to revise the Proposed Site Development Area, in writing, by mutual agreement with the CHARTER SCHOOL.**

Prior to and during construction of the Eligible Improvements, as defined in Provision 3(B) below, CHARTER SCHOOL shall have use and occupation of the following Dedicated Space:

- Building D
- Building E Room 25
- Portable 1
- Portable 2
- Portable 3A
- Portable 3B

Terms and conditions of the occupancy of the facilities by the CHARTER SCHOOL prior to the occupancy of the Eligible Improvements may be dictated by an annual Proposition 39 or in-lieu of Proposition 39 agreement between the Parties. Facilities fees charged to the CHARTER SCHOOL prior to the occupancy of the Eligible Improvements shall be outlined in the Proposition 39 or in-lieu of Proposition 39 agreement, and may supersede the terms outlined in Provision 3(A) of this agreement.

Immediately upon the occupancy of the Eligible Improvements, CHARTER SCHOOL, shall vacate Building D and Building E, and relocate into the newly constructed Eligible Improvements to the Site. These Eligible Improvements shall be the Dedicated Space for the remainder of the Agreement.

The District hereby grants to the CHARTER SCHOOL the right to joint use of the following spaces solely for the purposes to perform Charter School’s activities on the terms and conditions set forth herein:

**PARKING:** CHARTER SCHOOL shall have non-exclusive use of the parking lot located on site. CHARTER SCHOOL shall abide by District’s policies concerning the use of the lot, including the District policy relating to the drop-off and pick-up of students. CHARTER SCHOOL’s use of the parking lot shall be on a first come, first-serve basis but shall not unreasonably impact other occupants with similar access rights to the parking lot. Charter School shall not abandon any LPS R&D: In-Lieu Facilities Agreement 2019-2020 through 2033-2034



inoperative vehicles or equipment on any portion of the School Site. District shall not be liable for any personal injury suffered by CHARTER SCHOOL or CHARTER SCHOOL's visitors, invitees and guests, except where such damage is caused by the District's negligence or misconduct. CHARTER SCHOOL acknowledges that District has not made and is not making any warranties whatsoever with respect to parking.

**ATHLETIC FACILITIES:** The District shall allow the CHARTER SCHOOL to schedule supervised student use of the School Site's gymnasium, and athletic facilities so that the CHARTER SCHOOL may provide its own Physical Education programs within the school day using the Shared Space. The CHARTER SCHOOL shall coordinate with the District to schedule its use of the athletic facilities.

**AUDITORIUM:** The CHARTER SCHOOL shall coordinate with the District to schedule supervised student use of the School Site's auditorium, to allow for proportional access for special events and other needs, including use during the school day.

**BATHROOMS:** CHARTER SCHOOL students and staff shall have equal access to bathrooms located in Shared Space.

**COMMON HALLWAYS:** The District shall allow CHARTER SCHOOL students to use common hallways, as may be necessary, for ingress and egress to the Dedicated and Shared Space.

**DINING AREA/CAFETERIA:** The CHARTER SCHOOL shall coordinate with the District to schedule supervised student use of the School Site's dining area.

**COORDINATED SHARED USE:** CHARTER SCHOOL use of the Shared Space shall be coordinated through the District. The District shall provide CHARTER SCHOOL with sufficient keys to access Shared Space.

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

**BELL SCHEDULE/ALARMS/ANNOUNCEMENTS:** It is recognized that the CHARTER SCHOOL may have a separate bell schedule from the District's programs. If deemed feasible, following coordination between the Parties, the Dedicated Space will have a separate intercom and bell system.

## **2. TERM**

The term of this Agreement shall be for fifteen (15) consecutive school years, commencing on July 1, 2019 and ending on June 30, 2034, subject to earlier termination as set forth in this Agreement ("Initial Term"). The CHARTER SCHOOL shall have the right to renew this Agreement for one additional term of fifteen (15) years and one subsequent term of ten (10) years

("Extension Term", and the Initial Term and Extension Term(s) together are referred to as the "Term") by giving the District written notification of its desire to do so no later than July 1 of the last year of the Agreement and/or initial Extension Term. At the time CHARTER SCHOOL gives the District its written notification to exercise one of the option terms, the District or CHARTER SCHOOL may indicate its desire to meet and confer regarding the potential renegotiation of the terms of this Agreement and the parties shall meet and confer in good faith regarding whether there are revisions to terms of the Agreement that both Parties agree to. If both Parties agree to revisions to the terms of the Agreement, the Parties shall execute an amendment to this Agreement memorializing same.

This Agreement terminates automatically if CHARTER SCHOOL's program ceases to operate after a revocation, nonrenewal or surrender of the charter, and all statutory administrative, and non-judicial appeals have been exhausted. CHARTER SCHOOL shall quit the Dedicated Space, Shared Space, and/or Eligible Improvements and remove its possessions therefrom as of the effective date of termination, or upon the expiration of this Agreement. CHARTER SCHOOL shall have no obligations under this Agreement as of the effective date of the termination, except for those obligations that expressly or impliedly survive the termination of this Agreement.

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

If deemed necessary by the Parties, or the Office of Public School Construction, the DISTRICT and CHARTER SCHOOL shall, upon mutual written agreement, execute an amendment to this Agreement to include all terms required by virtue of Charter School's receipt of funding under Charter School Facilities Program (Proposition 51) for the construction or rehabilitation of facilities during the term of this Agreement.

### **3. CHARTER SCHOOL'S OBLIGATIONS**

#### **A. Rent.**

In recognition of the substantial financial commitment that CHARTER SCHOOL is making to improve the District's asset, as well as the long-term debt being incurred by the CHARTER SCHOOL for same, the CHARTER SCHOOL shall pay an additional yearly fee pursuant to Education Code Section 47613(b), in addition to the 1% oversight fee charged by DISTRICT pursuant to Education Code Section 47613(a), payable to the District's general fund.

For Years 1-5 of the Term, the CHARTER SCHOOL shall pay an additional yearly fee in the amount of 0.5% of CHARTER SCHOOL's revenue, as defined in Education Code Section 47613(b) and (f).

For Years 6-15 of the Term, the CHARTER SCHOOL shall pay an additional yearly fee in the amount of 0.5% (a total 1.5% fee).

For Years 16-25 of the Term, the CHARTER SCHOOL shall pay an additional yearly fee in the amount of 0.75% (a total 1.75% fee).

For Years 26-35, the CHARTER SCHOOL shall pay an additional yearly fee in the amount of 1% (a total 2% fee).

After the CHARTER SCHOOL has repaid its debt to the State of California through the Charter School Facilities Program through the remainder of the Term, the CHARTER SCHOOL shall pay an additional yearly fee of 2% (a total 3% fee).

Payments shall be made quarterly upon invoice by the District. If payment is made more than fifteen (15) days late, District shall notify the CHARTER SCHOOL and may assess a late fee of 1% (one percent) of the installment payment due. Interest shall accrue after the installment payment is thirty (30) days late at the rate of 5% (five percent) per annum. The payment of late fees and/or interest shall not by itself excuse or cure any default by CHARTER SCHOOL, and shall not stop the District from commencing legal action to regain possession of the facilities based on default by CHARTER SCHOOL under Section 11 of this Agreement.

The above payment terms shall pertain to the entire duration of the Agreement.

B. Charter School's Right to Make Improvements on the Proposed Site Development Area.

1. CHARTER SCHOOL shall have the right, with the exceptions set forth herein, to make the following improvements (collectively "Eligible Improvements") only on the Proposed Site Development Area at its own expense:
  - a. Build a stand alone classroom building and return the "Dedicated Space" in Buildings D and E to Castlemont High School. Rehabilitation funds will be used to raze the three existing portables adjacent to the athletic field identified as P-1, P-2 and P-3.
  - b. Create an Early College Center, housing college classes for Castlemont and CHARTER SCHOOL students.
2. The District Superintendent or his/her designee may approve, in writing, revisions to the Eligible Improvements as described herein.
3. CHARTER SCHOOL Option to Terminate. At any time within the first five (5) years of this Agreement, CHARTER SCHOOL at its option, and without any penalties, damages or other compensation to the District, may abandon or elect not to proceed with the Project if CHARTER SCHOOL is unable to obtain approval for Proposition 51 funding, and alternate financing is not available on terms acceptable to both Parties, or CHARTER SCHOOL has reasonably determined that the Project is not feasible, in which case the Term of this Agreement shall automatically terminate on

June 30 of the following school year. If the CHARTER SCHOOL elects to abandon or not to proceed with the Project, the CHARTER SCHOOL may submit a request for Prop. 39 facilities during the school year that begins in the fall as per the Prop. 39 implementing regulations for an allocation of facilities from the District for the following school year.

4. The Eligible Improvements, if made, shall become the property of the District at the end of the term of this Agreement (or any options or mutually agreed to extensions).

All improvements, including Eligible Improvements, are subject to the following procedures and requirements:

- a. CHARTER SCHOOL must bear financial responsibility for all improvements, and must hold the District harmless for claims for payment by any contractors, subcontractors or other parties, as well as any liens assessed as result of work performed. CHARTER SCHOOL agrees to defend and indemnify the District against any claims arising out of or related to performance of the work related to the improvements, subject to Section 8 (“Indemnification”) of this Agreement.
- b. CHARTER SCHOOL agrees to bear responsibility for paying for and performing any required unanticipated upgrades related to disability access triggered by the performance of any work done by CHARTER SCHOOL.
- c. CHARTER SCHOOL must follow all applicable procurement laws with respect to the Eligible Improvements; issue requests for proposals for all projects to obtain competitive pricing ; adhere to prevailing wage laws; and shall make best efforts to comply with the local hiring requirements in accordance with District Administrative Regulation and Board Policy 7115 (“Capital Program / Construction Related Local, Small Local and Small Local Resident Business Enterprise Program, and Board Policy”); and adhere to all applicable minimum wage requirements.
- d. CHARTER SCHOOL’s contractors shall be duly licensed in the State of California.
- e. The District reserves the right to review CHARTER SCHOOL’s selection of contractors. Contract prices are subject to District approval, which shall not be unreasonably withheld. Contractors retained by CHARTER SCHOOL with respect to the construction or installation of improvements 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 District shall be named as an additional insured on any applicable insurance policies and bonds. CHARTER SCHOOL shall bear full responsibility for ensuring that the construction or installation of improvements shall be performed in a sound and workmanlike manner, in compliance with all laws applicable to public schools including building codes and prevailing wage laws.

- f. The CHARTER SCHOOL agrees to provide a copy of documentation related to the work upon request, including requests for proposals, bids/proposals, schematic designs, specifications, work plans, work schedules, change orders, etc.
- g. All work performed, including designs (if applicable), specifications, work plans and work schedules, are subject to prior approval by the District, which shall not be unreasonably withheld, and periodic inspection by the District. CHARTER SCHOOL shall comply with all DISTRICT facilities design standards to the extent reasonably feasible and as required by the Division of State Architect ("DSA").
- h. CHARTER SCHOOL shall provide and pay for project management for all work performed, subject to compliance and progress reports to the District as requested by the District.
- i. CHARTER SCHOOL shall bear the exclusive responsibility, and bear the exclusive cost for, full compliance with any and all improvements or modifications made under this Agreement with all legal requirements, including but not limited to the Field Act (Education Code section 17280 et seq.); all requirements of DSA ; any other applicable Building Code requirements; the California Environmental Quality Act (Government Code section 21000 et seq.) ("CEQA"); Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 and applicable State law governing access to facilities; and any federal, local and state requirements governing building construction, building occupancy, fire safety, food storage and preparation. Notwithstanding the foregoing, District assumes full responsibility for all DSA tickets that were open as of the date the Agreement was executed.
- j. CHARTER SCHOOL shall be responsible for maintaining required fire and smoke detection/alarm systems and all telephone and data communication lines.

- k. CHARTER SCHOOL shall pay for its proportional share (based on square footage) of utilities charges for the Site. For purposes of this Agreement, utilities include water, irrigation, gas, electricity, telephone, security and fire alarm monitoring, data and communication lines and service, trash pick-up, and sewage fees. CHARTER SCHOOL shall be responsible, at its sole cost and expense, for the furnishing of all services and utilities to the Site, including, but not limited to heating, ventilation and air-conditioning, gas, electricity, water, telephone, trash collection, sewage disposal, and interior and exterior Site security services. CHARTER SCHOOL shall pay the cost of all utilities and other services directly to the applicable utility or service provider.

CHARTER SCHOOL agrees that the District shall not be liable for damages, by abatement of rent or otherwise, for the discontinuance, failure or interruption of any utility or other service (including telephone and telecommunication services), or for any diminution in the quality or quantity thereof; and such discontinuance, failure or interruption shall never be deemed to constitute an eviction or disturbance of CHARTER SCHOOL's use and possession of the Site or Proposed Site Development Area or relieve CHARTER SCHOOL from paying rent or other fees, costs or other amounts due and owing under this Agreement.

- l. CHARTER SCHOOL shall pay any assessment on the Dedicated Facilities, including any improvements which CHARTER SCHOOL constructs or causes to be constructed under this Agreement, whether real estate, general, special, ordinary or extraordinary, or rental levy or tax, improvement bond, and/or fee imposed upon or levied against the Site 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 Site address and where the proceeds so generated are applied by the city, county or other local taxing authority having jurisdiction. The provisions of this Section shall survive the expiration or earlier termination of this Agreement.
- m. Subject to and in accordance with Section 8 of this Agreement, CHARTER SCHOOL agrees to defend and indemnify the District against any and all claims arising out of any and all improvements that it makes under this Agreement in accordance with Section 8 ("Indemnification") of this Agreement.

- n. Section 6.B of this Agreement (“Alterations and Additions”) shall apply to any and all improvements performed by CHARTER SCHOOL under this Agreement, provided that if there is a conflict between Section 6.B. and this Section 3.B., the provisions of this Section 3.B. shall prevail.
- o. CHARTER SCHOOL shall keep the Dedicated Space, Shared Space, and/or Proposed Site Development Area and any facilities built thereon free from any liens arising out of any work performed, materials furnished or obligations incurred by or on behalf of CHARTER SCHOOL. Notwithstanding anything stated herein to the contrary, if CHARTER SCHOOL fails to promptly release and remove any such lien, District, at its sole option, may immediately (but shall not be obligated to) take all action necessary to release and remove such lien, without any duty to investigate the validity thereof, and all sums, costs and expenses, including reasonable attorneys’ fees and costs, incurred by District in connection with such lien shall be immediately due and payable by CHARTER SCHOOL.
- p. CHARTER SCHOOL shall not uninstall or remove any fixtures or improvements made at the Proposed Site Development Area or Site, if such removal or de-installation will materially adversely affect the structure of any of the Buildings, without prior written approval of the District.
- q. CHARTER SCHOOL may only make improvements to facilities within the Proposed Site Development Area. CHARTER SCHOOL shall be expressly prohibited from making alternation, addition, improvement, or modification not exclusively contained within CHARTER SCHOOL’s Proposed Site Development Area. Notwithstanding the foregoing, District acknowledges and agrees that certain improvements may be required to the road owned by the City of Oakland, and the District agrees to reasonably cooperate with CHARTER SCHOOL to obtain any approvals required with respect to such improvements, all in accordance with Section 3.B.3.g. of this Agreement.
- r. CHARTER SCHOOL acknowledges that the District holds title to the Site, the Proposed Site Development Area, and all existing facilities, structures, fixtures, and appurtenances thereto. The District shall hold title to any Eligible Improvements made by CHARTER SCHOOL, including but not limited to those that are constructed with Proposition 51 funds. All Eligible Improvements at the expiration or earlier termination of the term of this Agreement, or any options or mutually agreed to extensions, shall become

District's property. Except as set forth herein with respect to the Eligible Improvements, CHARTER SCHOOL expressly waives any liens, encumbrances, rights in equity, or any other claim of ownership or title thereto based upon any improvements made by CHARTER SCHOOL.

- s. Within 30 days of the completion of work, CHARTER SCHOOL shall cause a Notice of Completion to be recorded in the office of the Recorder of Alameda County in accordance with Section 3093 of the Civil Code of the State of California or any successor statute, and CHARTER SCHOOL shall deliver to the District within 30 days of the recordation of the Notice of Completion a reproducible copy of the "as built" drawings, which will be prepared by the architect to include the initial drawings stamped by the California Division of State Architect plus any subsequent field changes, plus any subsequent approvals from the California Division of State Architect, if applicable.

5. Approvals.

CHARTER SCHOOL shall submit all requests for approval under this Section 3.B.4. to the Office of the General Counsel by email. District shall respond to the request for approval within ten (10) business days. If District fails to respond to the request for approval within ten (10) business days, a District employee with the approval authority will attend a meeting or conduct a conference call with CHARTER SCHOOL within five (5) business days to review and approve the requests.

6. Compliance with California Environmental Quality Act.

District agrees to act as "lead agency" for any required compliance with the California Environmental Quality Act (Pub. Resources Code, §§ 21000, *et seq.*, Cal. Code Regs., tit. 14, §§ 15000, *et seq.* ("CEQA")), including any determination that the Project qualifies for an exemption from CEQA, using all appropriate and necessary documents which will be prepared by CHARTER SCHOOL or its consultants. District shall retain authority over review and approval of such documents, and shall not be responsible or liable for errors in and/or omissions from such documents by CHARTER SCHOOL or its consultants. CHARTER SCHOOL agrees to enter into a reimbursement agreement with the District, if necessary, and fund all reasonable costs of third party professionals and consultants necessary to comply with CEQA. In the event of any legal challenge to the Project under CEQA, District agrees to tender its defense of such challenge to CHARTER SCHOOL and to cooperate promptly thereafter as requested by CHARTER SCHOOL. Except where caused by the District's negligence or misconduct,



CHARTER SCHOOL agrees to indemnify, defend by counsel approved by the District in writing (such approval not being unreasonably withheld or delayed), and hold harmless the District, its employees, officers, governing board and members thereof, agents, and representatives, from and against any claims, liabilities, losses, costs, or damages arising out of or resulting from any claim or contention arising out of this Agreement, or CHARTER SCHOOL's use of the Site or construction of any Improvements thereon, including but not limited to, any third party challenge or contention based on CEQA.

7. District Cooperation.

District will reasonably and timely cooperate with CHARTER SCHOOL in connection with the processing by District of all third party and governmental approvals and permits required in order to construct the Eligible Improvements. District acknowledges that District's agreement to provide such cooperation is a material inducement to CHARTER SCHOOL's agreement to enter into this Agreement and that such cooperation shall include timely, reasonable, and prompt actions as may be reasonably required to enable CHARTER SCHOOL to process such approvals and permits. Such cooperation shall include, without limitation, executing, as may be requested by any governmental authority having jurisdiction over the Site or Proposed Site Development Area, applications, permits or approvals required for the construction of the Eligible Improvements.

4. USE

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

B. Use. The facilities on the Dedicated Space, Shared Space, and/or Eligible Improvements shall be used and occupied by CHARTER SCHOOL for the sole purpose of operating a California public charter school and all its related school activities and for no other purpose without the prior written consent of District. CHARTER SCHOOL's compliance with the provisions of the Civic Center Act (Education Code Section 38131, et seq.) in making use of the Facilities accessible to members of the community shall be included in the permissible uses of the Dedicated Space, Shared Space, and/or Eligible Improvements under this Agreement. CHARTER SCHOOL ACKNOWLEDGES AND AGREES (I) THAT, EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH HEREIN, IN ENTERING INTO THIS AGREEMENT, THE CHARTER SCHOOL HAS NOT RELIED ON ANY REPRESENTATION, STATEMENT, OR WARRANTY BY DISTRICT, OR ANYONE ACTING FOR OR ON BEHALF OF DISTRICT, AND THAT ALL MATTERS CONCERNING THE SITE AND PROPOSED SITE

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DEVELOPMENT AREA HAVE BEEN INDEPENDENTLY VERIFIED BY CHARTER SCHOOL; (II) THAT CHARTER SCHOOL IS TAKING/CONTINUING POSSESSION OF THE DEDICATED SPACE, SHARED SPACE, AND/OR PROPOSED SITE DEVELOPMENT AREA BASED ON ITS OWN INSPECTION AND EXAMINATION THEREOF AND ON AN “AS IS” BASIS; AND (III) THAT DISTRICT MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF CONDITION, HABITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE WITH RESPECT TO THE DEDICATED SPACE, SHARED SPACE, AND/OR PROPOSED SITE DEVELOPMENT AREA.

C. Restrictions. CHARTER SCHOOL shall have no rights to the air above or the subjacent terrain below any area of the Site or Proposed Site Development Area outside of CHARTER SCHOOL’s Site or Proposed Site Development Area.

D. Uses Prohibited.

1. CHARTER SCHOOL shall not do or permit anything to be done in or about the Site or Proposed Site Development Area nor bring or keep anything therein which would fall under an exclusion from coverage or cause a cancellation of any insurance policy covering said Site or Proposed Site Development Area or any part thereof or any of its contents, nor shall CHARTER SCHOOL sell or permit to be kept, used, or sold in or about said Site or Proposed Site Development Area any articles which may be prohibited by a standard form policy of fire insurance.
2. Neither party shall do or permit anything to be done in or about the Site or Proposed Site Development Area that will in any way obstruct or interfere with the rights of the other party or injure or annoy the other party or use or allow the Site or Proposed Site Development Area to be used for any unlawful or objectionable purpose nor shall either party cause, maintain or permit any nuisance in or about the Site or Proposed Site Development Area. Neither party shall not commit or suffer to be committed any waste in or upon the Site or Proposed Site Development Area.
3. CHARTER SCHOOL shall not use the Site or Proposed Site Development Area or permit anything to be done in or about the Site or Proposed Site Development Area that will in any way conflict with any applicable law, statute, ordinance or governmental rule, or regulation now in force or which may hereafter be enacted or promulgated, or with CHARTER SCHOOL’s charter. CHARTER SCHOOL shall comply with District policies and/or procedures or practices regarding plant operations at the Site or Proposed Site Development Area. District will provide CHARTER SCHOOL with copies of all relevant written plant operations policies. District will provide any such written policies that are amended during the term of the Agreement.

E. No Increases in Enrollment. The Parties enter this Agreement with the intent to provide safe facilities to the CHARTER SCHOOL and to ensure that the CHARTER SCHOOL's facilities are safely occupied and not at over-capacity. Therefore, the CHARTER SCHOOL will not exceed the authorized enrollment projected in the charter petition. The CHARTER SCHOOL will not seek to revise its charter petition for the purpose of requesting an increase in enrollment during the term of this Agreement unless mutually agreed upon by the Parties.

F. Remedies for Overallocation of Facilities. Once the Eligible Improvements are constructed and occupied by CHARTER SCHOOL students, if CHARTER SCHOOL's total enrollment at P-2 in any given year drops more than 20% below the target enrollment in CHARTER SCHOOL's current approved charter petition, CHARTER SCHOOL shall make all excess space not constructed or improved using Proposition 51 funding available to the DISTRICT for DISTRICT use, including for allocation to other charter schools pursuant to Prop. 39. For the purposes of this subdivision, any reclamation of facilities shall take place in the following school year. If this provision is triggered, for the following school year, the DISTRICT and CHARTER SCHOOL shall calculate the amount of space to be made available to the DISTRICT in the following year as follows:

- a. The DISTRICT and CHARTER SCHOOL shall calculate the number of teaching stations, and the total square footage of specialized classroom and non-teaching station space, which the CHARTER SCHOOL would be entitled to pursuant to Title 5, California Code of Regulations Section 11969.3(a) and (b), using the CHARTER SCHOOL's P-2 ADA and the District's P-2 ADA and comparison school usage information for that year ("Facility Entitlement").
- b. The DISTRICT and CHARTER SCHOOL shall compare the Facility Entitlement to the number of teaching stations, and the total square footage of specialized classroom and non-teaching station space allocated to CHARTER SCHOOL under this Agreement ("Facility Allocation"), and subtract the Facility Entitlement from the Facility Allocation ("Overallocation Facilities").
- c. The CHARTER SCHOOL shall be required to make available for DISTRICT use, including for allocation to other charter schools pursuant to Prop. 39, all teaching stations, and all specialized classroom and non-teaching station space square footage, that is 10% above the Overallocation Facilities. As an example but not a limitation, if the DISTRICT and CHARTER SCHOOL determine that the Overallocation Facilities includes ten (10) teaching stations and 5,000 square feet of specialized classroom space, the DISTRICT shall be entitled to reclaim for its use nine (9) teaching stations and 4,500 square feet of specialized classroom space.
- d. If the District elects to place another charter school on the Site, the co-located charter school shall pay the pro rata share for its use of the space, calculated pursuant to Title 5, California Code of Regulations Section 11969.7, directly to the CHARTER SCHOOL.

e. For the purposes of implementing this Overalllocation provision:

i. For the purposes of determining whether an overalllocation exists under this provision, the parties shall use all facilities occupied by the CHARTER SCHOOL, whether or not they were subsidized by Proposition 51 funding. **In the event that the District reclaims facilities under this provision, the District may only reclaim space that was not constructed or improved using Proposition 51 funding.**

f. The CHARTER SCHOOL and the DISTRICT, and any co-located charter school if applicable, shall work together collaboratively to identify the facilities to be reclaimed with the goal of minimizing the disruption to both programs.

g. If the CHARTER SCHOOL's total enrollment at P-2 in any subsequent year rises to less than **20%** below the target enrollment in CHARTER SCHOOL's current approved charter petition, the CHARTER SCHOOL shall be entitled to reclaim the space used by the DISTRICT for its use until and if its total enrollment at P-2 in any subsequent year again falls to **20%** below the target enrollment in CHARTER SCHOOL's current approved charter petition, in which case the process set forth in this Section shall be triggered. It is the intent of the Parties that this analysis will be performed on a yearly basis, such that any reclamation of space by the DISTRICT shall be in one year increments.

G. Representations and Covenants. CHARTER SCHOOL represents and covenants that, as of the date hereof and during the entire term hereof:

(1) Organization. It is and shall remain a California non-profit public benefit corporation, duly organized, qualified to do business and in good standing in California and any other jurisdiction where the nature of its operations require it to be so qualified.

(2) Tax-Exempt Status. It has obtained, and shall maintain in full force and effect, all required approvals, consents and qualifications to be a not for profit entity under Section 501(c)(3) of the Internal Revenue Code and comparable provisions of California law.

(3) Charter. It has obtained and shall maintain a valid charter to operate the charter school to be operated pursuant to this Agreement.

## 5. FURNISHINGS AND EQUIPMENT

CHARTER SCHOOL shall be solely responsible for providing its own furnishings and equipment at its Dedicated Space and Shared Space, except that all furnishing and equipment at the Dedicated Space and Shared Space previously provided by the District shall not be removed

by the District. District shall have no obligation to provide additional furnishings or equipment to CHARTER SCHOOL.

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

A. Maintenance and Repairs. The ongoing daily operations and routine maintenance of the facilities and equipment on the Dedicated Space is the responsibility of the CHARTER SCHOOL during the design and construction of the Eligible Improvements; major maintenance of the facilities on the Dedicated Space is the responsibility of the District. Upon occupancy of the Eligible Improvements, the ongoing daily operations and both routine and major maintenance of the Eligible Improvements is the responsibility of CHARTER SCHOOL. CHARTER SCHOOL and CHARTER SCHOOL's agents and employees shall observe and comply fully and faithfully with all policies, rules, and regulations adopted by the District for the maintenance, care, protection, and cleanliness, and operation of the Site (except where the District's practice is different from its policies, rules and regulations, in which case the CHARTER SCHOOL will comply with the District's practice), and the facilities, furnishings and equipment thereon, and shall comply with all applicable laws. CHARTER SCHOOL's students, visitors, and invitees shall observe and comply fully and faithfully with all policies, rules, and regulations adopted by the District for the use and care of the Site. The District will provide CHARTER SCHOOL with copies of all relevant written use, care, maintenance and operations policies. The District will provide any such written policies that are amended during the term of the Agreement.

### **B. Alterations and Additions.**

1. CHARTER SCHOOL must obtain prior written consent of District Superintendent or designee for any alterations, additions or improvements that exceed \$50,000 or that involve "major repair or replacement of plumbing, heating, air conditioning, electrical, roofing, and floor systems, the exterior and interior painting of school buildings, the inspection, sampling, and analysis of building materials to determine the presence of asbestos-containing materials, the encapsulation or removal of asbestos-containing materials, the inspection, identification, sampling, and analysis of building materials to determine the presence of lead-containing materials, the control, management, and removal of lead-containing materials" under Education Code section 17582. Alterations, additions, or improvements are defined as changes that would be deemed to be a "fixture" (in accordance with California Civil Code section 660) to the Site, Proposed Site Development Area, or any part thereof without obtaining the prior written consent of District. Civil Code section 660 defines a fixture as follows: "A thing is deemed to be affixed to land when it is attached to it by roots, as in the case of trees, vines, or shrubs; or imbedded in it, as in the case of walls; or permanently resting upon it, as in the case of buildings; or permanently attached to what is thus permanent, as by means of cement, plaster, nails, bolts, or screws; except that for the purposes of sale, emblements, industrial growing crops and things attached to or forming part of the land, which are agreed to be severed before sale or under the contract of sale, shall be treated

as goods and be governed by the provisions of the title of this code regulating the sales of goods.”

2. Consent for alterations, additions, or improvements may not be unreasonably withheld. District has the sole discretion to impose as a condition to the aforesaid consent any reasonable requirements the District may deem necessary, including but not limited to, the manner in which the work is done, a right of approval of the contractor by whom the work is to be performed, the times during which the work is to be accomplished, the manner in which the work is inspected, and the requirement that upon written request of District prior to the expiration or earlier termination of the Agreement, CHARTER SCHOOL will remove any and all alterations, additions or improvements installed by CHARTER SCHOOL pursuant to this provision, except for the Eligible Improvements, and only if such removal requirement is set forth in writing at the time of District’s approval of the addition, alteration or improvement to be removed. District reserves the right to require approval of all terms, including but not limited to construction schedule, work hours, and modifications, as well as requiring licensing and bonding of contractors (including performance and payment bonds covering 100% of contract price), as well as compliance with applicable prevailing wage laws in relation to public works projects, all required approvals shall not be unreasonably withheld. CHARTER SCHOOL agrees to name District as an intended third party beneficiary of any contract for the construction of alterations, additions, or improvements made by CHARTER SCHOOL.
3. CHARTER SCHOOL is encouraged to incorporate Collaborative for High-Performance Schools standards into the design of all improvements made under this Agreement and is encouraged to incorporate all editions of the California Green Building Standards Code. In addition to the public notice and participation requirement of CEQA, CHARTER SCHOOL agrees to use reasonable efforts to promote community knowledge and participation in the project and improvements described herein and to designate a community liaison for the project. In order to provide economic opportunity for residents and businesses and stimulate economic development, CHARTER SCHOOL shall make its best efforts to comply with District Administrative Regulation and Board Policy 7115 (“Capital Program / Construction Related Local, Small Local and Small Local Resident Business Enterprise Program, and Board Policy,” though it shall adopt a local hiring and local small business participation program, and agree to at least 25% local hiring/local business participation for all improvements under this Agreement. CHARTER SCHOOL is encouraged to incorporate all sustainability guidelines under the Division of the State Architect’s 7x7x7: Design Energy Water sustainability initiative.

4. All such alterations, additions or improvements that were permitted to be made consistent with Section 6.A and 6.B shall at the expiration or earlier termination of the Agreement become the property of District and remain upon and be surrendered with the Site, unless the District requests its removal as specified in Section 6.B above.
5. All articles of personal property owned by CHARTER SCHOOL or installed by CHARTER SCHOOL at its expense on the Site shall be and will remain the property of CHARTER SCHOOL and may be removed by CHARTER SCHOOL at any time during the Agreement term.
6. CHARTER SCHOOL shall be allowed to post signs that identify its location and name on the Site in a manner that is customary and equivalent to what other District school sites have established, and subject to District's prior approval.

## **7. ENTRY BY DISTRICT**

District reserves the right to enter CHARTER SCHOOL's Dedicated Space, Shared Space, and/or Eligible Improvements to inspect the same, to supply any service to be provided by District to CHARTER SCHOOL hereunder, to submit said Dedicated Space, Shared Space, and/or Eligible Improvements to prospective purchasers or future tenants to post notices of non-responsibility and "for lease" signs, providing always that the entrance to the Dedicated Space, Shared Space, and/or Eligible Improvements shall not be blocked thereby, and further providing that the business of CHARTER SCHOOL shall not be unreasonably interfered with. Except in an emergency or a situation involving a threat to health and safety, the District will provide the CHARTER SCHOOL with at least 24 hours notice prior to entering on the Dedicated Space, Shared Space, and/or Eligible Improvements, and shall comply with the CHARTER SCHOOL's visitor policies when entering upon the Dedicated Space, Shared Space, and/or Eligible Improvements, CHARTER SCHOOL hereby waives any claim for damages for any injury or inconvenience to or interference with CHARTER SCHOOL's business, any loss or occupancy or quiet enjoyment of the Dedicated Space, Shared Space, and/or Eligible Improvements. For each of the aforesaid purposes District shall at all times have and retain a key with which to unlock all of the doors in, upon and about the Dedicated Space, Shared Space, and/or Eligible Improvements, excluding CHARTER SCHOOL's vaults and safes, and District shall have the right to use any and all means which District may deem proper to open said doors in an emergency, in order to obtain entry to the Dedicated Space, Shared Space, and/or Eligible Improvements, and any entry to the Dedicated Space, Shared Space, and/or Eligible Improvements obtained by District by any of said means, or otherwise, shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into or a detainer of the Dedicated Space, Shared Space, and/or Eligible Improvements, or an eviction of CHARTER SCHOOL from the Site or any portion thereof.

## **8. INDEMNITY**

A. CHARTER SCHOOL shall indemnify, hold harmless, and defend the District, its Board Members, trustees, officers, administrators, attorneys, volunteers, employees and agents

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

B. District shall indemnify, hold harmless, and defend CHARTER SCHOOL, its Board Members, trustees, officers, administrators, attorneys, volunteers, employees and agents against and from any and all claims, demands, actions, suits, losses, liability, loss, expenses and costs related to or resulting from or arising from District's negligence or misconduct in connection with the conduct of its business or from District's negligence or misconduct in connection with the any activity, work, or other things done, permitted or suffered by District, its trustees, officers, employees and agents in or about the Site; provided, however, that District shall not have any obligation to indemnify, hold harmless or defend the CHARTER SCHOOL, its trustees, officers, employees and agents against and from any and all claims, demands, actions, suits, losses, liability, expenses and costs for any injury, death or damage to any person or property occurring in, on or about the Site resulting from or arising out of the negligence or misconduct of the CHARTER SCHOOL, its trustees, officers, employees and agents.

## 9. INSURANCE

Without in any way limiting CHARTER SCHOOL's liability pursuant to the "Indemnification" section of this Agreement, CHARTER SCHOOL shall procure and maintain during the full term of this Agreement the following insurance amounts and coverage:

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

1. Comprehensive or commercial general liability insurance with limits not less than Ten Million Dollars (\$10,000,000) each occurrence and \$20,000,000 (twenty million dollars) in the aggregate for bodily injury and property damage.
2. Comprehensive or Business Automobile Liability Insurance with limits not less than Two Million Dollars (\$2,000,000) each occurrence Combined Single Limit for Bodily Injury and Property Damage including coverage for Owned, Non-owned and Hired Vehicles, as applicable. District reserves the right to require CHARTER SCHOOL to maintain limits required of other tenants on District property.



3. Workers' Compensation as required by law, with Employer's Liability limits not less than One Million Dollars (\$1,000,000) each.
4. Professional Liability (Errors and Omissions or Directors and Officers) Insurance with limits not less than Two Million Dollars (\$2,000,000) each occurrence.
5. Crime coverage for losses resulting from employee dishonesty naming the District as a loss payee with limits of no less than \$1,000,000 (one million dollars) per occurrence. Such coverage should be primary and noncontributory to any other coverage available to the District with respect to claims arising out of CHARTER SCHOOL's performance under this Agreement.
6. If any policies are written on a claims-made form, CHARTER SCHOOL agrees to maintain such insurance continuously in force for three years following termination or revocation or termination of the Charter or extend the period for reporting claims for three years following the termination or revocation of the Charter to the effect that occurrences which take place during this time frame shall be insured.
7. CHARTER SCHOOL shall be responsible, at its sole expense, for separately insuring its personal property.
8. CHARTER SCHOOL shall add the District as a named additional insured on its insurance policies related to the Dedicated Space, Shared Space, and/or Proposed Site Development Area, or those potentially covering any risk arising out of CHARTER SCHOOL's improvement of the Dedicated Space, Shared Space, and/or Proposed Site Development Area under this Agreement, to the extent permissible, and shall provide the District with certificates of insurance and endorsement page no later than 30 days prior to the commencement of instruction.

CHARTER SCHOOL bears exclusive responsibility for procuring insurance with respect to the improvements set forth in Section 3.B of this Agreement, including but not limited to liability, automotive, workers compensation, professional liability, and property insurance for any and all personal property and structures erected by the CHARTER SCHOOL.

B. District's Coverage. The District shall maintain the same levels of insurance on the Site (except for the Eligible Improvements) as it would maintain on the Site if it was an existing District school. The District is permissibly self-insured for all losses pursuant to California Education Code Section 17566. The District's election in this regard is sufficient to satisfy any and all legal obligations that require it to provide evidence of liability or property damage.

## **10. ASSIGNMENT AND SUBLETTING**

CHARTER SCHOOL may not assign its rights or sublet any portion of the Dedicated Space, Shared Space, and/or Proposed Site Development Area without the written consent of the District. CHARTER SCHOOL shall not have the right to assign, mortgage, pledge, hypothecate, encumber, or permit any lien to attach to, or otherwise transfer, this Agreement or any interest hereunder, permit any assignment, or other transfer of this Agreement or any interest hereunder by operation of law, sublet the Site or any portion or improvements or any part thereof, or otherwise permit the occupancy or use of the Dedicated Space, Shared Space, and/or Proposed Site Development Area or improvements or any part thereof by any persons other than CHARTER SCHOOL and its employees and contractors (all of the foregoing are hereinafter sometimes referred to collectively as “Transfers” and any person to whom any Transfer is made or sought to be made is hereinafter sometimes referred to as a “Transferee”), without first procuring the written consent of the District. Any Transfer made without the prior written consent of the District shall be null, void and of no effect, and shall constitute a default by CHARTER SCHOOL under this Agreement. Any Transferee approved by the District shall agree at all times to comply with the terms of this Agreement, including, without limitation, the continuous use of the Dedicated Space, Shared Space, and/or Proposed Site Development Area for the purposes set forth in this Agreement. Notwithstanding anything in this Section to the contrary, (i) CHARTER SCHOOL shall have the right to enter into license or concession agreements for the provision of services or goods to the students of CHARTER SCHOOL and/or to the educational programs operated by CHARTER SCHOOL, and (ii) CHARTER SCHOOL shall only have the right to assign this Agreement and all of its rights with respect to the Dedicated Space, Shared Space, and/or Proposed Site Development Area to an affiliate of CHARTER SCHOOL, in each case under clause (i) and (ii) above (A) with the consent of the District and (B) such license or concession agreement or assignment to an affiliate shall not be deemed a Transfer to the extent necessary to obtain funding under the Charter School Facility Grant program under Education Code section 47614.5. CHARTER SCHOOL shall receive approval of any such assignment from the DISTRICT either through a written amendment to this Agreement or a material revision to its Charter, which shall not be unreasonably withheld or delayed.

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

## **11. DEFAULT; REMEDIES**

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

1. Any failure by CHARTER SCHOOL to make payments required to be paid hereunder, where such failure continues for thirty (30) days after receiving written notice of the failure to make payment.
2. Any failure by CHARTER SCHOOL to use and occupy the Dedicated Space, Shared Space, and/or Eligible Improvements for the operation of a charter school as required by this Agreement and/or the authorized charter petition.
3. Any failure by CHARTER SCHOOL to maintain insurance on the Dedicated Space, Shared Space, and/or Eligible Improvements as outlined herein or to provide evidence of insurance as required by this Agreement, and where the failure continues for thirty (30) days after receiving written notice of the failure to make payment or cancellation of insurance.
4. Any failure by CHARTER SCHOOL to observe and perform any other provision of this Agreement to be observed or performed by CHARTER SCHOOL, where such failure continues for thirty (30) days after receipt of written notice thereof by District to CHARTER SCHOOL, unless, however, the nature of the default is such that the same cannot reasonably be cured within said thirty (30) day period. CHARTER SCHOOL shall not be deemed to be in default if CHARTER SCHOOL shall within the thirty (30) day period commence such cure, and by determination of the District, diligently prosecute the cure to completion. In the event that the District has to issue written notice to CHARTER SCHOOL for violation of the same material obligation or provision of this Agreement on three or more occasions in the same fiscal year, the District may commence legal proceedings to terminate this Agreement, or take any other remedy provided in this Agreement, without the necessity of providing written notice to CHARTER SCHOOL.
5. The making by CHARTER SCHOOL of any general assignment or general arrangement for the benefit of creditors; the filing by or against CHARTER SCHOOL of a petition to have CHARTER SCHOOL adjudged bankrupt or of a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against CHARTER SCHOOL, the same is dismissed within 60 days); the appointment of a trustee or receiver to take possession of substantially all of CHARTER SCHOOL's assets located at the Dedicated Space, Shared Space, and/or Proposed Site Development Area or of CHARTER SCHOOL's interest in this Agreement, where possession is not restored to CHARTER SCHOOL within 30 days; or the attachment execution or other judicial seizure of substantially all of CHARTER SCHOOL's assets located at the Dedicated Space, Shared Space, and/or Proposed Site Development Area or of CHARTER SCHOOL's interest in this Agreement, where such seizure is not discharged within 30 days.

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

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

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

1. Maintain this Agreement in full force and effect and recover use payments and other monetary charges as they become due, without terminating CHARTER SCHOOL's right to possession irrespective of whether CHARTER SCHOOL shall have abandoned the Dedicated Space, Shared Space, and/or Proposed Site Development Area. If District elects not to terminate the Agreement, then District shall have the right to attempt to lease the Dedicated Space, Shared Space, and/or Proposed Site Development Area at such rent and upon such conditions and for such a term, and to do all acts necessary to maintain or preserve the Dedicated Space, Shared Space, and/or Proposed Site Development Area as District deems reasonable and necessary without being deemed to have elected to terminate the Agreement, including removal of all persons and property from the Dedicated Space, Shared Space, and/or Proposed Site Development Area; such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of CHARTER SCHOOL. If any such re-letting occurs, then this Agreement shall terminate automatically.
2. Terminate CHARTER SCHOOL's right to possession by any lawful means, in which case this Agreement shall terminate and CHARTER SCHOOL shall immediately surrender possession of the Dedicated Space, Shared Space, and/or Proposed Site Development Area to District. In such event District shall be entitled to recover from CHARTER SCHOOL all damages incurred by District by reason of CHARTER SCHOOL's default, including without limitations thereto, the following: (i) the worth at the time of award of any unpaid use payments which had been earned at the time of such termination; plus (ii) any other damages to which the District would be

entitled under the law. Upon any such re-entry District shall have the right to make any reasonable repairs, alterations or modifications to the Dedicated Space, Shared Space, and/or Proposed Site Development Area, which District in its sole discretion deems reasonable and necessary. As used in (i) above, the “worth at the time of award” is computed by allowing interest at the rate of 10% per year from the date of default. As used in (ii) and (iii) the “worth at the time of award” is computed by discounting such amount at the discount rate of the U.S. Federal Reserve Bank at the time of award plus 1%. The term “use payments”, as used in this Section 11.C.2., shall be deemed to be and to mean the payments to be paid pursuant to Section 3 and all other monetary sums required to be paid by CHARTER SCHOOL pursuant to the terms of this Agreement.

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

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

## **12. CONDEMNATION**

The rights and obligations of the parties shall be determined as follows: If the Dedicated Space, Shared Space, and/or Eligible Improvements are totally taken by condemnation; this Agreement shall terminate on the date of taking. If any portion of the Dedicated Space, Shared Space, and/or Eligible Improvements is taken by condemnation, CHARTER SCHOOL shall have the right to either terminate this Agreement or to continue in possession of the remainder of the Dedicated Space, Shared Space, and/or Eligible Improvements under the terms of this Agreement, provided that the rent shall be reduced on an equitable basis, taking into account the relative value of the portion of the Dedicated Space, Shared Space, and/or Eligible Improvements taken as compared to the portion of the Dedicated Space, Shared Space, and/or Eligible Improvements remaining. Such right to terminate must be exercised by notifying District within ninety (90) days after possession of the part taken by eminent domain. All damages awarded for such taking shall belong to and is the property of District; provided, however, that CHARTER SCHOOL, not District, shall be entitled to any portion of the award to which it is entitled under applicable law.

### **13. DESTRUCTION**

A. If any of the improvements made by CHARTER SCHOOL are damaged by any casualty, CHARTER SCHOOL shall bear exclusive financial responsibility for replacement, but only to the extent that Proceeds (as defined below) are available to pay the costs of rebuilding, storing, repairing and replacing such improvements. CHARTER SCHOOL shall obtain adequate insurance pursuant to Section 9 of this Agreement to cover all structures, and CHARTER SCHOOL's personal property. If the DISTRICT obtains any property insurance for any facility on the Site but outside of the Eligible Improvements, in the event of any act or event damaging or destroying all or a portion of outside of the Eligible Improvements, all proceeds recovered on account of damage or destruction to any facility outside of the Eligible Improvements from said the DISTRICT-acquired insurance shall be considered the property of the DISTRICT, and the DISTRICT shall determine the use of such proceeds, except that if the District elects not to use the proceeds to repair the damaged or destroyed facilities on the Site, CHARTER SCHOOL may elect to terminate this Agreement.

B. The District shall not be liable for any inconvenience or annoyance to CHARTER SCHOOL or its visitors, or injury to CHARTER SCHOOL's business resulting in any way from such damage or the repair thereof provided, that the foregoing sentence shall not apply to the extent the District's negligence or willful misconduct is the cause of such damage or destruction. CHARTER SCHOOL shall not be entitled to any compensation or damages from the District for loss of use of any part of the Site, or CHARTER SCHOOL's personal property used or located at the Dedicated Space, Shared Space, and/or Eligible Improvements, or for any inconvenience or annoyance occasioned by such damage or destruction, provided, that the foregoing sentence shall not apply to any damage or destruction caused by the negligence or willful misconduct of the District or limit the provisions of Section 19 below.

C. Disbursement of Insurance Proceeds. All property insurance proceeds, from policies obtained and maintained by CHARTER SCHOOL, recovered on account of damage or destruction to the improvements made in the Proposed Site Development Area ("the Proceeds") shall be applied to the payment of the cost of repairing, restoring, and replacing the improvements so damaged or destroyed (the "Reconstruction"). All Proceeds shall be deposited with a depository selected by CHARTER SCHOOL and reasonably acceptable to the District and under the exclusive control of CHARTER SCHOOL ("the Depository"). If the Proceeds are insufficient to cover the anticipated cost of Reconstruction, then prior to the commencement of any Reconstruction work CHARTER SCHOOL may deposit with the Depository funds in the amount of such deficiency ("CHARTER SCHOOL's Funds"), or re-scope the repairs so that they can be covered by Proceeds. The Depository shall disburse the Proceeds and CHARTER SCHOOL's Funds, if applicable, during the course of reconstruction in accordance with customary construction disbursements, including a percentage retention that CHARTER SCHOOL and the District shall mutually agree upon.

D. If there are funds remaining after the completion of the Reconstruction work in accordance with the terms of this Agreement, then such funds (after first deducting from such funds the fees and expenses of the Depository) shall be delivered to CHARTER SCHOOL.

If the District voluntarily obtains any of the property insurance on behalf of CHARTER SCHOOL for facilities within the Proposed Site Development Area, or CHARTER SCHOOL is paying or has paid the District for said property insurance policy(ies), all insurance proceeds recovered on account of damage or destruction to the improvements from said insurance policies shall be placed into the Depository for application towards the costs and expenses of Reconstruction. If there are not sufficient funds remaining to pay for the Depository's fees and expenses, CHARTER SCHOOL shall be responsible for the payment of same. The rights hereunder shall be subject to and subordinate to the rights of a Leasehold Mortgagee with regard to rebuilding and insurance proceeds.

E. Waiver of Statutory Provisions. The provisions of this Agreement, including this Section, constitute an express agreement between the District and CHARTER SCHOOL with respect to any and all damage to, or destruction of, all or any part of the improvements, and any statute or regulation of the State of California, including, without limitation, Sections 1932(2) and 1933(4) of the California Civil Code, with respect to any rights or obligations concerning damage or destruction in the absence of an express agreement between the parties, and any other statute or regulation, now or hereafter in effect, shall have no application to this Agreement or any damage or destruction to all or any part of the improvements.

#### **14. HAZARDOUS MATERIALS DISCLOSURE**

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

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

indemnify the District against all claims arising therefrom, subject to and in accordance with Section 8 of the Agreement.

C. CHARTER SCHOOL, at its expense, shall comply with all applicable laws, regulations, rules and orders with respect to its use and occupancy of the Dedicated Space, Shared Space, and/or Proposed Site Development Area, including, without limitation, those relating to health, safety, noise, environmental protection, waste disposal, and water and air quality. The CHARTER SCHOOL shall be responsible for any and all environmental conditions proximately caused by the CHARTER SCHOOL's occupancy of the Dedicated Space, Shared Space, and/or Eligible Improvements.

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

D. 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 Dedicated Space, Shared Space, and/or Proposed Site Development Area 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 Dedicated Space, Shared Space, and/or Proposed Site Development Area, during the Term of the Agreement. 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 Dedicated Space, Shared Space, and/or Proposed Site Development Area 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 Dedicated Space, Shared Space, and/or Proposed Site Development Area 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 Dedicated Space, Shared Space, and/or Proposed Site Development Area pursuant to any Environmental Laws.

## **15. SURRENDER**

A. Surrender of Site. No act or thing done by the District or any agent or employee of District during the Agreement Term shall be deemed to constitute an acceptance by District of a surrender of the Dedicated Space, Shared Space, and/or Proposed Site Development Area.



B. Removal of Personal Property by CHARTER SCHOOL. Upon the expiration of the Term, or upon any earlier termination of this Agreement, CHARTER SCHOOL shall, subject to the provisions of this Article, quit and surrender possession of the Dedicated Space, Shared Space, and/or Proposed Site Development Area to the District in as good order and condition as when CHARTER SCHOOL completed its initial construction, rehabilitation or modernization, reasonable wear and tear excepted. Upon such expiration or termination, CHARTER SCHOOL shall, without expense to the District, remove or cause to be removed from the Dedicated Space, Shared Space, and/or Proposed Site Development Area all debris and rubbish, and such items of furniture, equipment, business and trade fixtures, free-standing cabinet work, movable partitions and other articles of personal property (including those items attached to the Dedicated Space, Shared Space, and/or Proposed Site Development Area but that can easily be removed and the area of attachment repaired) owned by CHARTER SCHOOL.

C. If CHARTER SCHOOL holds over after the expiration of the Term or earlier termination thereof, without the express or implied consent of the District, such holding over shall not constitute a renewal hereof or an extension for any further term, and in such case the CHARTER SCHOOL shall pay during such hold over period 150% of the then current rent for the Dedicated Space, Shared Space, and/or Eligible Improvements (the "Hold Over Rent") as liquidated damages, as the District's damages under such an occurrence would be difficult to ascertain. Nothing contained in this Section shall be construed as consent by the District to any holding over by CHARTER SCHOOL, and the District expressly reserves the right to require CHARTER SCHOOL to surrender possession as provided in this Agreement upon the expiration or other termination of this Agreement. If CHARTER SCHOOL fails to surrender the Dedicated Space, Shared Space, and/or Eligible Improvements upon the expiration or earlier termination of this Agreement, in addition to any other liabilities to the District accruing therefrom, CHARTER SCHOOL shall protect, defend, indemnify and hold the District harmless from all loss, costs (including reasonable attorneys' fees) and liability resulting from such failure, including, without limiting the generality of the foregoing, any claims made by any succeeding CHARTER SCHOOL founded upon such failure to surrender and any losses to the District resulting therefrom subject to and in accordance with Section 8 of this Agreement.

## **16. DISPUTE RESOLUTION**

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

## **17. FINGERPRINTING**

CHARTER SCHOOL and the District, their employees, agents, contractors and subcontractors shall comply with the requirements of Education Code Sections 45125.1 and 45125.2 related to access to the Dedicated Space, Shared Space, and/or Proposed Site Development Area and protection of minor students. CHARTER SCHOOL shall not be required to have volunteers fingerprinted if they are directly supervised at all times by a CHARTER SCHOOL employee with proper criminal background check clearance. Any volunteer or visitor having unsupervised student contact is required to undergo a fingerprint scan and criminal background check under the supervision and/or responsibility (financial and otherwise) of

CHARTER SCHOOL. CHARTER SCHOOL shall also ensure that its employees are in compliance with the tuberculosis testing requirements set forth in Section 49406 of the California Education Code.

**18. SECURITY**

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

**19. WAIVER**

CHARTER SCHOOL agrees to waive its right to seek and/or obtain facilities from the District under Proposition 39, or any other provision of law, beginning at such time as the CHARTER SCHOOL's students occupy the Eligible Improvements, unless the CHARTER SCHOOL is not able to construct the Eligible Improvements, in which case the CHARTER SCHOOL shall still be entitled to request facilities from the District pursuant to Proposition 39. If (i) the CHARTER SCHOOL can no longer utilize some or all of the Dedicated Space, Shared Space, and/or Eligible Improvements for school instruction as intended by the Agreement due to damage, destruction or condemnation, or (ii) this Agreement is terminated for any reason other than a default by CHARTER SCHOOL, CHARTER SCHOOL may exercise all rights under Proposition 39, and the District shall use best efforts to provide facilities under the terms of Proposition 39. In the case where the CHARTER SCHOOL seeks Prop. 39 facilities pursuant to (i), any rights exercised under Prop. 39 are limited to the number of in-District students displaced by said damage, destruction or condemnation. Moreover, if the CHARTER SCHOOL can no longer utilize some or all of the Dedicated Space, Shared Space, and/or Eligible Improvements for school instruction as intended by the Agreement due to damage, destruction or condemnation, District shall make best efforts to provide temporary space for the operation of CHARTER SCHOOL for those students displaced. Except as otherwise stated herein, CHARTER SCHOOL agrees to waive any and all claims, causes of action, and other legal actions against the District arising out of CHARTER SCHOOL's occupation of the Dedicated Space, Shared Space, and/or Eligible Improvements based on Proposition 39. Nothing in this provision shall bar the application of Section 8 ("Indemnification") of this Agreement.

Waiver and Release. With regard to the waiver of CHARTER SCHOOL's right to seek and/or obtain facilities from the District for LPS Oakland R&D under Proposition 39 for the Term except under certain circumstances as set forth in this Section 19, LPS, its affiliated entities and supporting organizations, and its respective present and former officers, directors, employees, agents, representatives, successors and assigns, and each of them does hereby fully and finally

settle, release, relieve, acquit and forever discharge the District and the directors, employees, administrators, assigns, agents, representatives, attorneys, and insurers, from any and all claims, claims for indemnification or contribution, complaints, causes of action, demands, liabilities, losses, or damages, including attorneys' fees and costs, experts' and consultants' fees and costs, known or unknown, which LPS may now or hereafter have against the District and the directors, employees, administrators, assigns, agents, representatives, trustees, attorneys, insurers, experts and consultants, arising out of the District's obligations to provide LPS with reasonably equivalent facilities except as set forth herein. LPS acknowledges that they are familiar with Section 1542 of the California Civil Code which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her, must have materially affected his or her settlement with the debtor.

Except as provided for specifically in this Agreement, LPS waives and relinquishes any and all rights and benefits which they may have under, or which may be conferred upon them by the provisions of Section 1542 of the California Civil Code, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the subject matter of this Agreement. In connection with such waiver and relinquishment, LPS hereby acknowledges that it is aware that it or its attorneys may hereafter discover claims or facts in addition to or different from those which they now know or believe to exist with respect to the subject matter of this Agreement, but that it is the intention of the Parties to this Agreement to hereby fully, finally and forever waive said claims, whether known or unknown, suspected or unsuspected, which concern or arise out of the District's obligations, to provide Proposition 39 facilities to LPS except as set forth herein.

## **20. MISCELLANEOUS**

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

B. Captions; Attachments; Defined Terms, Amendments.

1. The captions of the paragraphs of this Agreement are for convenience only and shall not be deemed to be relevant in resolving any question of interpretation or construction of any section of this Agreement.
2. Exhibits attached hereto, and addenda and schedules initialed by the parties, are deemed by attachment to constitute part of this Agreement and are incorporated herein.
3. This Agreement may only be amended in a writing that specifically indicates its intent to modify and/or amend this Agreement. All amendments shall only be effective if executed by both parties.

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

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

E. Binding Effect; Choice of Law. The parties hereto agree that all provisions hereof are to be construed as both covenants and conditions as though the words importing such covenants and conditions were used in each separate paragraph hereof. Subject to any provisions hereof restricting assignment or subletting by CHARTER SCHOOL, all of the provisions hereof shall bind and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns. The laws of the State of California shall govern this Agreement. In the event of any suit or proceeding arising out of or related to this Agreement, Alameda County Superior Court of California will have exclusive venue and the parties will submit to the jurisdiction of that court.

F. 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.

No provision of this Agreement shall be deemed waived by either party hereto unless expressly waived in a written instrument signed by a person on behalf of the party waiving the provision. The waiver by either party hereto of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of same or any other term, covenant or condition herein contained.

The subsequent acceptance of any fee or other amounts due and owing under this Agreement by the District shall not be deemed to be a waiver of any preceding breach by CHARTER SCHOOL of any term, covenant or condition of this Agreement. No receipt of monies by the District from CHARTER SCHOOL after the termination of this Agreement shall in any way alter the length of the Term or of CHARTER SCHOOL's right of possession hereunder, or after the giving of any notice shall reinstate, continue or extend the Term or affect any notice given CHARTER SCHOOL prior to the receipt of such monies, it being agreed that after the service of notice or the commencement of a suit, or after final judgment for possession of the Site, the District may receive and collect any fees or other amounts due and owing under this Agreement, and the payment of said amount(s) shall not waive or affect said notice, suit or judgment.

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

H. Notices. All Notices or demands of any kind required or desired to be given by District or CHARTER SCHOOL hereunder shall be in writing and shall be deemed delivered three (3) business days after depositing the notice or demand in the United States mail, certified or registered, postage prepaid, addressed to the District or CHARTER SCHOOL respectively at the following addresses:

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

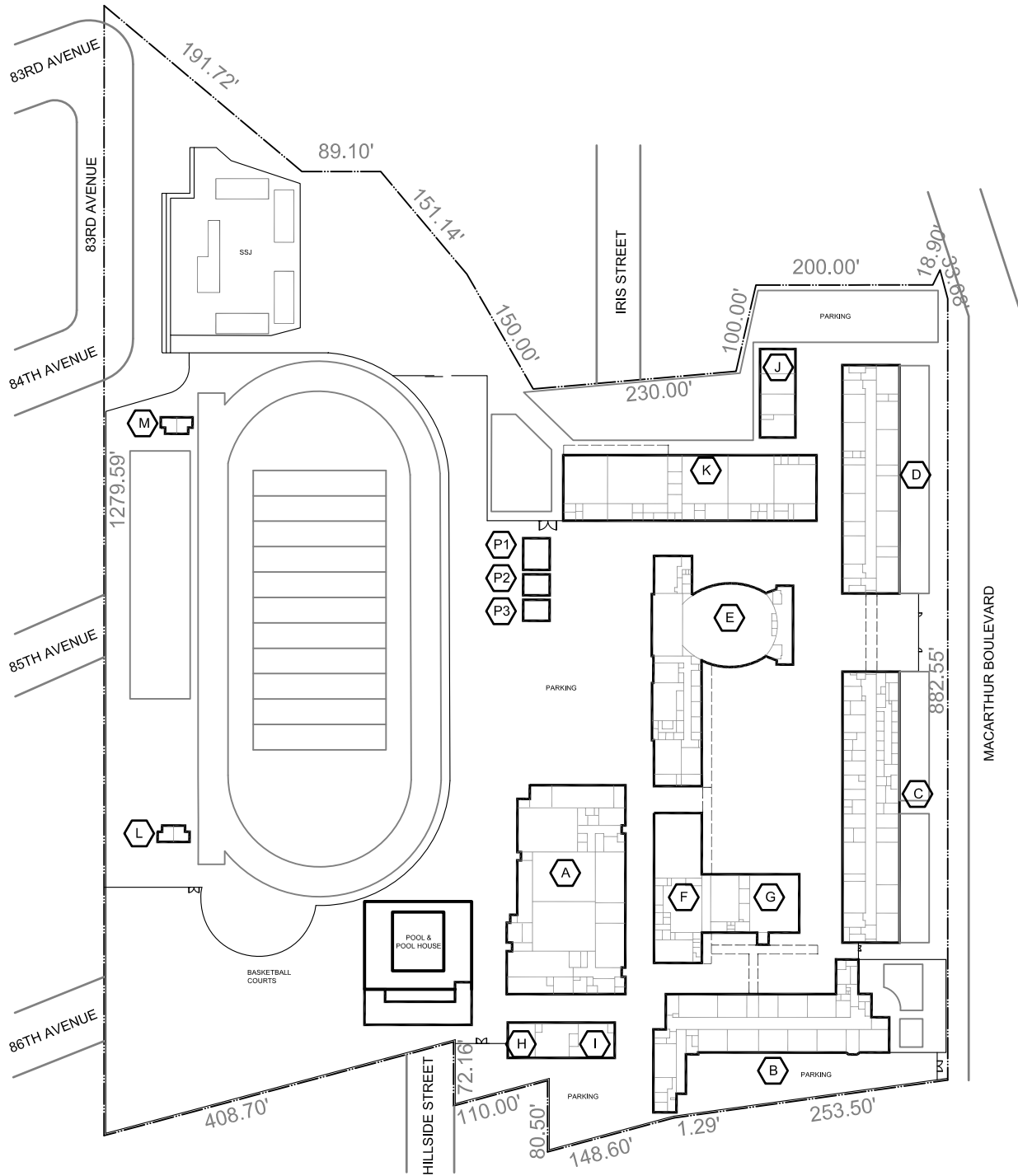
Chief Business Officer  
Leadership Public Schools  
99 Linden Street  
Oakland, CA 94607  
Telephone: (510) 830-3780  
Fax: (510) 225-2575

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

J. Contract Contingent on Governing Board Approval. District shall not be bound by the terms of this Agreement until it has been formally approved by District's Governing Board.

APPROVED AS TO FORM:  Date: 5/10/19  
Edward J. Sklar  
Legal Counsel

# Exhibit A



## SITE PLAN 301 - CASTLEMONT COMMUNITY OF SMALL SCHOOLS

8601 MACARTHUR BOULEVARD, OAKLAND, CA 94605



Date: 1/18/2013

Scale: 1"=180'-0"