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

Memo

To Board of Education

From Dr. Silke Bradford, Director – Quality Diverse Providers
Andrea Epps, Office of the General Counsel

Board Meeting Date December 13, 2017

Subject **Field Use Agreement between the District and Aspire ERES Charter School for use of a portion of the athletic field at Fremont High School Located at 4610 Foothill Boulevard, Oakland, CA**

Action Requested **Approval by the Board of Education of the Field Use Agreement between the District and Aspire ERES Charter School for use of a portion of the athletic field at Fremont High School Located at 4610 Foothill Boulevard, Oakland, CA.**

Background and Discussion During completion of its own private facility, Aspire ERES rents a private facility adjacent to Fremont High School. The rented facility does not have any space for ERES to offer physical education courses to its students. In lieu of a Proposition 39 offer of facilities, Aspire ERES agrees that the educational needs of their students may be met by the use of the first thirty (30) yards of the football field at Fremont High School for approximately one hour per day four days a week.

Recommendation Approval by the Board of Education of the Facilities Use Agreement between District and Aspire ERES Charter School for use of the first thirty (30) yards of the football field at Fremont High School located at 4610 Foothill Boulevard, Oakland, CA.

Fiscal Impact Approximately \$7,000 in annual revenue.

Attachment

- Facilities Use Agreement between District and Aspire ERES Charter School



CONTRACT JUSTIFICATION FORM

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

Legislative File ID No. 17-2324

Department: Office of the General Counsel

Vendor Name: Aspire ERES Charter School

Contract Term: Start Date: October 1, 2017 End Date: December 31, 2017

Annual Cost: \$ revenue \$7,000 annual

Approved by: General Counsel

Is Vendor a local Oakland business? Yes No

Why was this Vendor selected?

Aspire ERES Charter School is located at 1936 Courtland Avenue 94601. Based on its physical proximity, it is beneficial to temporarily rent a portion of Fremont High School's athletic field in order to offer physical education courses to its students.

Summarize the services this Vendor will be providing.

N/A

Was this contract competitively bid? Yes No

If No, answer the following:

1) How did you determine the price is competitive?

N/A

2) Please check the competitive bid exception relied upon:

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

CHARTER SCHOOL FACILITIES AGREEMENT

THIS CHARTER SCHOOL FACILITIES AGREEMENT (“Agreement”) effective October 1, 2017 through December 31, 2017, is entered into by and between the Oakland Unified School District, a California Public School district (hereinafter referred to as the “District”) and the Aspire Public Schools, a California non-profit public benefit corporation (hereinafter referred to as “CHARTER SCHOOL”), for use of specific portions of the facilities located at 4610 Foothill Boulevard, Oakland, CA 94601 (hereinafter referred to as “Site”).

RECITALS

WHEREAS, the District agrees to provide facilities to the CHARTER SCHOOL for the limited purpose of conducting physical education course for its students, and the CHARTER SCHOOL intends to utilize the limited portion of the Site offered for such purposes in lieu of an allocation of facilities pursuant to California Proposition 39 for the 2017-2018 school year (Education Code section 47614) and its implementing regulations (“Proposition 39”).

WHEREAS, the parties intend that use of the Site for the specified purpose be a pilot program for the first semester of the 2017-2018 school year and Parties will meet on or before December 15, 2017 to discuss whether to extend this Agreement through June 30, 2018.

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 a specific portion of the Site school site located at 4610 Foothill Boulevard, Oakland CA, described more fully in Exhibit “A” attached hereto, subject to and upon all of the terms, covenants, and agreements hereinafter set forth. It is the intent of the parties that this written agreement supersede all previous agreements, written or unwritten, related to the use and occupation of the Site by the CHARTER SCHOOL.

0. APPLICABILITY

This Agreement shall only relate to District’s provision of facilities for CHARTER SCHOOL’s ERES Academy charter for the 2017-2018 school year. Nothing contained herein shall restrict, limit or otherwise affect CHARTER SCHOOL’s rights to District-provided facilities for its other charters nor shall the Agreement obligate CHARTER SCHOOL or District to take or refrain from taking any action related to its other charters.

1. ALLOCATED SPACE AT SITE

The CHARTER SCHOOL shall have access to the first thirty (30) yards of the football field ("Allocated Space") located at Fremont High School at 4610 Foothill Boulevard, Oakland, CA 94601. This allotment of space shall be set forth in Exhibit "A" hereto.

2. TERM

The term of this Agreement shall be for one semester of the 2017-2018 school year, with an option to extend for one additional semester upon written agreement by both Parties.

This Agreement terminates automatically upon revocation, nonrenewal or termination of the charter. CHARTER SCHOOL shall have no obligations under this Agreement as of the effective date of the termination, except for those obligations that survive the termination of this Agreement.

No later than DECEMBER 15, 2017, CHARTER SCHOOL shall contact the District to request a meeting with the Fremont High School Site Leadership or his/her designee to discuss whether the parties desire to extend this agreement for the second semester of the 2017-2018 school year.

The District shall have the right to terminate this Agreement immediately should CHARTER SCHOOL fail to comply with the Facilities Use Terms and Conditions or with any applicable law. If the District seeks to terminate the Agreement for any other reason, it shall provide forty five (45) days' notice of termination and shall return any unused portions of the Facilities Usage Fees.

3. CHARTER SCHOOL'S OBLIGATIONS

A. PAYMENTS

1. CHARTER SCHOOL shall pay the following rate of \$5,000 per semester for use and occupation of the Allocated Space at the Site.

2. Payments for the first semester of the 2017-2018 school year shall be pro-rated based upon the date of occupancy. A semester is the equivalent of five (5) months; thus, pro-rated payments shall be valued at \$1,000 per month.

3. Payment(s) shall be made in one lump sum within thirty (30) days of the effective date of this Agreement. 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 payment due and interest shall accrue after the payment is thirty (30) days late at the rate of 5% (five percent) per annum. The payment of late fees and/or interest shall not by itself excuse or cure any default by CHARTER SCHOOL, and shall not estop the District from commencing legal action to regain possession of the Allocated Space based on default by CHARTER SCHOOL under Section 11 of this Agreement.

4. Should the Parties extend this Agreement for a second semester, a lump sum payment of \$5,000 shall be due on or by January 15, 2018. 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 payment due and interest shall accrue after the payment is thirty (30) days late at the rate of 5% (five percent) per annum. The payment of late fees and/or interest shall not by itself excuse or cure any default by CHARTER SCHOOL, and shall not estop the District from commencing legal action to regain possession of the Allocated Space based on default by CHARTER SCHOOL under Section 11 of this Agreement.

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

4. USE

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

4.2 Use. The Allocated Space at the Site shall be used by CHARTER SCHOOL for the sole purpose of offering a physical education course to students attending CHARTER SCHOOL and for no other purpose without the prior written consent of District. CHARTER SCHOOL's use of Allocated Space is subject to the following terms:

- CHARTER SCHOOL shall use Allocated Space to provide physical education for its sixth, seventh, and eighth grade students.
- CHARTER SCHOOL shall not have more than 25 students using Allocated Space at one time.
- CHARTER SCHOOL shall ensure a minimum of two adults are present to supervise no more than 25 students when using Allocated Space.
- CHARTER SCHOOL shall have a key to access the locked gate adjacent to Allocated Space. CHARTER SCHOOL shall ensure that gate is properly locked after every entry and exit. Failure to lock the gate may result in termination of this Agreement.
- CHARTER SCHOOL shall be solely responsible for the safety, property, and possessions of its students and staff.
- CHARTER SCHOOL shall not cause a disruption to District operated programs at Site during its use of the Allocated Space.
- CHARTER SCHOOL shall use Allocated Space on the following school days at the specified time:

DAY	TIME
Monday	9:25am-10:20am
Tuesday	9:25am-10:20am
Wednesday	9:55am-11:20am
Friday	9:25am-10:20am

CHARTER SCHOOL ACKNOWLEDGES AND AGREES (I) THAT, EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH HEREIN, IN ENTERING INTO THIS AGREEMENT, THE CHARTER SCHOOL HAS NOT RELIED ON ANY REPRESENTATION, STATEMENT, OR WARRANTY BY DISTRICT, OR ANYONE ACTING FOR OR ON BEHALF OF DISTRICT, AND THAT ALL MATTERS CONCERNING THE SITE HAVE BEEN INDEPENDENTLY VERIFIED BY CHARTER SCHOOL; (II) THAT CHARTER SCHOOL IS TAKING/CONTINUING POSSESSION OF THE SITE BASED ON ITS OWN INSPECTION AND EXAMINATION THEREOF AND ON AN "AS IS" BASIS; AND (III) THAT DISTRICT MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF CONDITION, HABITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE WITH RESPECT TO THE SITE.

4.3 Uses Prohibited.

(a) CHARTER SCHOOL shall not do or permit anything to be done in or about the Site nor bring or keep anything therein which will, by itself, in any way increase the existing insurance rate or affect any fire or other insurance upon the Site or any of its contents, or cause a cancellation of any insurance policy covering said Site or any part thereof or any of its contents, nor shall CHARTER SCHOOL sell or permit to be kept, used, or sold in or about said Site any articles which may be prohibited by a standard form policy of fire insurance.

(b) CHARTER SCHOOL shall not do or permit anything to be done in or about the Site that will in any way obstruct or interfere with the rights of the District or injure or annoy District or use or allow the Site to be used for any unlawful or objectionable purpose nor shall either party cause, maintain or permit any nuisance in or about the Site. CHARTER SCHOOL shall not commit or suffer to be committed any waste in or upon the Site.

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

5. MAINTENANCE AND REPAIRS

5.1 Maintenance and Repairs.

The ongoing daily operations and maintenance of the facilities and equipment on the Site is the responsibility of District. CHARTER SCHOOL and CHARTER SCHOOL's agents, employees, students, visitors and invitees shall observe and comply fully and faithfully with all policies, rules, and regulations adopted by the District for the maintenance, care, protection, cleanliness,

and operation of the Site, and the facilities, furnishings and equipment thereon, and shall comply with all applicable laws.

6. INDEMNITY

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

District shall indemnify, hold harmless, and defend Charter School, its trustees, officers, employees and agents from and against any and all demands, claims, causes of action, fines, penalties, damages, losses, liabilities (including, but not limited to, strict liability), judgments, and expenses (including, without limitation, reasonable attorneys' fees and expenses, filing and other court costs) incurred in connection with or arising out of the sole omissions and gross negligence of the District, its trustees, officers, employees, and agents.

7. INSURANCE

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

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

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

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

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

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

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

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

g. CHARTER SCHOOL shall add the District as a named additional insured on its insurance policies related to the Site, or those potentially covering any risk arising out of CHARTER SCHOOL's improvement of the site under this Agreement, and shall provide the District with certificates of insurance and endorsement page no later than 30 days prior to the commencement of instruction.

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

8. ASSIGNMENT AND SUBLETTING

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

9. DEFAULT; REMEDIES

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

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

(b) Any failure by CHARTER SCHOOL to use the Allocated Spaced as required by Provision 4.2 of this Agreement;

(c) Any failure by CHARTER SCHOOL to maintain proper insurance and where the failure continues for thirty (30) days after receiving written notice of the failure to make payment or cancellation of insurance;

(d) 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.

(e) If CHARTER SCHOOL's charter is not renewed, or is revoked, or terminated for any reason or CHARTER SCHOOL ceases to use the Allocated Space for the charter school purpose delineated in Provision 4.2.

9.2 Remedies: If CHARTER SCHOOL commits any default or breach then District may, at any time thereafter without limiting District in the exercise of any right or remedy at law or in equity which District may have by reason or such default or breach:

(a) Maintain this Agreement in full force and effect and recover use payments and other monetary charges as they become due, without terminating CHARTER SCHOOL's right to use.

(b) Terminate CHARTER SCHOOL's right to use by any lawful means, in which case this Agreement shall terminate and CHARTER SCHOOL shall immediately surrender possession of the keys and access to the Allocated Space 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) the worth at the time of award of the amount by which the unpaid use payments which would have been earned after termination until the time of award exceeds the amount of such loss that is proved could have been reasonably avoided; plus (iii) the worth at the time of award of the amount by which the unpaid use payments for the balance of the term after the time of award exceeds the amount of such loss that is proved could be reasonably avoided.

10. CAPTIONS; ATTACHMENTS; AMENDMENTS

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

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

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

11. ENTIRE AGREEMENT

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

12. 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.

13. 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. The Alameda County Superior Court shall have jurisdiction over any state court litigation initiated to enforce or interpret this Agreement.

14. 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.

15. SMOKING

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

16. NOTICES

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

Office of the General Counsel
Oakland Unified School District
1000 Broadway, Suite 680

Oakland, CA 94607

Chief Financial Officer and General Counsel
Aspire Public Schools
1001 22nd Avenue
Oakland, CA 94606

17. 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.

District shall not be bound by the terms of this Agreement until it has been formally approved by OUSD's Governing Board. This Agreement shall be deemed to be approved when it has been signed by the Board of Education, and/or the Superintendent as its designee.

18. DISPUTE RESOLUTION

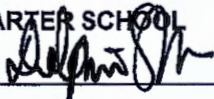
In the event of any disagreement as to the terms of this Agreement, the parties shall utilize the Dispute Resolution process set forth in the CHARTER SCHOOL's Charter.

19. FINGERPRINTING

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

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

CHARTER SCHOOL



Oakland Unified School District

Name Delphine Sherman
CFD
Title _____

Date 10/19/17

APPROVED AS TO FORM

D'Lonra Ellis
General Counsel, Aspire

James Harris,
[Signature]
President, Board of Education

Date 12/14/17

[Signature]
Kyla Johnson-Trammell, Superintendent
Secretary, Board of Education

Date 12/14/17

APPROVED AS TO FORM

[Signature]
Andrea Epps
Staff Attorney

Date 10/31/2017