

| | |
|--|---------|
| Board Office Use: Legislative File Info. | |
| File ID Number | 16-0703 |
| Introduction Date | 4-13-16 |
| Enactment Number | |
| Enactment Date | |



OAKLAND UNIFIED
SCHOOL DISTRICT

Community Schools: Thriving Students

Memo

To Board of Education
From Jacqueline Minor, General Counsel
Board Meeting Date April 13, 2016
Subject **Amendment To Facilities Use Agreement between District and East Bay Innovation Academy Charter School For Use Of The Marshall Campus Located At 3400 Malcolm Avenue, Oakland, CA**

Action Requested **Approval by the Board of Education of the Amendment To Facilities Use Agreement between District and East Bay Innovation Academy Charter School ("EBIA") for Use of the Marshall Campus Located At 3400 Malcolm Avenue, Oakland, CA**

Background And Discussion The District is amending the existing Facility Use Agreement for the use of the Marshall Campus, located at 3400 Malcolm Avenue, Oakland, CA for an option year – 2016-17 at the Facility Fee rate of \$104,226.

Recommendation **Approval by the Board of Education of the Amendment To Facilities Use Agreement between District and East Bay Innovation Academy Charter School For Use Of The Marshall Campus Located At 3400 Malcolm Avenue, Oakland, CA**

Fiscal Impact Approximately \$104,226 in revenue

Attachments

- Amendment
- Facilities Use Agreement Between District and EBIA



CONTRACT JUSTIFICATION FORM

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

Legislative File ID No. 16-0703

Department: Legal

Vendor Name: East Bay Innovation Academy Charter School

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

Annual Cost: \$ 104,226 in revenue

Approved by: General Counsel

Is Vendor a local Oakland business? Yes No

Why was this Vendor selected?

Renewal of agreement for vendor to use facilities

Summarize the services this Vendor will be providing.

Vendor will use the Marshall Campus located at 3400 Malcolm Avenue, Oakland.

Was this contract competitively bid? Yes No

If No, answer the following:

1) How did you determine the price is competitive?

N/A Revenue

2) Please check the competitive bid exception relied upon:

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

**AMENDMENT TO THE
FACILITIES USE AGREEMENT
BETWEEN OAKLAND UNIFIED SCHOOL DISTRICT AND
EAST BAY INNOVATION ACADEMY CHARTER SCHOOL
FOR USE OF THE MARSHALL CAMPUS LOCATED AT 3400
MALCOLM AVENUE, OAKLAND , CA**

By Enactment # 15-1166 on June 24, 2015, the Board of Education approved the Facilities Use Agreement between OAKLAND UNIFIED SCHOOL DISTRICT AND EAST BAY INNOVATION ACADEMY CHARTER SCHOOL ("EBIA") FOR USE OF THE MARSHALL CAMPUS LOCATED AT 3400 MALCOLM AVENUE, OAKLAND , CA for the term from July 1, 2015 through June 30, 2016, with an option to extend for one additional year.

By this Amendment, the Parties hereby agree to exercise the option to extend the term for the 2016-17 school year, with the extension ending effective July 1, 2017. During the extension, the facility use fee is \$104,226, payable as provided in the Facility Use Agreement.

Except as expressly provided in this Amendment, the original Facility Use Agreement is unchanged.

This Amendment, together with prior the Agreement constitute the entire understanding and agreement between the Parties. All understandings, agreements, covenants, representations and warranties, express or implied, oral or written between are contained and merged herein. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made by or between the Parties concerning the subject matter hereof. This is an integrated agreement. It may not be altered, modified or otherwise changed in any respect except in a writing signed by each party.

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

<https://www.sam.gov/portal/public/SAM>

IN WITNESS WHEREOF, the parties hereto agreed to be bound and have executed this Amendment to the Agreement originally approved by the Oakland Unified School District Board of Education on June 24, 2015.

EAST BAY INNOVATION ACADEMY CHARTER SCHOOL

OAKLAND UNIFIED SCHOOL DISTRICT

President, Board of Education
Oakland Unified School District

Secretary, Board of Education
Oakland Unified School District

Approved as to Form

Jacqueline Minor, General Counsel

**FACILITIES USE AGREEMENT
BETWEEN OAKLAND UNIFIED DISTRICT AND
EAST BAY INNOVATION ACADEMY**

This FACILITIES USE AGREEMENT ("Agreement") is made and entered into this 1st day of July, 2015 ("Effective Date"), by and between OAKLAND UNIFIED SCHOOL DISTRICT, a California public school district ("District") and East Bay Innovation Academy, a California Charter School ("EBIA" and/or "CHARTER SCHOOL"). The District and EBIA may be referred to herein as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, this Agreement is entered into by the Parties as an "in-lieu" facilities use agreement pursuant to the requirements of California Education Code section 47614, which allows the District and CHARTER SCHOOL to collaborate on the terms for use of the Premises, outside of the provisions of Proposition 39 and its implementing regulations ("Prop 39"), including the duration of the Agreement beyond the one (1) year Prop 39 term;

WHEREAS, District is the owner of certain real property located at 3400 Malcolm Avenue, Oakland, CA ("Premises"), as further depicted on the attached **Exhibit "A"**; and

WHEREAS, CHARTER SCHOOL requires classrooms and facilities for its in-district students for the purposes of operating its educational program in accordance with the Charter School's charter ("Program" or "Activities") which includes the provision of recreational Activities on the Premises for students residing in the District as further defined herein; and

WHEREAS, as part of its Program and under this Agreement, CHARTER SCHOOL shall have exclusive use of the Premises for its own educational purposes;

WHEREAS, under the provisions of Education Code section 17534 (b), the requirement that the term of any agreement for joint use must not exceed five (5) years, shall not apply when capital outlay improvements are made on school property for park and recreation purposes by public entities and nonprofit corporations such as CHARTER SCHOOL; and

WHEREAS, CHARTER SCHOOL may in the future elect to construct significant capital outlay improvements on the Premises for recreation purposes, and thereby be entitled, subject to Board of Education approval, to exercise options to extend the term of this Agreement beyond the current one (1) year term.

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

AGREEMENT

1. Use of Premises. District hereby leases to CHARTER SCHOOL, and CHARTER SCHOOL hereby leases from District, the Premises for the Term and upon the covenants and conditions set forth in this Lease. District agrees to allow use of the Premises by CHARTER SCHOOL for purposes of operating a public school providing educational instruction to public school students

consistent with the terms of CHARTER SCHOOL's Charter Petition, and incidental related uses ("Activities").

- 1.1. District agrees to allow use of the Premises for the sole purpose of operating CHARTER SCHOOL's educational program in accordance with all applicable federal, state and local regulations relating to the Premises, and to the operation of CHARTER SCHOOL's educational program, including summer school and programs procured by CHARTER SCHOOL through third party entities, e.g. after-school program providers. CHARTER SCHOOL shall not use the Premises for any use other than that specified in this Agreement without the prior written consent of District.
- 1.2. CHARTER SCHOOL shall provide appropriate site supervision, including, but not limited to, campus supervisors, administrators and police, at a level no less than what the District provides.
- 1.3. CHARTER SCHOOL shall not commit, or suffer to be committed, any waste upon the Premises, or allow any sale by auction upon the Premises, or allow the Premises to be used for any unlawful purpose, or place any loads upon the floor, walls or ceiling which endanger the structure, or place any harmful liquids in the plumbing, sewer or storm water drainage system of the Premises. No waste materials or refuse shall be dumped upon or permitted to remain upon any part of the Premises except in trash containers designated for that purpose.
- 1.4. Any uses which involve the serving and/or sale of alcoholic beverages and the conducting of games of chance are prohibited on the Premises. CHARTER SCHOOL shall comply with District-wide policy prohibiting the use of tobacco products on the Premises at all times.
- 1.5. CHARTER SCHOOL shall not use or permit the use of the Premises or any part thereof for any purpose inconsistent with a public educational facility.
- 1.6. CHARTER SCHOOL shall require all invitees and guests to use the Premises only in conformance with the permitted use and with applicable governmental laws, regulations, rules and ordinances. During the Term, CHARTER SCHOOL shall comply with the all District policies and procedures regarding the use and occupation of District facilities, including but not limited to Campus Security and Disruptions. The District's most recent policies and procedures can be accessed at <http://www.ousd.k12.ca.us/domain/68>.
- 1.7. CHARTER SCHOOL shall not do or permit anything to be done in or about the Premises nor bring or keep anything therein which will in any way increase the District's existing insurance rate or affect any fire or other insurance upon the Premises, or cause a cancellation of any insurance policy covering the Premises or any part thereof or any of the contents of the Premises, nor shall the CHARTER SCHOOL sell or permit to be kept, used or sold in or about the Premises any articles which may be prohibited by a standard form policy of fire insurance.

- 1.8. CHARTER SCHOOL agrees to comply with the provisions of the Civic Center Act (Education Code §§ 38130, *et seq.*) to make the Premises accessible to members of the community. The Parties understand that the Premises is to be used primarily for educational programs and activities and as such, any use of the Premises by the Community shall not interfere with CHARTER SCHOOL's educational program.

2. Condition of Premises.

- 2.1. District shall not be required to make or construct any alterations including structural changes, additions or improvements to the Premises, except as provided for in Section 7.2, below.
- 2.2. CHARTER SCHOOL acknowledges that neither District nor District's agents have made any representation or warranty as to the suitability of the Premises for CHARTER SCHOOL's Activities. Any agreements, warranties or representations not expressly contained herein shall in no way bind either District or CHARTER SCHOOL, and District and CHARTER SCHOOL expressly waive all claims for damages by reason of any statement, representation, warranty, promise or agreement, if any, not contained in this Agreement.

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

4. Term. The Term shall be one (1) year, for the period from July 1, 2015 to June 30, 2016, with an option to renew for one (1) additional year term, subject to earlier termination if EBIA's program ceases to operate after a revocation, nonrenewal or surrender of the charter to the granting agency, and all appeals have been exhausted. If the Parties wish to renew this Agreement after expiration of the option term, this can only be done by a separate writing executed by the Parties that complies with Education Code section 17534(a) or 17534(b) (which requires capital outlay improvements by EBIA to exceed the term beyond five (5) years), as applicable.

5. Surrender. On the last day of the Term hereof, or on sooner termination of this Agreement, CHARTER SCHOOL shall surrender to District the Premises and any then existing improvements in good order, condition and repair, reasonable wear and tear excepted, free and clear of all liens, claims and encumbrances, subject to sections 10 and 11 below. The condition of the Premises shall be similar to that existing as of the Commencement Date excepting normal ordinary wear and tear and any structural improvements made by CHARTER SCHOOL or District subsequent to the Commencement Date. This Agreement shall operate as a conveyance and assignment to District of any improvements identified by District to remain on the Premises. To the extent required by sections 10 and 11 below, CHARTER SCHOOL shall remove from the Premises all of CHARTER SCHOOL's personal property, trade fixtures, and any improvements made by CHARTER SCHOOL which CHARTER SCHOOL and District agreed would be removed by CHARTER SCHOOL. All property not so removed shall be deemed abandoned by CHARTER SCHOOL. If the Premises are not so surrendered at the termination of this

Agreement in accordance with sections 10 and 11 below, CHARTER SCHOOL shall indemnify District against loss or liability resulting from delay by CHARTER SCHOOL in so surrendering the Premises including, without limitation, any claims made by any succeeding tenant or losses to District due to lost opportunities to obtain succeeding tenants.

6. Facility Use Fee.

- 6.1 For 2015-16 and the option year 2016-17, the fee shall be \$3.80 per square foot, based upon 27,428 square feet or a total \$104,226 per year.
- 6.1. In the event CHARTER SCHOOL constructs or installs recreational improvements or other school facilities, the Parties may agree to negotiate a reduction in the Rent. The District shall only consider a reduction in the Rent for sums equal to the actual costs directly attributable to purchase, installation, and construction of the additional recreational improvements or facilities. The actual costs shall not include any of the costs of permits, inspections, environmental clearance, and/or maintenance of the additional recreational improvements or facilities, and shall not include any costs for overhead, or CHARTER SCHOOL staffing, as applicable, or other indirect expenses incurred by CHARTER SCHOOL, as applicable, pursuant to this Agreement.
- 6.2. Rent shall be paid quarterly and shall be due as follows:
- July 1 – 25%
 - October 1 -25%
 - January 1 -25%
 - April 1 - 25%
- 6.3. Rent does not include the utility charges for the Premises. CHARTER SCHOOL shall pay for all utilities charges for the Premises. 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.
- 6.4. CHARTER SCHOOL shall pay promptly to District, the Rent when due during the Term, without deduction, setoff, prior notice or demand.
- 6.5. CHARTER SCHOOL acknowledges that late payment by CHARTER SCHOOL to District of the Rent and other sums due hereunder will cause District to incur costs not contemplated by this Agreement, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, if District does not receive any installment of Rent or any other sum due from CHARTER SCHOOL by 4:00 p.m. within ten (10) days after such amount is due, CHARTER SCHOOL shall pay to District, as additional rent, a late charge equal to five percent (5%) of such overdue amount or the maximum amount allowed by law, whichever is less. The Parties hereby agree that such late charges represent a fair and reasonable estimate of the costs District will incur by reason of late payment by CHARTER

SCHOOL. Acceptance of any late charge by District shall in no event constitute a waiver of CHARTER SCHOOL's default with respect to the overdue amount, nor prevent District from exercising any of its other rights and remedies granted hereunder.

- 6.6. Taxes; Assessments. CHARTER SCHOOL shall pay any assessment on the Premises, including any improvements which CHARTER SCHOOL constructs or causes to be constructed on the Premises, whether real estate, general, special, ordinary or extraordinary, or rental levy or tax, improvement bond, and/or fee imposed upon or levied against the Premises or CHARTER SCHOOL's legal or equitable interest created by this Agreement, and the taxes assessed against and levied upon CHARTER SCHOOL's alterations and utility installations that may be imposed by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Premises address and where the proceeds so generated are applied by the city, county or other local taxing authority having jurisdiction. The provisions of this Section shall survive the expiration or earlier termination of this Agreement.

7. Maintenance and Repairs

- 7.1. **Routine Repair, Cleaning and General Maintenance.** Other than custodial services, which the Charter School may elect to self-procure, District shall be responsible for the routine repair, cleaning and general maintenance of the Premises and any furnishing or equipment provided to Charter School. For purposes of the Agreement, "routine repair, cleaning and general maintenance" shall mean the school facility component work performed on an annual basis each year to keep facilities in proper operating condition. District shall also be responsible for ongoing operations and maintenance of the facilities on the Premises as defined in California Code of Regulations, Title 5, section 11969.4(b). The District shall only be obligated to perform routine repair, cleaning and general maintenance on the Premises on an equivalent basis as that performed at other comparable District school sites.
- 7.2. **Deferred Maintenance.** District shall be responsible for the major maintenance of the Premises. For purposes of the Agreement, "major maintenance" includes, for example, the major repair or replacement of plumbing, heating, ventilation, air conditioning, electrical, roofing, and floor systems, exterior and interior painting, and any other items considered deferred maintenance under Education Code section 17582. All other kinds of maintenance shall be considered routine maintenance and shall also be the responsibility of District. The District shall only be obligated to perform deferred maintenance on the Premises on an equivalent basis as that performed at other comparable District school sites.
- 7.3. **Structural Repairs.** District shall be responsible for repairs major structural elements of the buildings on the Premises. As used in the Agreement, the term "structural elements of the building" are defined as and shall be limited to the foundation, footings, floor slab but not flooring, structural walls excluding glass

and doors, HVAC systems and the roof excluding skylights. The Parties agree that if the structural elements of the Premises become damaged to a lesser condition than currently exists, and if the structural damage is due to no fault or negligence of Charter School, then District will repair the damage in order to bring it back to a condition which is similar to the condition which exists at the time Charter School takes possession of the Premises. District may, however, terminate this Agreement if the cost to repair the Premises exceeds Seven Hundred Fifty Thousand dollars (\$750,000) per incident. District may, in its sole discretion, pro-rate the Pro Rata Share during the "repair" period, if the resulting structural damage prohibits Charter School from carrying out its normal daily activities. If District elects not to perform a repair estimated to cost in excess of Seven Hundred Fifty Thousand dollars (\$750,000), Charter School may elect to remain in possession of the Premises and pay the Pro Rata Share for the portion of the Premises still available for its use, unless revised through mutual agreement of the Parties, or Charter School may elect to terminate this Agreement. If either District or Charter School terminates this Agreement for just cause as set forth herein, the District shall immediately use its best efforts to provide the Charter School with reasonably equivalent alternative facilities to accommodate its entire projected in-District ADA for the remaining Term of this Agreement.

8. Improvements.

- 8.1. CHARTER SCHOOL may at its sole cost and expense, make or perform improvements, alterations, or additions to the Premises ("Improvements"), provided that any Improvements requiring approval of the Division of the State Architect shall require prior written notice and approval of District, which approval shall not be unreasonably withheld, conditioned or delayed. If District fails to respond within thirty (30) days after CHARTER SCHOOL's written request for approval of any Improvements, District shall be deemed to have given its approval to such Improvements. Improvements shall comply with all legal requirements relating to construction of the Improvements, including, without limitation, Title 24 of the California Code of Regulations, the Education Code (including the Field Act, Education Code §17280, et seq.), the Americans with Disabilities Act, the California Environmental Quality Act and regulations promulgated thereunder.
- 8.2. All contractors and subcontractors of CHARTER SCHOOL, if any, shall be duly licensed in the State of California. Under all circumstances, CHARTER SCHOOL must seek and receive approval from the Division of the State Architect for all of CHARTER SCHOOL's Improvements to the extent such approval is required by law.
- 8.3. CHARTER SCHOOL shall at its own expense obtain all necessary environmental and governmental approvals and permits, including, without limitation, the California Environmental Quality Act ("CEQA"), any necessary approvals from any local authority including any site, grading, zoning, design review and other required permits or approvals, if applicable, prior to commencing construction

and shall provide District with evidence of approval by all applicable governmental agencies.

- 8.4. CHARTER SCHOOL shall be responsible for ensuring that all Improvements work is performed in strict compliance with the approved SWPPP, REAP, ATS, and the Construction Storm Water Permit issued, as required by applicable law.
- 8.5. All maintenance and construction activities performed by CHARTER SCHOOL shall comply with the Environmental Protection Agency's National Pollution Discharge Elimination System program and the Clean Water Act to prevent storm water pollution and a Storm Water Pollution Prevention Plan (SWPPP) approved by the appropriate governing authority, if applicable.
- 8.6. CHARTER SCHOOL shall be solely responsible for maintaining the Premises and CHARTER SCHOOL's Improvements installed thereon during the Term, including any extensions, and for compliance with all applicable laws or ordinances, rules and regulations.
- 8.7. CHARTER SCHOOL shall be solely responsible to make payment for any service or work performed in connection with the design and construction of the Improvements. CHARTER SCHOOL shall administer and resolve any claims or disputes that may arise in connection with the design and construction of the Improvements.
- 8.8. CHARTER SCHOOL and any person performing work for construction of the Improvements, shall exercise reasonable precautions to avoid damage and protect persons or property while on the Premises and any adjacent staging area. District assumes no liability for loss or damage to property or injuries to or deaths of agents, contractors, or employees of CHARTER SCHOOL by reason of the exercise of privileges given in this section. CHARTER SCHOOL shall indemnify and hold District harmless from any damage caused by the CHARTER SCHOOL's activities authorized in this section, except to the extent such damage was caused by District's gross negligence or willful misconduct. CHARTER SCHOOL shall either reimburse the District for any damage or destruction to the Premises, or other property, occurring by reason of the exercise of rights granted, or to replace or restore said property to its preexisting condition.
- 8.9. The Improvements shall be made by CHARTER SCHOOL at its sole expense.
- 8.10. CHARTER SCHOOL shall coordinate the work of the Improvements with the District. CHARTER SCHOOL shall provide notice to District in writing of the status of the Improvement projects and notify the District when the Improvements are completed. District shall have the right to inspect and reject the Improvements.

9. Signage. CHARTER SCHOOL may install signage at the School Site including one sign at the CHARTER SCHOOL's main entrance stating the CHARTER SCHOOL name and other pertinent information, a sign indicating the main office of the CHARTER SCHOOL, and other

directional signs as appropriate. The signage shall not require any Improvement to the School Site in order to erect such signage. Any signage shall be in compliance with any District standards previously made available to CHARTER SCHOOL and CHARTER SCHOOL's receipt of any applicable permits and approvals required under any municipal or other governmental laws, ordinances, rules or regulations; provided, that in the event of any conflict between the District's standards and any applicable municipal or governmental permit and/or approval, the terms and conditions of the municipal or governmental permit and/or approval shall prevail. At the termination of this Agreement, CHARTER SCHOOL shall remove any signs which it has placed on the School Site and shall repair any damage caused by the installation or removal of those signs.

10. Removal of CHARTER SCHOOL's Personal Property.

On or before the expiration of this Agreement, or within seventy-five (75) days after any earlier termination of this Agreement, CHARTER SCHOOL shall remove all personal property and removable fixtures ("Property"), at its sole expense. CHARTER SCHOOL shall repair any damage to the Premises, caused by removal of CHARTER SCHOOL's Property and restore the Premises to good condition, less ordinary wear and tear. In the event that CHARTER SCHOOL fails to timely remove its Property, District, upon fifteen (15) days written notice, may either (1) accept ownership of CHARTER SCHOOL's Property with no cost to District, or (2) remove CHARTER SCHOOL's Property at CHARTER SCHOOL's sole cost. In the event that District chooses to accept ownership of CHARTER SCHOOL's Property, CHARTER SCHOOL shall execute any necessary documents to effectuate the change in ownership of CHARTER SCHOOL's Property. In the event that District removes CHARTER SCHOOL's Property, CHARTER SCHOOL shall pay all invoices for the removal of CHARTER SCHOOL's Property within thirty (30) days of receipt of such invoices.

11. Surrender. Title to improvements at the Premises constructed by CHARTER SCHOOL shall be owned by CHARTER SCHOOL until expiration or the earlier termination of the term of this Agreement. All improvements on the Premises at the expiration of the term of this Agreement, or any options or mutually agreed to extensions shall, with compensation to CHARTER SCHOOL in an amount equal to their fair market value, become District's property; provided, that the improvements are DSA approved or can be utilized for adaptive re-use under the standards set-forth in the Division of State Architect's "FEASIBILITY GUIDELINES FOR SELECTION OF EXISTING NON-CONFORMING FACILITIES FOR REHABILITATION TO PUBLIC SCHOOLS AND CALIFORNIA COMMUNITY COLLEGES".¹ The regulations of Title 24, C.C.R. apply to any existing non-conforming building for purchase or lease by a district for use as a public school. If the improvements are not suitable for adaptive re-use, CHARTER SCHOOL shall remove improvements and return the property to the District in its pre-Agreement condition.

12. Fingerprinting and Criminal Background Verification. CHARTER SCHOOL shall be responsible for ensuring compliance with all applicable fingerprinting and criminal background investigation requirements described in Education Code section 45125.1.

13. Drug-Free Workplace. CHARTER SCHOOL's employees shall comply with the District's policy of maintaining a drug free workplace. Neither CHARTER SCHOOL nor CHARTER SCHOOL's employees shall unlawfully manufacture, distribute, dispense, possess or use controlled

¹ http://www.documents.dgs.ca.gov/dsa/pubs/feasibility_guidelines_pub_dsa_reh_01.pdf

substances, as defined in 21 U.S. Code § 812, including, but not limited to, marijuana, heroin, cocaine, and amphetamines, at the Site. If CHARTER SCHOOL or any employee of CHARTER SCHOOL is convicted or pleads nolo contendere to a criminal drug statute violation occurring at the Site, CHARTER SCHOOL within five (5) days thereafter shall notify the District.

14. Inspection of Premises. District shall have the right to enter the Premises to conduct its own compatible operations, or to conduct inspections of the Premises during usual business hours in order to insure that proper pest management control and maintenance is being conducted on the Premises. District will endeavor during the course of any access of the Premises to not disrupt Charter School's classroom and instructional activities.

15. Termination.

15.1. Termination for Convenience.

15.1.1. CHARTER SCHOOL may terminate this Agreement by written notification one hundred and eighty (180) days prior to the effective date of the termination. CHARTER SCHOOL acknowledges that this one hundred and eighty (180) day notice period is acceptable so that District can attempt to find another tenant.

15.2. Termination for Cause. Either Party may terminate this Agreement immediately for cause upon the occurrence of an event of default that is not cured within any applicable cure period. Cause shall include, without limitation:

15.2.1. Material violation of this Agreement by CHARTER SCHOOL or District that is not cured within ten (10) days after notice to the defaulting party of such violation if such violation constitutes a monetary breach of this Agreement or within thirty (30) days after notice to the defaulting party of such violation if such violation constitutes a non-monetary breach of this Agreement; provided, however, that if the nature of such default is such that more than thirty (30) days are reasonably required for its cure, then CHARTER SCHOOL or District, as applicable, shall not be deemed to be in default if such party shall commence such cure within said 30-day period and thereafter diligently prosecute such cure to completion; or

15.2.2. CHARTER SCHOOL is adjudged a bankrupt, CHARTER SCHOOL makes a general assignment for the benefit of creditors or a receiver is appointed on account of CHARTER SCHOOL's insolvency.

15.2.3. The cessation of CHARTER SCHOOL's program after a revocation, nonrenewal or surrender of the charter to the granting agency. However, CHARTER SCHOOL shall not be in default of this Agreement until after it has exhausted all appeals subsequent to the revocation or nonrenewal of its charter;

15.2.4. If District terminates this Agreement for cause, CHARTER SCHOOL's rights in the Premises shall terminate upon CHARTER SCHOOL's receipt of notice of termination from District. Upon receipt of

District's notice of termination, CHARTER SCHOOL shall surrender and vacate the Premises in the condition required under this Agreement, and District may re-enter and take possession of the Premises and all the remaining improvements or property and eject CHARTER SCHOOL or any of CHARTER SCHOOL's subtenants, assignees or other person or persons claiming any right under or through CHARTER SCHOOL or eject some and not others or eject none. This Agreement may also be terminated by a judgment specifically providing for termination. Any termination under this Section shall not release CHARTER SCHOOL from the payment of any sum then due District or from any claim for damages or Rent previously accrued or then accruing against CHARTER SCHOOL.

- 15.3. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District and/or CHARTER SCHOOL.
- 15.4. Upon termination of this Agreement, CHARTER SCHOOL shall be responsible to restore the Premises to the extent required under Sections 4.2 and 10.
- 15.5. **Option to Terminate for Destruction.** CHARTER SCHOOL shall have the right to terminate this Agreement if, during the term, the improvements are damaged or destroyed by a casualty for which CHARTER SCHOOL is not required to carry insurance and the cost to repair or restore the damaged or destroyed Improvements exceeds fifty percent (50%) of the fair market value of the improvements immediately before the damage or destruction.
- 15.6. **Application of Insurance Proceeds.** Any and all fire and other insurance proceeds that become payable at any time during the term of this Agreement because of damage to or destruction of any Improvements on the Premises shall be paid to CHARTER SCHOOL and applied by CHARTER SCHOOL toward the costs of repairing and restoring the damaged or destroyed Improvements in the manner required herein, or if this Agreement is terminated under Section 14.5, applied by CHARTER SCHOOL towards the payment of any leasehold encumbrance.
- 15.7. **District's Default.** District shall not be in default of any of its obligations hereunder, unless District fails to perform such obligations within a reasonable time, but in no event less than thirty (30) days, after written notice by Charter School to District specifying that District has failed to perform its obligations; provided, however, that if the nature of District's default requires more than thirty (30) days to cure, District shall not be in default if District commences a cure within thirty (30) days and thereafter diligently prosecutes the same to completion.
 - 15.7.1. Charter School shall have no rights as a result of any default by District until Charter School gives thirty (30) days' notice to District specifying the nature of the default. District shall then have the right to cure the default, and District shall not be deemed in default if it cures the default within

thirty (30) days after receipt of the notice of the default, or within a longer period of time as may reasonably be necessary to cure the default. If the District defaults hereunder, then Charter School may exercise any right or remedy at law or equity which Charter School may have by reason of such default, including, the remedy of self-help and deduction of reasonable self-repair costs from the pro rata share payments owed.

16. Reciprocal Indemnification.

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

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

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

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

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

Except where the losses, costs, damages, expenses and liabilities (including without limitation court costs and reasonable attorneys' fees) are caused by

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

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

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

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

The provisions of this Section 21 shall survive the expiration or sooner termination of this Use Agreement.

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

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

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

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

17. Insurance.

- 17.1. Insurance is to be placed with insurers with a current A.M. Best Insurance rating of no less than A-minus; VII and subject to the approval of District; insurance acquired by the CHARTER SCHOOL through a Joint Powers Authority shall meet this requirement. CHARTER SCHOOL shall furnish District with the original certificates and amendatory endorsements effecting coverage required.
- 17.2. CHARTER SCHOOL acknowledges that the insurance to be maintained by District on the Premises will not insure any of CHARTER SCHOOL's property or improvements made by CHARTER SCHOOL.
- 17.3. CHARTER SCHOOL shall, at CHARTER SCHOOL's expense, obtain and keep in force during the term of this Agreement a policy of commercial general liability insurance and a comprehensive auto liability policy insuring District and CHARTER SCHOOL against claims and liabilities arising out of the operation, condition, use, or occupancy of the Premises and all areas appurtenant thereto, including parking areas. CHARTER SCHOOL's comprehensive auto liability policy shall insure all vehicle(s), whether hired, owned or non-owned. CHARTER SCHOOL's commercial general insurance shall be at least as broad as the Insurance Service Office (ISO) CG 00-01 form and in an amount of not less than Three Million dollars (\$3,000,000) for bodily injury or death and property damage as a result of any one occurrence and a Three Million dollar (\$3,000,000) general aggregate policy limit. In addition, CHARTER SCHOOL shall obtain a products/completed operations aggregate policy in the amount of One Million dollars (\$1,000,000). The insurance carrier, deductibles and/or self insured retentions shall be approved by District, which approval shall not be unreasonably withheld. Prior to the Commencement Date, CHARTER SCHOOL shall deliver to District a certificate of insurance evidencing the existence of the policies required hereunder and copies of endorsements stating that such policies shall:
 - 17.3.1. Not be canceled or altered without thirty (30) days prior written notice to District;
 - 17.3.2. State the coverage is primary and any coverage by District is in excess thereto;
 - 17.3.2.1. Contain a cross liability endorsement; and
 - 17.3.3. Include a separate endorsement naming District as an additional insured.

At least thirty (30) days prior to the expiration of each certificate, and every subsequent certificate, CHARTER SCHOOL shall deliver to District a new certificate of insurance

consistent with all of the terms and conditions required in connection with the original certificate of insurance as described above.

- 17.4. In the event of loss or damage to the Premises, the buildings, Improvements or any contents, each Party, and all persons claiming under each Party, shall look first to any insurance in its favor before making any claim against the other Party, and to the extent possible without adding additional costs, each Party shall obtain for each policy of insurance provisions permitting waiver of any claim against the other Party for loss or damage within the scope of the insurance and each Party, to the extent permitted, for itself and its insurers, waives all such insurance claims against the other Party.
- 17.5. Oakland Unified School 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.
- 17.6. During the term of this Agreement, CHARTER SCHOOL shall comply with all provisions of law applicable to CHARTER SCHOOL with respect to obtaining and maintaining workers' compensation insurance. Prior to the commencement and any renewal of this Agreement and CHARTER SCHOOL's occupancy of the Premises, CHARTER SCHOOL shall provide District, as evidence of this required coverage, a certificate in a form satisfactory to District on or before the Commencement Date, providing that insurance coverage shall not be canceled or reduced without thirty (30) days prior written notice to District.
- 17.7. **Subrogation.** Except as provided in the Certificate of Insurance obtained per Section 13.3 above, neither CHARTER SCHOOL nor District shall be liable to the other or to any insurance company (by way of subrogation) insuring the other party for any loss or damage to the Premises, if any such loss or damage is covered by insurance benefiting the party suffering the loss or damage.

18. Eminent Domain. If the whole or any portion of Premises is taken by any paramount public authority under the power of eminent domain, then the rights and obligations of the parties shall be determined as follows: If Premises are totally taken by condemnation; this Agreement shall terminate on the date of taking. If any portion of Premises is taken by condemnation, CHARTER SCHOOL shall have the right to either terminate this Agreement or to continue in possession of the remainder of Premises 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 Premises taken as compared to the portion of the Premises 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 made for loss of installations or improvements made by CHARTER SCHOOL in accordance with this Lease and for any award for any taking of CHARTER SCHOOL's personal property and fixtures belonging to CHARTER SCHOOL and removable by CHARTER SCHOOL upon expiration of the Term pursuant to the terms of this Lease, and for relocation expenses.

19. Surrender of Agreement Not Merger. The voluntary or other surrender of this Agreement by CHARTER SCHOOL, or a mutual cancellation thereof, shall not work a merger and shall, at the option of District, terminate all or any existing subleases or subtenancies, or operate as an assignment to District of any or all subleases or subtenancies.

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

District:

Office of Charter Schools
Oakland Unified School District
Silke.bradford@ousd.k12.ca.us
1000 Broadway, Suite 600
Oakland, CA 94607

With copy to:

Department of Facilities Planning and Management
Oakland Unified School District
955 High Street
Oakland, CA 94604

CHARTER SCHOOL:

East Bay Innovation Academy
Devin Krugman, Head of School
3400 Malcolm Avenue, Oakland, CA 94605

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

21. No Assignment or Subletting. CHARTER SCHOOL shall not have the right, voluntarily or involuntarily, to assign, license, transfer or encumber this Agreement or sublet all or part of the Premises without District's consent, which consent shall not be unreasonably withheld, conditioned or delayed. Any purported transfer shall be void and shall, at District's election, constitute a default. No consent to transfer shall constitute a waiver of the provisions of this Section.

22. Proposition 39. In consideration for the District entering into this multi-year agreement in full satisfaction of the provisions of Proposition 39, CHARTER SCHOOL hereby agrees to waive any further right to petition the District for additional space under Proposition

39 for the in-District ADA accommodated at the Premises in the 2015-2016 school year, so long as CHARTER SCHOOL occupies the Premises.

23. Joint and Several Liability. If CHARTER SCHOOL is more than one person or entity, each such person or entity shall be jointly and severally liable for the obligations of CHARTER SCHOOL hereunder.

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

25. Entire Agreement of Parties. This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.

26. California Law. This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in county in which the District's administrative offices are located.

27. Compliance with All Laws.

27.1. CHARTER SCHOOL shall at CHARTER SCHOOL's expense comply with all requirements of all governmental authorities, in force either now or in the future, affecting the Premises, and shall faithfully observe in CHARTER SCHOOL's use of the Premises all laws, regulations and ordinances of these authorities, in force either now or in the future including, without limitation, all applicable federal, state and local laws, regulations, and ordinances pertaining to air and water quality, hazardous material, waste disposal, air emission and other environmental matters (including the California Environmental Quality Act ("CEQA") and its implementing regulations in its use of the Premises), and all District policies, rules and regulations. Specifically, CHARTER SCHOOL shall comply with the restriction on chemical usage indicated in Integrated Pest Management Policy **Exhibit "B."**

27.2. The judgment of a court of competent jurisdiction, or CHARTER SCHOOL's admission in an action or a proceeding against CHARTER SCHOOL, whether District be a party to it or not, that CHARTER SCHOOL has violated any law or regulation or ordinance in CHARTER SCHOOL's use of the Premises shall be considered conclusive evidence of that fact as between District and CHARTER SCHOOL. If CHARTER SCHOOL fails to comply with any such law, regulation or ordinance, District reserves the right to take necessary remedial measures at CHARTER SCHOOL's expense, for which CHARTER SCHOOL agrees to reimburse District on demand.

28. Hazardous Substances.

- 28.1. CHARTER SCHOOL shall comply with all applicable Environmental Laws relating to industrial hygiene and environmental conditions on, under or about the Premises, including but not limited to, air, soil and ground water conditions. CHARTER SCHOOL shall not use Hazardous Substances on, under or about the Premises; provided, however, that CHARTER SCHOOL may use normal and customary cleaning solutions and office supplies so long as the use of those solutions and supplies are in quantities and in a manner wholly consistent with all applicable Environmental Laws; and further provided that CHARTER SCHOOL may use normal and customary chemicals for classroom use so long as the use of those chemicals are in quantities and in a manner wholly consistent with all applicable school standards. CHARTER SCHOOL shall not, nor shall CHARTER SCHOOL allow any party to, transport, use, store, maintain, generate, manufacture, handle, dispose, release or discharge any Hazardous Substance upon or about the Premises in violation of Environmental Laws, nor permit any subtenant, employee, agent, invitees or contractor to engage in such activities in violation of Environmental Laws upon or about the Premises, during the Term of the Agreement. CHARTER SCHOOL shall not be responsible for the remediation of any Hazardous Substances that were present at the Premises prior to CHARTER SCHOOL's occupancy thereof.
- 28.2. **Notice.** CHARTER SCHOOL will promptly notify District in writing if CHARTER SCHOOL has or acquires notice or knowledge that any Hazardous Substance has been or is threatened to be, released, discharged, disposed of, transported, or stored on, in, or under or from the Premises in violation of Environmental Laws. CHARTER SCHOOL shall promptly provide copies to District of all written assessments, complaints, claims, citations, demands, fines, inquiries, reports, violations or notices relating to the conditions of the Premises or compliance with Environmental Laws. CHARTER SCHOOL shall promptly supply District with copies of all notices, reports, correspondence, and submissions made by CHARTER SCHOOL to the United States Environmental Protection Agency, the United States Occupational Safety and Health Administration, and any other local, state, or federal authority that requires submission of any information concerning environmental matters or Hazardous Substances pursuant to Environmental Laws. CHARTER SCHOOL shall promptly notify District of any liens threatened or attached against the Premises pursuant to any Environmental Laws.
- 28.3. **Inspection.** District and District's agents, servants, and employees including, without limitation, legal counsel and environmental consultants and engineers retained by District, may (but without the obligation or duty to do so), at any time and from time to time, on not less than ten (10) business days' notice to CHARTER SCHOOL (except in the event of an emergency, in which case, no notice will be required), inspect the Premises to determine whether CHARTER SCHOOL is complying with CHARTER SCHOOL's obligations set forth in this Section, and to perform environmental inspections and samplings, during regular

business hours (except in the event of an emergency) or during such other hours as District and CHARTER SCHOOL may agree.

28.4. **Indemnification.** CHARTER SCHOOL shall indemnify, defend (by counsel reasonably approved in writing by District), protect, release, save and hold harmless District from and against any and all Claims arising from any breach of CHARTER SCHOOL's covenants under this Section, except to the extent caused by the gross negligence or willful misconduct of District.

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

30. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors, and assigns.

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

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

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

34. **Incorporation of Recitals and Exhibits.** The Recitals and each Exhibit attached hereto are hereby incorporated herein by reference.

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

ACCEPTED AND AGREED on the date indicated below:

///

///

///

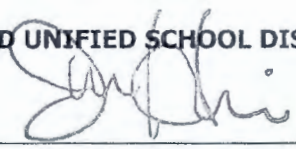
///

///

///

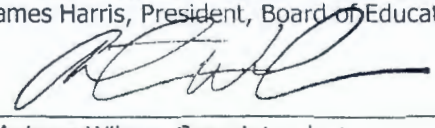
///

OAKLAND UNIFIED SCHOOL DISTRICT



James Harris, President, Board of Education

Date: 6/25/15



Antwan Wilson, Superintendent

Date: 6/25/15

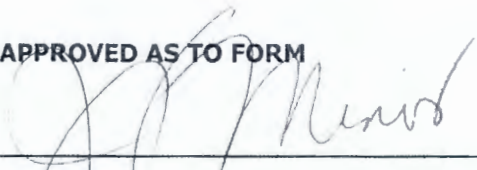
EAST BAY INNOVATION ACADEMY



BY: Laurie Jones
ITS: Board Chair

Date: 6/22/15

APPROVED AS TO FORM



Jacqueline Minor, OUSD General Counsel

Date: 6/24/15

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

EXHIBIT "A"

PREMISES

