

Board Office Use: Legislative File Info.	
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Enactment Number	
Enactment Date	



Memo

To Board of Education

From Jacqueline Minor, General Counsel
David Montes de Oca, Deputy Chief
Silke Bradford, EdD, Director, Office of Diverse Providers

Board Meeting Date June 29, 2016

Subject **Facilities Use Agreement with East Bay Innovation Academy ("EBIA")**

Action Requested Approval by Board of Education of Facilities Use Agreement with East Bay Innovation Academy for the 2016-2017 school year.

Background and Discussion The facilities Use Agreement between District and East Bay Innovative Academy ("EBIA") for joint use of the Roosevelt Middle School site located at 1926 East 19th Street, Oakland, CA 94606, for a one year term, for the period from July 1, 2016 to June 30, 2017, the agreement is subject to earlier termination if EBIA's program ceases to operate after a revocation, nonrenewal or surrender of the charter, and all appeals have been exhausted Parties may mutually agree in writing to extend the agreement. The Facility Use Fee for the first year is \$32,970.99 using the 2016-17 Proposition 39 annual rate.

Recommendation Approval by Board of Education of Facilities Use Agreement with East Bay Innovation Academy.

Fiscal Impact Annual Revenue of \$32,970.99 for July 1, 2016 through June 30, 2017

Attachments Agreement



CONTRACT JUSTIFICATION FORM

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

Legislative File ID No. 16-1629

Department: Continuous School Improvement

Vendor Name: East Bay Innovative Academy

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

Annual Cost: \$ Revenue \$32,970.99

Approved by: General Counsel

Is Vendor a local Oakland business? Yes No

Why was this Vendor selected?

N/A

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?

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**

**FACILITIES USE AGREEMENT BETWEEN
OAKLAND UNIFIED SCHOOL DISTRICT AND
EAST BAY INNOVATION ACADEMY
FOR USE OF CLASSROOM SPACE FOR EDUCATIONAL PURPOSES at
ROOSEVELT MIDDLE SCHOOL, 1926 East 19th Street, OAKLAND, CA 94606**

THIS FACILITIES USE AGREEMENT (“Agreement”) is effective this 1st day of July, 2016 by and between the OAKLAND UNIFIED SCHOOL DISTRICT, a California public school district (“District”), East Bay Innovation Academy, a California non-profit public benefit corporation (“Charter School”) for use of classroom space for educational purposes for **Grade 9** at Roosevelt Middle School, 1926 East 19th Street, Oakland, CA 94606. District and Charter School may be referred to herein individually as a “Party” or collectively as the “Parties.”

RECITALS

WHEREAS, Charter School is a non-profit public benefit corporation that is operating a charter approved by the Oakland Unified School District under the laws of the Charter Schools Act of 1992 (Education Code §47600 *et seq.*) serving students sixth (6th) grade through ninth (9th) grades in the 2016-2017 school year; and

WHEREAS, pursuant to the requirements of California Education Code section 47614 and its implementing regulations (“Proposition 39”), on or about April 14, 2016, the District Board of Trustees made a written final offer to provide the Charter School with facilities for its in-District students for the 2016-2017 school year; and

WHEREAS, the District and Charter School enter into this Agreement wherein the District and Charter School mutually agree that the Charter School will occupy classrooms and use facilities (the “Premises”), that will later be particularly described in Exhibit A and located at Roosevelt Middle School, 1926 East 19th Street, Oakland, California, 94606 (the “School Site”), commencing with the 2016-2017 school year, under Proposition 39 and consistent with California Code of Regulations, tit. 5, section 11969.1 *et seq.*

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

AGREEMENT

1. Use of Premises. District agrees to allow use of the Premises at the School Site(s) by Charter School for the sole purpose of operating Charter School’s educational program for **Grade 9** in accordance with all applicable federal, state and local regulations relating to the Premises and to the operation of Charter School’s educational program. Charter School shall not use the Premises for any use other than that specified in this Agreement without the prior written consent of District.

1.1. 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.

- 1.2. 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 the District-wide policy prohibiting the use of tobacco products on the Premises at all times.
- 1.3. Charter School shall not use or permit the use of the Premises or any part thereof for any purpose not consistent with a public educational facility.
- 1.4. If required, Charter School shall obtain a use permit from the City in which the School Site is located for Charter School's use throughout the Term. 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 all District policies and procedures regarding the use and occupation of District facilities, including but not limited to Campus Security and Disruptions. Charter School shall comply with the District's most recently published policies and procedures, which are accessible at www.OUSD.K12.ca.us under dropdown menu "Governing Board", "Board Policies."
- 1.5. 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.
- 1.6. **Civic Center Act.** Charter School agrees to comply with the provisions of the Civic Center Act (Education Code § 38131 *et seq.*) to make the Premises accessible to members of the community. The Parties understand that the Premises are 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. Any request received by Charter School for use of the Premises pursuant to the Civic Center Act shall be promptly forwarded to the District. District shall be responsible for coordinating access to the Premises under the Civic Center Act, and any fee paid for use of the Premises under the Civic Center Act shall be paid to the District.

2. Term.

- 2.1. The term of this Agreement shall be for **one year**. The commencement date shall be July 1, 2016, ("Commencement Date"), and, unless sooner terminated under any provision hereof, this Agreement shall end on June 30, 2017 ("Term"). However, the Parties agree that Charter School shall take possession of the Premises on a date to be

mutually agreed upon between the Parties. The Premises will be made available to Charter not later than August 1, 2016.

3. Pro Rata Share Charge.

- 3.1. For and in consideration of the use of the Premises for the Term of the Agreement Charter School agrees to pay District the following sums ("Pro Rata Share") under California Code of Regulations, Title 5, section 11969.7:

\$ 4.73 per square foot. Based on Charter School's square footage of 6,970.61 SF, the Pro Rata Share is \$32,970.99 annually.

The Parties acknowledge that the pro-rata share of facilities costs contained in the District's East Bay Innovation Academy 2016-2017 Final Offer of Facilities was for 6,370.61 SF. The Parties acknowledge that the District is basing Charter School's pro-rata share of facilities costs upon the 6,970.61 SF figure agreed upon in the spirit of compromise after issuance of the District's 2016-2017 Final Offer of Facilities.

- 3.2. Charter School understands that, in consideration of the District providing ongoing operations and maintenance of the facilities on the Premises, the District may include facilities costs related to operations and maintenance in the calculation of the pro-rata share.
- 3.3. The Pro Rata Share for the first month shall be due upon the first date of use or occupation of the Premises by Charter School. Thereafter, the Pro Rata Share shall be due on the first of each month until the expiration or termination of the Agreement.
- 3.4. Charter School shall promptly pay to District the Pro Rata Share on the first day of each month in advance during the Term of the Agreement, without deduction, setoff, prior notice or demand.
- 3.5. Charter School acknowledges that late payment by Charter School to District of the Pro Rata Share 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. Those costs include, but are not limited to, processing and accounting charges. Accordingly, if District does not receive any installment of the Pro Rata Share or any other sum due from Charter School by 4:00 p.m. within ten (10) days after the Pro Rata Share is due, Charter School shall pay to District, as additional sums due, a late charge equal to five percent (5%) of the overdue amount or the maximum amount allowed by law, whichever is less. The Parties hereby agree that any late charge assessed to Charter School shall represent a fair and reasonable estimate of the costs District will incur by reason of late payment by Charter School. Acceptance of any late sums by District shall in no event constitute a waiver of Charter School's default with respect to any overdue amount, nor prevent District from exercising any of its other rights and remedies granted hereunder.

4. **Over-Allocation.** The District reserves the right to collect over-allocation and other applicable fees and reimbursements from Charter School, pursuant to California Code of Regulations, Title 5, section 11969.8. The Charter School's projected in-District Average Daily Attendance ("ADA") for the 2015-2016 school year, and upon which the Premises are provided is 82.65.
5. **Utilities.** District shall furnish or cause to be furnished to the Premises necessary utilities. For purposes of the Agreement, utilities include electrical, natural gas, sewer, waste disposal/recycling and water services. The District's failure to furnish or cause to be furnished utilities when the failure is caused by (i) acts beyond the reasonable control of the District; (ii) strikes, lockouts, labor disturbances or labor disputes of any kind; (iii) any laws, rules, orders, ordinances, regulations, requirements or any other action by federal, state, county or municipal authority; or (iv) any other unavoidable delay, shall not cause the District to be in default of the Agreement and shall not result in any liability of the District. Charter School shall comply with all District energy conservation policies relating to use of the Premises.
6. **Furnishings and Equipment.** The District shall provide, in accordance with the Proposition 39 regulations, furnishings and equipment at the Premises for 83 students. These furnishings and equipment shall remain the property of the District. The furnishings and equipment provided shall be equivalent to those furnishings and equipment provided in the comparison group of schools in accordance with California Code of Regulations, Title 5, section 11969.3. The District and the Charter School shall develop a mutually agreeable inventory of furnishings and equipment that will be located at the Premises. District shall only be obligated to replace furnishings and equipment supplied by the District in accordance with District established schedules and practices.
7. **Relocation of Charter School.** Notwithstanding anything to the contrary in this Agreement, District shall have the right to re-locate Charter School to other buildings on the School Site, or at another location, based on District's need to accommodate multiple programs and occupants ("Relocation"). The need for any Relocation shall be in accordance with California Code of Regulations, Title 5, section 11969.5 and shall be at District's sole discretion. District shall provide Charter School with reasonable notice of any intended Relocation so that Charter may make necessary preparations for Relocation. Any Relocation shall be to reasonably equivalent facilities and at the same Pro-Rata Share then existing, as adjusted in order to accommodate differences in square footage. If Relocation is necessary, District shall, at its own expense, arrange to have Charter School's personal property moved to the new facilities. Charter school shall be responsible for packing and unpacking its personal property for any Relocation. The Parties may, by mutual agreement, negotiate the cost of Relocation of Charter School.
8. **Additional Services.** Charter School and District may negotiate additional services or equipment as requested by Charter School. District shall assess Charter School separately for the cost to provide the additional services or equipment, if any.
9. **Shared School Site and Recreational Facilities.** Charter School acknowledges and understands that the Premises are located in an operating public school site. As such, the School Site and the playgrounds, common areas, recreational facilities and other outdoor play areas (collectively "Shared Space") will be used by other parties, including the District. Charter School shall cooperate with the other parties and the District in reaching amicable arrangements concerning

the use, maintenance and security of the Shared Space. To facilitate cooperative working relationships on shared campuses, the District encourages charter schools and District schools on a shared campus to execute the attached Memorandum of Understanding, which is attached hereto and incorporated by reference herein.

10. Parking. Charter School shall abide by District’s policies concerning the use of parking, including the District policy relating to the drop-off and pick-up of students. Charter School may instruct its visitors, invitees and guests to park on available street parking. Charter School shall not abandon any 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, or for any damage to or destruction or loss of any of Charter School or Charter School’s visitors, invitees, or guests’ personal property located or stored in street parking, or the School Site, except where such damage is caused by the District’s negligence or misconduct. Charter School accepts parking “as is” and Charter School acknowledges that District has not made and is not making any warranties whatsoever with respect to the parking.

11. Condition of Premises.

11.1. The Premises are allocated to Charter School on an "AS IS" basis. District shall not be required to make or construct any alterations including structural changes, additions or improvements to the Premises. District shall, however, remain responsible for compliance with the requirements of the Americans with Disabilities Act, California Fair Employment and Housing Act, and other applicable building code standards, but only to the extent the compliance would be required of District without regard to Charter School’s use of the Premises. By entry and taking possession of the Premises pursuant to this Agreement, Charter School accepts the Premises in "AS IS" condition and acknowledges and agrees the Premises are “reasonably equivalent” as that term is defined in Proposition 39.

11.2. 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 or Charter School’s Program. Any agreements, warranties or representations not expressly contained in this Agreement shall in no way bind the 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.

11.3. 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 One Hundred Fifty Thousand dollars (\$150,000) 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 One Hundred Fifty Thousand dollars (\$150,000),

Charter School may elect to remain in possession of the Premises and pay the Pro Rata Share, unless revised through mutual agreement of the Parties, or Charter School may elect to terminate this Agreement.

11.4. 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, and the roof excluding skylights. Plumbing, electrical and heating systems shall be considered "structural elements of the building" excluding, however, those repairs and maintenance items which can be completed without wall or floor removal in which case these repairs shall be the responsibility of Charter School.

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

13. District's Entry and Access to Premises. District and its authorized representatives shall have the right, after two school-days' prior written notice to Charter School, to enter the Premises during normal business hours for the purpose of inspection ("Inspection"); or to perform deferred maintenance in or on the Premises in a manner so as not to disrupt the normal classroom and school activities; provided, however, that in an emergency situation, no prior notice shall be required. In an emergency, District shall give notice to Charter School immediately upon District's receipt of notification of any emergency. If Charter School is not present to open and permit an entry into the Premises in an emergency situation as reasonably determined by District, District may enter by means of a master key without liability to Charter School.

13.1. If Charter School is violating the use restrictions of the Agreement or is not in material compliance with any applicable law, then all reasonable costs and expenses reasonably and actually incurred by District in connection with any Inspection shall become due and payable by Charter School as additional sums due District, within ten (10) days of presentation by District of an invoice for the Inspection.

13.2. If Charter School fails to perform any covenant or condition to be performed by Charter School pursuant to the Agreement or the Charter School's charter, District and its authorized representative shall have the right, after reasonable prior written notice to Charter School, to enter the Premises during normal business hours for the purpose of performing the covenant or condition at District's option after thirty (30) days' written notice to and failure to perform by Charter School (provided, no written notice is required in the case of emergencies). All costs incurred by District in shall be reimbursed to District by Charter School within ten (10) days of written demand, together with interest at the Interest Rate computed from the date incurred by District until paid. Any performance by District of Charter School's obligations shall not waive or cure the default. All reasonable out-of-pocket costs and expenses actually incurred by District, including reasonable attorneys' fees (whether or not legal proceedings are instituted), in collecting the fees herein or enforcing the obligations of Charter School under the Agreement shall be paid by Charter School to District within ten (10) days of written demand.

- 13.3. District may, during the progress of such work, keep and store on the Premises all necessary materials, tools, supplies and equipment. District shall not be liable for inconvenience, annoyance, disturbance, loss of business or other damage to Charter School by reason of making the repairs or the performance of any work.
- 13.4. Notwithstanding the foregoing and without further notice, District shall have the right to enter the Premises to conduct its own operations, to perform any routine or deferred maintenance, custodial services, or conduct inspections of the Premises. District will use reasonable efforts during the course of any access of the Premises to not disrupt Charter School's classroom and instructional activities consistent with District's practices at its schools. Where practicable, District shall provide relevant scheduling information to Charter School.
- 13.5. Charter School expressly waives any claim for damages for any inconvenience to or interference with the Charter School's educational program, any loss or use of quiet enjoyment of the Premises related to District's entry into the Premises for the purposes identified in this Section.

14. Surrender of Premises, Furnishings and Equipment.

- 14.1. On the last day of the Term, or on sooner termination of this Agreement, Charter School shall surrender the Premises, Furnishings and Equipment to District and any existing improvements in good order, condition and repair, free and clear of all liens, claims and encumbrances, though nothing in this provision shall be construed to authorize Charter School to allow or cause to be placed any liens, claims and/or encumbrances of any kind, unless expressly permitted in this Agreement. The condition of the Premises when surrendered shall be similar to that existing as of the Commencement Date of this Agreement excepting normal ordinary wear and tear and any structural improvements made by 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.
- 14.2. 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 and which may be removed without irreparable or material damage to the Premises. Removal of Charter School's property shall be subject to all applicable laws, including any local permits and/or approval by the California Department of General Services, Division of the State Architect.
- 14.3. All property that is not removed on or before the end of the Term shall be deemed abandoned by Charter School and associated costs to store, remove or dispose of abandoned property shall be the responsibility of the Charter School. If the Premises are not surrendered at the end of the Term or upon earlier termination of this Agreement, Charter School shall indemnify District against loss or liability resulting from delay by Charter School in surrendering the Premises including, without limitation, any claims made by any succeeding Charter School or loss to District due to lost opportunities to timely obtain succeeding tenants.

- 14.4. **Holding Over.** If Charter School remains in possession of the Premises or any part thereof after the end of the Term or upon earlier termination of this Agreement without the express written consent of District, Charter School's occupancy shall be a tenancy on a month-to-month basis for a pro rata share equal to one hundred fifty percent (150%) of all monthly sums charged and owing the previous thirty (30) calendar day period.
- 14.5. No payment of money by Charter School after the termination of the Agreement, or after the giving of notice of termination by the District to the Charter School, shall reinstate, continue or extend the Term.
15. **Taxes and 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. Nothing in this Section shall be construed to override the requirement in the Section "Title to and Removal of Charter School's Improvements/Premises; Equipment Requirements" of this Agreement that Charter School obtain the express written consent of the District to perform any improvements on the site, unless expressly permitted by this Agreement.
16. **Maintenance.**
- 16.1. **Routine Repair, Cleaning and General Maintenance – Co-located School Sites.** In cases of co-location between the District and Charter School, 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. Charter School will be responsible for its fair share of routine repair, cleaning, custodial costs of District provided custodian, and general maintenance costs.
- 16.2. **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.

17. Title to and Removal of Charter School's Improvements / Premises; Equipment Requirements.

- 17.1. Charter School shall not construct or cause to be constructed on the Premises any improvements ("Charter School's Improvements") without express prior written consent from the District. For District consent and approval, Charter School's Improvements must be considered necessary to the operation of Charter School's educational program.
- 17.2. Charter School shall at its 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(s), 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. To the extent that the District assumes lead agency status for any "project" under CEQA related to the provision of facilities under this Agreement, Charter School agrees to reimburse the District for any and all costs and expenses related to achieving compliance with CEQA.
- 17.3. Any modifications to the Premises must be approved in writing in advance by District. Charter School's contractor must be approved in advance by District. All contractors and subcontractors of Charter School, if any, shall be duly licensed in the State of California. Charter School shall be solely responsible for maintaining the Premises and Charter School's Improvements installed thereon during the Term of this Agreement, including any extensions, and for compliance with all applicable laws or ordinances, rules and regulations.
- 17.4. Under all circumstances, Charter School must seek and receive approval from the Division of the State Architect for any of Charter School's Improvements.
- 17.5. Charter School shall not install any ovens, stoves, hot plates, toasters, or similar items (not including microwave ovens) without the prior written consent of the District.
- 17.6. Charter School shall at all times indemnify and hold District harmless from all claims for labor or materials in connection with construction, repair, alteration, or installation of structures or improvements within the Premises, and from the cost of defending against such claims, including attorney's fees. Charter School shall provide District with at least ten (10) days written notice prior to commencement of any work which could give rise to a mechanics' lien or stop payment notice. District has the right to enter upon the Premises for the purpose of posting Notices of Non-responsibility. In the event a lien is imposed upon the Premises as a result of such construction, repair, alteration, or installation, Charter School shall either:

- 17.6.1. Record a valid Release of Lien; or
- 17.6.2. Deposit sufficient cash with the District to cover the amount of the claim on the lien in question and authorize payment to the extent of the deposit to any subsequent judgment holder that may arise as a matter of public record from litigation with regard to the lien-holder claim; or
- 17.6.3. Procure and record necessary bonds that frees the Premises from the claim of the lien from any action brought to foreclose the lien.

If Charter School fails to accomplish one of these three optional actions within fifteen (15) days after the filing of any lien or stop payment notice, the Agreement shall be in default and shall be subject to immediate termination.

- 17.7. On or before the expiration of this Agreement, or within thirty (30) days after any earlier termination of this Agreement, Charter School shall remove Charter School's Improvements, at its sole expense. Charter School shall repair any damage to the School Site and/or the Premises caused by removal of Charter School's Improvements and restore the School Site and the Premises to good condition, less ordinary wear and tear. In the event that Charter School fails to timely remove Charter School's Improvements, District, upon fifteen (15) days written notice, may either (1) accept ownership of Charter School's Improvements with no cost to District, or (2) remove Charter School's Improvements at Charter School's sole expense. If the District chooses to accept ownership of Charter School's Improvements, Charter School shall execute any necessary documents to effectuate the change in ownership of Charter School's Improvements. If the District removes Charter School's Improvements, Charter School shall pay all invoices for the removal of Charter School's Improvements within thirty (30) days of receipt of an invoice.
- 18. Safety of Premises.** The School Site, including the Premises, may be monitored by a safety system or protocol implemented, maintained and operated by District ("District's Safety Measures"). However, Charter School specifically acknowledges, understands, and agrees that District is neither responsible for nor has the obligation to supply, provide, establish, maintain, or operate District's Safety Measures for either Charter School or the Premises. Charter School further expressly acknowledges and agrees that District shall not be liable for and is hereby released from any and all responsibility for any damage, loss, or injury to Charter School or its personal property resulting or arising out of any criminal activity (including, but not limited to, any damage, loss, or injury resulting from intrusions, petty theft, vandalism, or other similar acts) that may occur on or near the Premises, regardless of whether District was able to, actually did, or failed to provide notice to Charter School of a safety incident or situation occurring on the Premises which led to the damage, loss, or injury. District makes no warranties or representations as to the safety or security of Charter School, the Premises, the School Site, or District's Safety Measures. Unless expressly agreed to by District and Charter School, Charter School shall be responsible, at its sole cost, for supplying, providing, establishing, maintaining, and operating its own safety measures, protocols, personnel, or systems to encourage and ensure the security of Charter School, its agents, officers, employees, licensees and invitees, and the Premises ("Charter School's Safety Measures"); provided, however, that Charter School must obtain prior written approval from District prior to employing Charter School's Safety

Measures and provided that all of Charter School's Safety Measures are compatible with District's safety system or protocol.

19. Fingerprinting and Criminal Background Verification. Charter School shall be responsible for ensuring compliance with all applicable fingerprinting and criminal background investigation requirements described in California Education Code section 45125.1, which may be met under the fingerprinting provisions of Title 22 of the California Code of Regulations and applicable provisions of the California Health and Safety Code relevant to community care facility licensing (Health & Saf. Code § 1500 *et seq.*).

20. Default.

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

20.1.1. The failure of Charter School to promptly pay the Pro Rata Share or other fees identified herein when due hereunder, which failure continues for fifteen (15) days after written notice thereof by District to Charter School; provided, however, that any notice shall be in lieu of, and not in addition to, any notice required under Code of Civil Procedure section 1161, and the three (3) day cure period shall run concurrently with any cure period required under California law, including Code of Civil Procedure section 1161;

20.1.2. The revocation or non-renewal of the Charter School's charter, upon exhaustion of any administrative, non-judicial appeals as provided under Education Code sections 47605 or 47607;

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

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

- 20.1.5. The making by Charter School of any general assignment or general arrangement for the benefit of creditors; the filing by or against Charter School or any guarantor of the Agreement of a petition to have Charter School or any guarantor of the Agreement adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Charter School or any guarantor of the Agreement, the same is dismissed within sixty (60) days); the appointment of a trustee or receiver to take possession of substantially all of the Charter School's assets located at the Premises, or of Charter School's interest in the Agreement, where possession is not restored to Charter School within thirty (30) days; or the attachment, execution or other judicial seizure of substantially all of Charter School's assets located at the Premises or of Charter School's interest in the Agreement, where such seizure is not discharged within thirty (30) days;
- 20.1.6. The making or furnishing by Charter School of any warranty, representation or statement to District in connection with the Agreement, or any other agreement to which Charter School and District are parties, which is false or misleading in any material respect when made or furnished; or
- 20.1.7. The assignment, subletting or other transfer, or any attempted assignment, subletting or other transfer, of the Agreement.

In the event of any default by Charter School, District shall have the right, in addition to all other rights available to District under the Agreement or now or later permitted by law or equity, to terminate the Agreement by providing Charter School with a notice of termination. Upon termination of the Agreement, District may recover from Charter School the worth at the time of award of the unpaid Pro Rata Share and any other accrued fees which are due at the time of termination. In addition, upon termination, Charter School shall immediately vacate the Premises.

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

- 20.2. **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.

- 20.2.1. 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.

21. Indemnification.

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

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, liabilities, claims, suits, actions of any kind, costs, damages, expenses and liabilities, including without limitation court costs and reasonable attorneys' fees, (collectively "Claims") directly or indirectly arising out of, on account of, connected with, or resulting from, the operation, condition, use or occupancy of the Premises, all improvements thereon, and all area appurtenant thereto, with the exception of any Claims caused by the negligence or willful misconduct of the Indemnified Parties; and in case any action or proceeding be brought against the Indemnified Parties, Charter School shall defend the Indemnified Parties at Charter School's sole expense. This Agreement is made on the express condition that District shall not be liable for, or suffer loss by reason of, injury to person or property, from whatever cause in any way connected with the condition, use or occupancy of the Premises specifically including, without limitation, any liability for injury to the person or property of the Charter School, its agents, officers, employees, licensees and invitees. Charter School shall keep the Premises and the School Site clear of all liens, encumbrances and/or clouds on District's title to any portion of the Premises and the School Site.

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

22. Insurance.

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

- 22.2. Charter School acknowledges that the insurance to be maintained by District on the School Site will not insure any of Charter School's property or improvements made by Charter School.
- 22.3. 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 One Million dollars (\$1,000,000) for bodily injury or death and property damage as a result of any one occurrence and Two Million dollars (\$2,000,000) 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:

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

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

22.3.3. Contain a cross liability endorsement; and

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

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

- 22.4. During the Term of this Agreement, District shall maintain at its cost a policy of standard fire and casualty insurance limited to the value of the buildings and improvements located on the School Site as of the Commencement Date. In the event of loss or damage to the School Site, the buildings, the Premises or any contents, each Party, and all persons claiming under the 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.

22.4.1. No use shall be made or permitted to be made of the Premises, nor acts done, that will increase the existing rate of insurance upon the building or buildings of

the Premises or cause the cancellation of any insurance policy, covering same, or any part thereof, nor shall Charter School sell, or permit to be kept, used, or sold in or about the Premises any article that may be prohibited by the standard form of fire insurance policies. Charter School shall, at its sole cost and expense, comply with any and all requirements pertaining to the Premises, of any insurance organization or company, necessary for the maintenance of reasonable fire and casualty insurance, covering the Premises' buildings, or appurtenances. Fire and casualty insurance premium increases to District due to equipment and/or activities of Charter School shall be charged to Charter School.

- 22.5. During the Term, Charter School shall comply with all provisions of law applicable to Charter School with respect to obtaining and maintaining workers' compensation insurance. Prior to the commencement and any renewal of this Agreement and Charter School's occupancy of the Premises, Charter School shall provide District, as evidence of this required coverage, a certificate in a form satisfactory to District on or before the commencement or renewal date, providing that insurance coverage shall not be canceled or reduced without thirty (30) days prior written notice to District.
23. **Signs.** Charter School may, at Charter School's sole cost, have the right and entitlement to place an onsite sign on the Premises to advertise Charter School's educational program, provided Charter School obtains the prior written approval and consent of District. District's approval and consent shall not be unreasonably withheld. Any signs shall be at Charter School's cost and in compliance with the local ordinances pertaining thereto. In connection with the placement of any of Charter School's signs, District agrees to cooperate with Charter School in obtaining any governmental permits which may be necessary. Throughout the Term of the Agreement Charter School shall, at its sole cost and expense, maintain any of its signage and all appurtenances in good condition and repair. At the termination of the Agreement, Charter School shall remove any signs which it has placed on the Premises and School Site, and shall repair any damage caused by the installation or removal of Charter School's signs.
24. **Notice.** Any notice required or permitted to be given under the Agreement shall be deemed to have been given, served and received if given in writing and personally delivered or either deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service or facsimile transmission, addressed as follows:

DISTRICT:

Oakland Unified School District
Attn: Office of Charter Schools
1000 Broadway, Suite 639
Oakland, CA 94607

CHARTER SCHOOL:

Rochelle Benning and Devin Krugman
East Bay Innovation Academy
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.

25. **Subcontract, Assignment and Sublease.** Charter School shall not have the right, voluntarily or involuntarily, to assign, license, transfer or encumber the Agreement or sublet all or part of the Premises. 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.
26. **Joint and Several Liability.** If Charter School is more than one person or entity, each person or entity shall be jointly and severally liable for the obligations of Charter School hereunder.
27. **Independent Contractor Status.** The 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.
28. **Entire Agreement of Parties.** The Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations and agreements, whether oral or written. The Agreement may be amended or modified only by a written instrument executed by both Parties.
29. **California Law.** The 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 the Agreement shall be maintained in Santa Clara County.
30. **Compliance with All Laws.**
 - 30.1. 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 or School Site and Charter School's use thereof, 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 Charter School's use of the Premises), and all District policies, rules and regulations ("Environmental Laws").
 - 30.2. 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 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.

- 30.3. Charter School shall not cause or permit any Hazardous Material to be generated, brought onto, used, stored, or disposed of in or about the Premises and any improvements by Charter School or its agents, employees, contractors, subtenants, or invitees, except for limited quantities of standard office, classroom and janitorial supplies (which shall be used and stored in strict compliance with Environmental Laws). Charter School shall comply with all Environmental Laws. As used herein, the term "Hazardous Materials" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California or the United States Government. The term "Hazardous Materials" includes, without limitation, petroleum products, asbestos, PCB's, and any material or substance which is (i) defined as hazardous or extremely hazardous pursuant to Title 22 of the California Code of Regulations, Division 4.5, Chapter 11, Article 4, section 66261.30 *et seq.* (ii) defined as a "hazardous waste" pursuant to section (14) of the federal Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et. seq.* (42 U.S.C. 6903), or (iii) defined as a "hazardous substance" pursuant to section 10 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et. seq.* (42 U.S.C. 9601). As used herein, the term "Hazardous Materials Law" shall mean any statute, law, ordinance, or regulation of any governmental body or agency (including the U.S. Environmental Protection Agency, the California Regional Water Quality Control Board and the California Department of Health Services) which regulates the use, storage, release or disposal of any Hazardous Material.
- 30.4. **Notice of Hazardous Substance.** 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 or School Site 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.
- 30.5. **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.

- 30.6. **Indemnification.** Charter School's indemnification and defense obligations in this Agreement shall include any and all Claims arising from any breach of Charter School's covenants under this Section.
31. **Attorneys' Fees.** If either Party files any action or brings any proceedings against the other arising out of the Agreement, the prevailing party shall be entitled to recover, in addition to its costs of suit and damages, reasonable attorneys' fees to be fixed by the court. The "prevailing party" shall be the Party who is entitled to recover its costs of suit, whether or not suit proceeds to final judgment. No sum for attorneys' fees shall be counted in calculating the amount of a judgment for purposes of determining whether a Party is entitled to its costs or attorneys' fees.
32. **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.
33. **Successors and Assigns.** The Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors, and assigns.
34. **Counterparts.** The Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.
35. **Captions.** The captions contained in the Agreement are for convenience only and shall not in any way affect the meaning or interpretation thereof nor serve as evidence of the interpretation thereof, or of the intention of the Parties hereto.
36. **Severability.** Should any provision of the 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.
37. **Incorporation of Recitals and Exhibits.** The Recitals and each Exhibit attached hereto are hereby incorporated herein by reference.
38. **Authorization to Sign Agreement.** Each individual executing the Agreement on behalf of a Party represents and warrants that he or she is duly authorized to execute and deliver the Agreement on behalf of the Party that the individual is executing the Agreement and that the Agreement is binding upon that Party in accordance with its terms.
39. **Full Satisfaction of Proposition 39/Release of Claims.** Charter School agrees that this Agreement is a negotiated agreement and agrees to waive its right to bring a legal action for the 2015-2016 school year based on any claims arising out of or relating to alleged compliance or noncompliance with Education Code section 47614 and the Proposition 39 regulations. This waiver does not extend to the obligations set forth in this Agreement.

ACCEPTED AND AGREED on the date indicated below:

CHARTER SCHOOL
East Bay Innovation Academy

By:

Date

OAKLAND UNIFIED SCHOOL DISTRICT

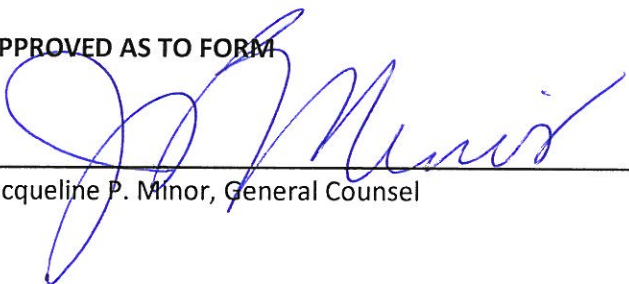
James Harris, President, Board of Education

Date

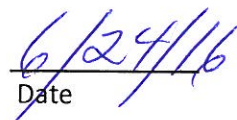
Antwan Wilson, Superintendent/Secretary, Board of Education

Date

APPROVED AS TO FORM



Jacqueline P. Minor, General Counsel



Date

Exhibit "A"
DESCRIPTION OF PREMISES AND SITE

The Premises that are being allocated to Charter School shall consist of approximately 6970.99 square feet of space located in the room(s) and area(s) as depicted on the attached School Site maps.