

Board Office Use: Legislative File Info.	
File ID Number	15-1528
Introduction Date	8/12/2015
Enactment Number	15-1293
Enactment Date	8/12/15 <i>as</i>

OFFICE OF THE GENERAL COUNSEL



OAKLAND UNIFIED
SCHOOL DISTRICT

Community Schools, Thriving Students

Memo

To Board of Education

From Jacqueline P. Minor, General Counsel

Board Meeting Date August 12, 2015

Subject **Facilities Use Agreement**

Action Requested **Approval Of Proposition 39 Facilities Use Agreement With American Indian Public Charter School For Use Of Classroom At Lakeview Elementary School, 746 Grand Avenue, Oakland, Ca 94610 For The 2015-16 School Year Serving Grades 9 - 12**

Background and Discussion The facility offer for AIMS is for one year only, during the 2015-2016 school year. The offer includes 8 classrooms, and administrative space and shared use of other space on the Lakeview campus, sufficient to house approximately 185-195 students in Grades 9-12. After the District use of the Lakeview campus for the 2015-16 school ends sometime in November, AIMS may seek to modify the Agreement in order to serve more AIMS students at the Lakeview campus.

AIMS has been informed that Lakeview will be a shared site for the 2015-16 school year and will be shared with the District's Community Schools and Student Services Department and Student Assignment Office. **AIMS has also been informed that the District has an immediate need for the Lakeview site for the 2016-17 school year to house a District program.** The District and AIMS are fully committed to meeting the District's obligation to make alternative space available for the AIMS program starting in the 2016-17 school year. The District and AIMS have agreed to collaborate to develop a long term solution that may include a ground lease and the development of a co-located, shared campus that will include the AIMS program housed at Lakeview for the 2015-16 school year.

Recommendation **Approval of Proposition 39 Facilities Use Agreement with American Indian Public Charter School for the 2015-16 School Year**

Fiscal Impact Annual Revenue of \$ \$38,383 for 15-16 FY



OAKLAND UNIFIED
SCHOOL DISTRICT

Community Schools, Thriving Students

OFFICE OF THE GENERAL COUNSEL

Attachment

Agreement
Site Layout

**FACILITIES USE AGREEMENT BETWEEN
OAKLAND UNIFIED SCHOOL DISTRICT AND
AMERICAN INDIAN PUBLIC CHARTER SCHOOL
FOR USE OF CLASSROOM SPACE FOR EDUCATIONAL
PURPOSES AT LAKEVIEW ELEMENTARY SCHOOL,
746 GRAND AVENUE, OAKLAND, CA 94610
FOR THE 2015-16 SCHOOL YEAR SERVING GRADES 9-12**

THIS FACILITIES USE AGREEMENT ("Agreement") is effective and commences the 7th day of August, 2015 and is by and between the **OAKLAND UNIFIED SCHOOL DISTRICT**, a California public school district ("District"), and **AMERICAN INDIAN PUBLIC CHARTER SCHOOL**, a California non-profit public benefit corporation ("AIMS" or "Charter School"). District and Charter School may be referred to herein individually as a "Party" or collectively as the "Parties." AIMS agrees that it will serve approximately 185 to 248 (nine classes at a maximum of 28 students) students, which number may increase after November 15, 2015 in Grades 9-12 at the Lakeview premises.

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.*); and

WHEREAS, the District and Charter School enter into this Agreement wherein the District, under Proposition 39 and consistent with California Code of Regulations, tit. 5, section 11969.1 *et seq.*, and Charter School mutually agree that the Charter School will occupy classrooms and use facilities (the "Premises") sufficient to house approximately 185 to 248 students, which number may increase after November 15, 2015 in Grades 9-12, as particularly described in Exhibit A and located at 746 Grand Avenue, Oakland, CA 94610 (the "School Site"), for one year only, during the 2015-2016 school year;

WHEREAS, the facility allocation is based on a projected in-district classroom ADA for grades 6-8, however the parties have agreed that the facilities may be used to house students in grades 9-12;

WHEREAS, AIMS has been informed that Lakeview will be a shared site for the 2015-16 school year and will be shared with the District's Community Schools and Student Services Department and Student Assignment Office;

WHEREAS, the District has informed AIMS that this Agreement is for the 2015-16 school year and that the District has an immediate need for the Lakeview site for the 2016-17 school year to house a District program;

WHEREAS, the District and AIMS are fully committed to meeting the District's obligation to make alternative space available for the AIMS program starting in the 2016-17 school year;

WHEREAS, the District and AIMS have agreed to collaborate to develop an long term solution that may include a ground lease and the development of a co-located, shared campus that will include the AIMS program housed at Lakeview for the 2015-16 school year;

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

AGREEMENT

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 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 that is not consistent with for a public educational facility.
- 1.4 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.
- 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.

- 1.7 The Parties agree that once the District vacates Lakeview in early November 2015, AIMS shall have the option to use the space the District is vacating, with any expanded usage by AIMS subject to a proportionate increase in the facility use fee. The parties will confer in good faith on the terms of such expanded usage once the date that the additional facilities will become available to AIMS has been determined. If AIMS decides to utilize additional space, the Parties' agreement shall be documented in writing as an amendment to this Agreement.

Shared Space

- . The District hereby grants to the Charter School the right to joint use of the following "Shared Space" solely for the purposes to perform Charter School's Activities on the terms and conditions set forth herein:

- 2.1 **PARKING:** Between August 7, 2015 and November 15, 2015, Charter School shall have one reserved parking space in the parking lot located on the School Site. In addition to the reserved parking space, Charter School shall also have additional non-exclusive use of the parking lot located on the School Site. Charter School shall abide by District's policies concerning the use of the parking lot, including the District policy relating to the drop-off and pick-up of students. Except with respect to the reserved parking space, Charter School's use of the parking lot shall be on a first-come, first-serve basis but shall not unreasonably impact other occupants with similar access rights to the parking lot. Charter School shall not abandon any inoperative vehicles or equipment on any portion of the School Site. District shall not be liable for 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's personal property located or stored in the parking lot, street parking, or the School Site or the personal property of Charter School's visitors, invitees and guests, 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.
- 2.2 **ATHLETIC FACILITIES:** The District shall allow the Charter School to schedule supervised student use of the School Site and blacktop area so that the Charter School will provide its own Physical Education programs within the school day using this Shared Space. The Charter School shall coordinate with the District to schedule its use of the athletic facilities for Physical Education.
- 2.3 **BATHROOMS:** Charter School students and staff shall have equal access to bathrooms located in Shared Space.
- 2.4 **COMMON HALLWAYS:** The District shall allow Charter School students to use common hallways, as may be necessary, for ingress and egress to the Dedicated Space and Shared Space.

- 2.5 DINING AREA/CAFETERIA after January 1, 2016: The District shall allow the Charter School to schedule supervised student use of the School Site's dining area as outlined in herein.
- 2.6 COORDINATING SHARED USE: Charter School use of the Shared Space shall be coordinated through the District. The District shall provide the Charter School with appropriate keys to access Shared Space no later than August 7, 2015.
- 2.7 STUDENT DISCIPLINE: The District and the Charter School will collaborate to resolve any student disciplinary issues that involve students and/or the personal property of both the Charter School and other District programs. The District shall otherwise have no responsibility as it relates to student discipline of Charter School students.
- 2.8 BELL SCHEDULE/ALARMS/ANNOUNCEMENTS: It is recognized that the Charter School may have a separate bell schedule. If deemed feasible, the Dedicated Space will have a separate intercom and bell system. If not feasible, the principal of the Charter School and the Deputy Chief of the District shall collaborate in the development of a plan.

Furnishings and Equipment for In-District Students

.

- 3.1 The District may provide furnishings and equipment at the Dedicated Space for Charter School's in-District Enrollment ADA as agreed by the Parties. These furnishings and equipment shall remain the property of the District. The District and the Charter School shall develop a mutually agreeable inventory of furnishings and equipment that will be located at the Dedicated Space.

Emergency Procedures

.

- 4.1 The principal of the Charter School and the Deputy Chief of the District shall immediately inform one another or their designees of any health and/or safety emergency as they relate to the safety of the parties located on the School Site. This includes reports of any serious incident that takes place on the School Site where the police, fire department, or paramedics are involved, including, but not limited to, incidents of physical or sexual abuse, bomb threats, weapons on the School Site, and the sale of narcotics on the School Site. Charter School staff, faculty, and students shall cooperate with, and participate in, any lockdowns or exigent security procedures required by the District at the School Site.
- 4.2 The Charter School will be notified two (2) school days in advance of scheduled fire drills and emergency drills on the School Site which may disrupt the Charter School and its operations. Charter School will provide notification two (2) school

days in advance to the District of scheduled fire drills and emergency drills on the School Site which may disrupt the District School and its operations.

- 4.3 To the extent feasible, fire and other security and emergency alarm testing will be limited to after-school hours or non-teaching/training days. The principal of the Charter School and the District Staff shall coordinate with each other to identify appropriate dates and times for these tests.

Safety of School Site and Dedicated Space

- 5.1 The School Site, including the Dedicated Space, 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 Dedicated Space. 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 Dedicated Space, 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 Dedicated Space which led to the damage, loss, or injury. District makes no warranties or representations as to the safety or security of Charter School, the Dedicated Space, 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 Dedicated Space ("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.
- 5.2 District shall secure the gates on the back fence and install a four foot fence to separate AIMS' use from other uses on the campus. The fence shall be eight to ten feet from the portable to allow for safe ingress and egress.
- 5.3 The District notes that there will be heavy use of the Lakeview site from August 10, 2015 to September 11, 2015. District will work with AIMS to make the campus safe for students. Among other things, District will provide additional security personnel at Lakeview to provide security and manage traffic during this period.

Condition of Dedicated Space

- 6.1 District shall not be required to make or construct any alterations including structural changes, additions or improvements to the Dedicated Space except as set forth in this Agreement. District shall, however, remain responsible for compliance with ADA, FEHA and other applicable building code standards for the Premises including Shared Space and Dedicated Space, to the extent applicable for the public school use that the Premises is provided for under this Agreement.
- 6.2 Charter School acknowledges that neither District nor District's agents have made any representation or warranty as to the suitability of the Dedicated Space 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.
- 6.3 The Parties agree that if the structural elements of the Dedicated Space 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 Dedicated Space. District may, however, terminate this Agreement if the cost to repair the Premises exceeds Five Hundred Thousand dollars (\$500,000) per incident. District will pro-rate the Rent 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 \$500,000 per incident, Charter School may elect to remain in possession of the Dedicated Space and pay the Rent, unless revised through mutual agreement of the Parties, or Charter School may elect to terminate this Agreement. If necessary and to the extent practicable, the District shall provide the Charter School temporary housing on the School Site, or another school site that is near to the Dedicated Space for any part of the Charter School program that is displaced by the partial damage and/or the repair work of the same.
- 6.4 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.
- 6.5 Dedicated Space is as shown in Exhibit A and includes, but is not limited to:

- 6.5.1 Nine (9) teaching stations as shown on Exhibit A.
- 6.5.2 Multi-purpose room, conference rooms, office space and meeting rooms as shown in Exhibit A, including the Administrative Conference Room off of the office.
 - (a) The server/copier room will be retained by OUSD.
- 6.5.3 A portable bathroom that will be installed on the blacktop for exclusive use by AIMS students (in addition to shared restrooms).
- 6.5.4 Auditorium, which AIMS shall have exclusive use of during the school day and agreed, in advance, weekend and evening use. The parties shall jointly develop a schedule of use for the Auditorium. District shall have use of the Auditorium for professional development training the week of August 10, 2015. The Auditorium will be turned over to AIMS on August 17, 2015. The District understands that AIMS' school day use extends to 5:30pm. The Auditorium must remain available for designated and agreed in advance OUSD events in evenings and weekends.

Title to School Site/Dedicated Space

- . The Parties acknowledge that title to the School Site/ Dedicated Space is held by District.

Term

.

- 8.1 The term of this Agreement shall be for one year. The commencement date shall be August 7, 2015, ("Commencement Date"), and, unless sooner terminated under any provision hereof, this Agreement shall end on June 30, 2016 ("Term"). Provided Charter School has executed this Agreement, Charter School may take possession of the shared premises on August 7, 2015.

Pro Rata Share Charge

.

- 9.1 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:
 - \$3.80 per square foot. Based on Charter School's square footage of 10,101 SF, the Pro Rata Share is \$38,383 annually.
- 9.2 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.

- 9.3 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.
- 9.4 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.
- 9.5 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.

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.

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.

- 11.1 The Charter School shall pay the District's costs to provide the Utilities in an amount equal to the percentage of the Charter School's use of the School Site ("Use Percentage") multiplied by the total cost of Utilities provided to the School Site. The Use Percentage shall be calculated based on the square footage of the Dedicated Space plus the Charter School's proportional use of Shared Space, if applicable, as shown in Exhibit "A". Charges for Utilities shall be paid by Charter School on a quarterly basis as billed by the District. Charter School's share is approximately 36.4%.
- 11.2 The Charter School shall obtain its own internet service and telephone provider and shall assume sole responsibility for upkeep and maintenance of all telephone systems, data lines, and related equipment, software and hardware. Charter School may use any pre-existing T-1 Line located in the Dedicated Space, if any. In the event Charter School uses a pre-existing T-1 Line, Charter School shall transfer billing of the line to Charter School upon approval from the District's Technology Services Department.

Furnishings and Equipment

- . The District shall provide, in accordance with the Proposition 39 regulations, furnishings and equipment at the Premises for Charter Schools in district enrollment. 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.

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, if any.

Condition of Premises

- . [See Section 6.1]

Title to School Site(s)/Classroom Buildings

- . The Parties acknowledge that title to the School Site and Premises is held by District.

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.

- 16.1 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.
- 16.2 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.
- 16.3 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.
- 16.4 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.
- 16.5 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.

Surrender of Premises, Furnishings and Equipment

- 17.1 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.
- 17.2 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.
- 17.3 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.
- 17.4 **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.
- 17.5 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.

Maintenance

- 18.1 **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 and general maintenance costs. Charter School shall be billed separately.
- 18.2 **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.

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

- 19.1 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.
- 19.2 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.

- 19.3 Under all circumstances, Charter School must seek and receive approval from the Division of the State Architect for any of Charter School's Improvements.
- 19.4 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.
- 19.5 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 performed by the Charter School, 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:

19.5.1 Record a valid Release of Lien; or

19.5.2 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

19.5.3 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.

- 19.6 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.

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 which shall not be unreasonably withheld and provided that all of Charter School's Safety Measures are compatible with District's safety system or protocol.

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. Charter School shall provide written verification of compliance with the fingerprinting and criminal background investigation requirements to District prior to Charter School taking possession of the Premises and prior to conducting its educational program on the Premises. The District hereby certifies that its employees, agents, contractors or independent contractors that perform work on the School Site or that it directs to perform work at the School Site and who may have contact with Charter School students shall undergo a criminal background check according to the procedures set forth in Education Code Section 45125.1 and 45125.2 or any applicable law regarding contact with Charter School's minor students, and will provide written verification to Charter School upon its request that criminal background checks have been cleared.

Default

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

- 22.1.1 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;
- 22.1.2 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;
- 22.1.3 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;
- 22.1.4 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;
- 22.1.5 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;

22.1.6 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

22.1.7 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.

22.2 **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.

22.2.1 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. 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.

Reciprocal Indemnification

- 23.1 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.

Insurance

- 24.1 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 through a Joint Powers Authority shall be considered sufficient. Charter School shall furnish District with the original certificates and amendatory endorsements effecting coverage required.
- 24.2 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.
- 24.3 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:
 - 24.3.1 Not be canceled or altered without thirty (30) days' prior written notice to District;
 - 24.3.2 State the coverage is primary and any coverage by District is in excess thereto;
 - 24.3.3 Contain a cross liability endorsement; and

24.3.4 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.

24.4 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.

24.4.1 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 reasonable 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.

24.5 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.

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.

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:

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

And

OUSD Office of Charter Schools
Silke Bradford
Silke.Bradford@ousd.k12.ca.us

CHARTER SCHOOL:

Maya Woods Cadiz, Superintendent
American Indian Model Schools
171 12th Street
Oakland, CA 94607
O: 510-893-8701 Ex. 16
M: 510-508-6957
maya.woods-cadiz@aimschools.org

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.

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.

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.

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.

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.

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 Alameda County.

Compliance with All Laws

.

- 32.1 Except as otherwise provided in this Agreement, 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 Charter School's use of 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") except where the obligation to comply with CEQA is solely the result of the District's decision to allocate facilities to the Charter School on the Premises, and its implementing regulations in Charter School's use of the Premises), and all District policies, rules and regulations ("Environmental Laws").

- 32.2 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.
- 32.3 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.
- 32.4 **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.

32.5 **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.

32.6 **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.

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.

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.

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.

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.

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.

Incorporation of Recitals and Exhibits

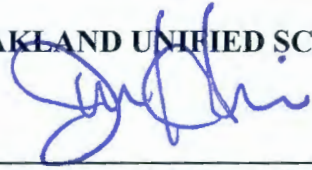
. The Recitals and each Exhibit attached hereto are hereby incorporated herein by reference.

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.

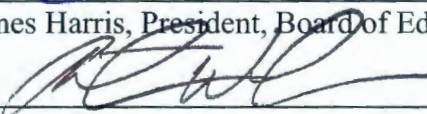
ACCEPTED AND AGREED on the date indicated below:

OAKLAND UNIFIED SCHOOL DISTRICT



James Harris, President, Board of Education


8/13/15
Date



Antwan Wilson, Superintendent/Secretary, Board of Education

8/13/15
Date

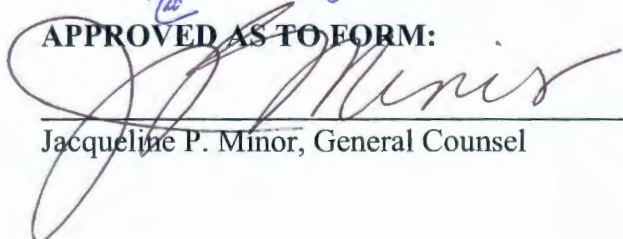
AMERICAN INDIAN PUBLIC CHARTER SCHOOL



By: Maya Woods Cadiz, Superintendent
*under the approval of AIMS board
on 8-31-2015*

8-31-2015
Date

APPROVED AS TO FORM:



Jacqueline P. Minor, General Counsel

8/11/2015
Date