

Board Office Use: Legislative File Info.	
File ID Number	15-2221
Introduction Date	11/04/2015
Enactment Number	15-1799
Enactment Date	4/4/15 <i>JA</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 *JA*

Board Meeting Date November 4, 2015

Subject **CHARTER SCHOOL FACILITIES PROGRAM USE AGREEMENT FOR EDUCATION FOR CHANGE PUBLIC SCHOOLS – EDUCATION FOR CHANGE AND LAZEAR CHARTER ACADEMY AND CHARTER SCHOOL FACILITIES PROGRAM MOU**

Action Requested **APPROVAL OF CHARTER SCHOOL FACILITIES PROGRAM USE AGREEMENT FOR EDUCATION FOR CHANGE PUBLIC SCHOOLS – EDUCATION FOR CHANGE AND LAZEAR CHARTER ACADEMY AND CHARTER SCHOOL FACILITIES PROGRAM MOU**

Background and Discussion

Lazear is located at the former OUSD School Site, Lazear Elementary School, located at 824—29th Avenue, Oakland, CA 94601. EFC has raised the 50% local matching necessary to qualify for funding under the California School Facilities Program ("CSFP"). EFC will build a new school building on the site of the current soccer field. After construction of the new building, the existing portables will be demolished and the current site will become the athletic field. In order to meet the requirements of CSFP, the term of the Facility Use Agreement is twenty (20) years, with two additional terms of ten (10). The term commences July 1, 2015. Because the final design plans are not yet complete, the Facility Use Agreement provides that within 3 months of completion of the Project, the Parties will meet to fairly renegotiate an annual Rent for the remaining years of the Agreement. In the event the Parties are not able to agree, the Agreement provides for mediation.

The Facility Use Agreement and the State funding are contingent upon Education for Change/Lazear's program continuing to operate and not being revoked or non-renewed. During the first five years, the Facility Use Fee is \$112,217 per year, subject to 3% increase annually commencing July 1, 2016. In addition to approval of the Facility Use Agreement, the District is required to execute the MOU with the State of California and EFC authorizing EFC, without liability of any kind to the District to receive funds under the Charter School Facilities Program to build a new school



on the Lazear campus.

Additional Information

The Charter School Facilities Program ("CSFP") is intended to provide funds to qualified charter schools to acquire real property, rehabilitate, modernize or construct improvements to be used as a school facility for the charter school educational program. The State is charged with the implementation and administration of the CSFP. The CSFP requires OUSD to hold the fee title to the newly constructed Facilities/Improvements, in trust for the California public school system and to take certain action in the event the charter school ceases to use the Facilities/Improvements for the intended purpose. The District will incur no additional fees.

Recommendation

**APPROVAL OF CHARTER SCHOOL FACILITIES PROGRAM
USE AGREEMENT FOR EDUCATION FOR CHANGE PUBLIC
SCHOOLS – EDUCATION FOR CHANGE AND LAZEAR
CHARTER ACADEMY AND CHARTER SCHOOL FACILITIES
PROGRAM MOU**

Fiscal Impact

Revenue of \$112,217 per year, increasing by 3% for four years starting July 1, 2016

Attachment

Charter School Facilities Program Use Agreement For Education For Change Public Schools – Education For Change And Lazear Charter Academy

Charter Academy And Charter School Facilities Program MOU

CHARTER SCHOOL FACILITIES PROGRAM
USE AGREEMENT
FOR
EDUCATION FOR CHANGE PUBLIC SCHOOLS – LAZEAR CHARTER ACADEMY

This Use Agreement (the "**Use Agreement**") is made by and between **OAKLAND UNIFIED SCHOOL DISTRICT**, a school district formed and existing under the laws of the State of California ("**OUSD**"), and **EDUCATION FOR CHANGE PUBLIC SCHOOLS – LAZEAR CHARTER ACADEMY**, a charter school authorized by Alameda County Office of Education ("**EFC**" or "**CHARTER SCHOOL**").

ARTICLE 1

CONDITIONS PRECEDENT; RIGHT TO USE; FACILITIES/IMPROVEMENTS

1.1 **Purpose.** The Charter School Facilities Program ("CSFP") is intended to provide funds to qualified charter schools to acquire real property, rehabilitate, modernize or construct improvements to be used as a school facility for the charter school educational program. The State is charged with the implementation and administration of the CSFP. The CSFP requires OUSD to hold the fee title to the newly constructed Facilities/Improvements, as defined below, in trust for the California public school system and to take certain action in the event the charter school ceases to use the Facilities/Improvements for the intended purpose. OUSD agrees to execute the Charter School Facilities Program Memorandum of Understanding by and Among EFC, OUSD and the State of California, State Allocation Board and California School Finance Authority which is attached hereto as Exhibit 1.

1.1.1 **Limitation of OUSD.** OUSD discloses and CHARTER SCHOOL acknowledges and agrees that in light of OUSD's limited role and involvement in the CSFP, OUSD's duties and responsibilities are also limited in scope.

(a) **Title to the Facilities/Improvements.** In accordance with Section 17078.57(a)(3)(A) of the Cal. Ed. Code, OUSD must hold title to the Facilities/Improvements, as defined in Exhibit A and in Section 1.3 below, in trust for the benefit of the California public school system. The CSFP requires OUSD, as the holder in trust of the Facilities/Improvements, to provide the use of the Facilities/Improvements to CHARTER SCHOOL for an educational program conducted by said charter school, which is the basis for this Use Agreement. OUSD shall have no responsibilities or duties to assist CHARTER SCHOOL, obtain on behalf of CHARTER SCHOOL, or undertake an act for the benefit of CHARTER SCHOOL in areas, such as but not limited to, land use entitlements for the Facilities/Improvements or operation of the charter school program, or construction of the Facilities/Improvements.

(b) **Default; Abandonment.** In the event CHARTER SCHOOL defaults under any term or condition of this Use Agreement, or CHARTER SCHOOL abandons or otherwise ceases to use the Facilities/Improvements for the permitted use, OUSD shall observe the requirements set forth in the MOU regarding Section 17078.62(b)(1) through (5) inclusive, of the California Education Code. In the event the STATE notifies OUSD that CHARTER

SCHOOL has defaulted under the MOU or Funding Agreement, if applicable, and requests OUSD to declare CHARTER SCHOOL in default under the Use Agreement, OUSD shall observe the requirements set forth in the MOU regarding Section 17078.62(b)(1) through (5), inclusive, of the California Education Code.

(c) **Funding.** OUSD shall have no obligation to provide to CHARTER SCHOOL additional funding for the construction of any improvements for the Facilities/Improvements, funding to pay or settle outstanding debts and/or liens attaching to the Facilities/Improvements such as, but not limited to, mechanic's liens, taxes or assessments, or funding to operate the charter school. CHARTER SCHOOL represents and warrants that it is CHARTER SCHOOL's intention to operate independently from OUSD with minimal administration and oversight in accordance with statutory requirements.

1.2 **Conditions Precedent.** The STATE requires this Use Agreement to be executed by and between OUSD and CHARTER SCHOOL prior to CHARTER SCHOOL's acquisition of the real property and construction and/or rehabilitation of improvements constituting the "Facilities/Improvements," as defined below, as a condition to the distribution of the funding under CSFP unless otherwise approved by the State. The effectiveness of this Use Agreement and all of CHARTER SCHOOL's rights hereunder shall be contingent upon the occurrence of all the following (collectively, the "Conditions Precedent"):

1.2.1 **Notification of Pending Distribution.** CHARTER SCHOOL shall provide written evidence of the STATE's determination that CHARTER SCHOOL qualifies for disbursement of funds under the CSFP and the STATE's request for the submittal of this Use Agreement as executed by CHARTER SCHOOL and OUSD as a condition to the distribution of funds.

1.2.2 **Submittal of Approvals, Permits, etc.** CHARTER SCHOOL shall submit to OUSD a binder containing a copy of the plans and specifications for the Facilities/Improvements. OUSD discloses and CHARTER SCHOOL acknowledges that OUSD shall not review the documents tendered for sufficiency, adequacy, or compliance but rather OUSD shall hold the documents tendered as basic information pertaining to the Facilities/Improvements for future reference by interested parties.

1.3 **The Facilities/Improvements.** The Facilities/Improvements are defined as the following:

1.3.1 Those improvements currently existing on the real property as of the Commencement Date of this Use Agreement and those improvements that may be constructed on said real property after the Commencement Date of this Use Agreement by Charter School.

1.4 **Right to Use.** Upon the satisfaction of the Condition Precedents set forth in Section 1.2 above, CHARTER SCHOOL shall have the right to:

1.4.1 Take exclusive possession of the Facilities/Improvements and commence and pursue to completion the rehabilitation, modernization and/or construction of improvements appropriate for the conduct of a charter school educational program as CHARTER SCHOOL deems appropriate so long as:

(i) CHARTER SCHOOL has obtained all necessary and appropriate permits and/or approvals required under the CSFP for the Facilities/Improvements;

(ii) CHARTER SCHOOL complies and will comply with all terms and conditions imposed by the governmental agencies issuing said permits and/or approvals;

(iii) CHARTER SCHOOL has and maintains appropriate insurance throughout the work occurring on the Facilities/Improvements naming the STATE and OUSD as additional insureds;

(iv) CHARTER SCHOOL notifies OUSD a minimum of 30 days in advance of the commencement of any work so OUSD may post notices of non-responsibility on the Facilities/Improvements;

(v) all work is performed in a good and workmanlike manner, in conformance with any and all applicable federal, state, county or municipal laws, rules and regulations and pursued with all diligence to completion; and

(vi) within 30 days of the completion of work, including Future Work as defined below, CHARTER SCHOOL shall cause a Notice of Completion to be recorded in the office of the Recorder of Alameda County in accordance with Section 3093 of the Civil Code of the State of California or any successor statute, and CHARTER SCHOOL shall deliver to OUSD within 30 days of the recordation of the Notice of Completion a reproducible copy of the "as built" drawings, which will be prepared by the architect of the Facilities/Improvements or Future Work, to include the initial drawings stamped by the California Division of State Architect plus any subsequent field changes, plus any subsequent approvals from the California Division of State Architect, if applicable.

The foregoing conditions shall apply to maintenance and repairs, if requiring compliance with the Field Act and preparation of plans, and all additions, extensions, alterations, renovations, modernization or other capital improvement (the "Future Work") that CHARTER SCHOOL may undertake at any time during the term of this Use Agreement; provided, that to the extent the CSFP does not contemplate or address Future Work, the proposed Future Work shall be subject to Section 17078.54(c)(1)(A) of the California Education Code.

1.4.2 Exclusively use the Facilities/Improvements for the Permitted Use after completion of the work for the Facilities/Improvements as set forth in CHARTER SCHOOL's CSFP application and as contemplated in Section 1.4.1 above. CHARTER SCHOOL shall not use or permit the Facilities/Improvements, or any portion thereof, to be used for any other purpose or purposes whatsoever without notifying OUSD of CHARTER SCHOOL's intention to modify the use and the STATE's consent to such modified use. CHARTER SCHOOL shall comply with all recorded covenants, conditions, and restrictions now or hereafter affecting the Facilities/Improvements. CHARTER SCHOOL shall procure, maintain and hold available for OUSD's reasonable inspection any governmental license, permit or approval required for the lawful conduct of CHARTER SCHOOL's Permitted Use as set forth herein.

CHARTER SCHOOL agrees that the right to use the Facilities/Improvements is upon and subject to the terms, covenants and conditions set forth in this Use Agreement, and CHARTER SCHOOL covenants as a material part of the consideration for this Use Agreement to keep and perform each and all of such terms, covenants and conditions by it to be kept and performed and that this Use Agreement is made upon the condition of such performance. CHARTER SCHOOL hereby acknowledges and agrees that CHARTER SCHOOL shall accept the existing Facilities/Improvements "as is", "where is", "with all faults" condition in all respects. CHARTER SCHOOL acknowledges and agrees that CHARTER SCHOOL is not considering or relying upon OUSD as to the condition of the Facilities/Improvements or as to the use to which the Facilities/Improvements can be put or as to the suitability of the Facilities/Improvements, or any portion thereof, for CHARTER SCHOOL's intended uses and purposes since CHARTER SCHOOL selected the Facilities/Improvements based upon its independent investigation and application under the CSFP. Neither OUSD nor any agent of OUSD has made any representation or warranty regarding the condition of the Facilities/Improvements or with respect to the suitability of the Facilities/Improvements for the conduct of CHARTER SCHOOL's business. The taking of possession of the Facilities/Improvements by CHARTER SCHOOL shall conclusively establish that the Facilities/Improvements were in the condition and repair anticipated by CHARTER SCHOOL based upon its evaluation and investigation into the Facilities/Improvements as part of the transaction contemplated under the CSFP.

1.4.3 Prohibited Uses. CHARTER SCHOOL shall not: (i) engage in any commercial or manufacturing activity or uses on the Facilities/Improvements; or (ii) use, generate, manufacture, produce, store, treat, dispose or permit the escape on, under, about or from the Facilities/Improvements, or any part thereof, any asbestos or any flammable, explosive, radioactive, hazardous, toxic, contaminating, polluting matter, waste, substance or related injurious materials, whether injurious by themselves or in combination with other materials in violation of any applicable laws; provided, that notwithstanding anything herein to the contrary, CHARTER SCHOOL shall have the right to use normal and customary cleaning solutions and classroom chemicals (for educational purposes) in quantities and in a manner consistent with applicable laws. CHARTER SCHOOL covenants and agrees that CHARTER SCHOOL shall not use, or suffer or permit any person or persons to use, the Facilities/Improvements or any part thereof for any use or purpose in violation of the laws of the United States of America, the State of California, or the ordinances, regulations or requirements of the local municipal or county governing body or other lawful authorities having jurisdiction over the Facilities/Improvements or CHARTER SCHOOL's use thereof. CHARTER SCHOOL shall not cause or permit waste to occur in, on or about the Facilities/Improvements, or use or allow the Facilities/Improvements to be used for any improper, unlawful or objectionable purpose, nor shall CHARTER SCHOOL cause, maintain or permit any nuisance in, on or about the Facilities/Improvements.

1.4.4 Continued Operation. CHARTER SCHOOL covenants and agrees that except in the event of a force majeure it will conduct the Permitted Use from the Facilities/Improvements on the Commencement Date, and thereafter operate and conduct such use at the Facilities/Improvements continuously and uninterruptedly during the term in accordance with this Use Agreement. In the event CHARTER SCHOOL fails to continuously operate its business in the Facilities/Improvements as required by this Section 1.4.4, and except in the event of a force majeure, for a period of 60 consecutive or non-consecutive days in any

calendar year but excluding holidays and those days when the school is on break (e.g., Winter break, Spring break, Summer break).

1.5 Non-Terminability. Except as otherwise expressly set forth in this Use Agreement to the contrary, this Use Agreement and the rights and obligations of OUSD or CHARTER SCHOOL hereunder shall not be affected by any event or for any reason, including the following: (i) any damage to or theft, loss or destruction of any portion of the Facilities/Improvements, (ii) any condemnation of any portion of the Facilities/Improvements, (iii) any latent or other defect in any portion of the Facilities/Improvements, (iv) the bankruptcy, insolvency, reorganization, composition, readjustment, liquidation, dissolution or winding-up of, or other proceeding affecting OUSD, (v) the exercise of any remedy, including foreclosure, under any mortgage or assignment, (vi) any action with respect to this Use Agreement (including the disaffirmance hereof) which may be taken by OUSD, any trustee, receiver or liquidator of OUSD or any court under the Federal Bankruptcy Code or otherwise, (vii) any interference with CHARTER SCHOOL's use of the Facilities/Improvements, provided such interference is not caused or permitted by OUSD, or (viii) market or economic changes. In the event CHARTER SCHOOL exercises any right to terminate this Use Agreement, CHARTER SCHOOL shall be deemed to have released its rights under the CSFP and any rights of redemption or cure provided in this Use Agreement and OUSD may rely upon CHARTER SCHOOL's termination and proceed to observe the requirements of Section 17078.62(b)(2) through (5), inclusive.

1.6 Separate Covenants. The obligations of CHARTER SCHOOL under this Use Agreement shall be separate and independent covenants and agreements, except as expressly provided for otherwise in this Use Agreement, all monetary obligations shall continue to be payable in all events (or, in lieu thereof, CHARTER SCHOOL shall pay amounts equal thereto), and the obligations of CHARTER SCHOOL hereunder shall continue unaffected unless the requirement to pay or perform the same shall have been terminated pursuant to an express provision of this Use Agreement. This Use Agreement does contain provisions which impose an obligation on CHARTER SCHOOL to pay rent and other charges under certain circumstances and any such rent and other charges payable by CHARTER SCHOOL hereunder shall constitute "rent" for all purposes (including Section 502(b)(6) of the Bankruptcy Code).

ARTICLE 2

TERM

The commencement date ("Commencement Date") shall be July 1, 2015.

The term ("Initial Term") of this Agreement shall be for twenty (20) years and shall end on June 30, 2035; the term may be extended for two additional terms of 10 years each, unless subject to earlier termination under any provision of this Agreement, including but not limited to the following reasons:

- 2.1.1 CHARTER SCHOOL'S program ceases to operate after a revocation, nonrenewal or surrender of the charter to the granting agency, and all appeals have been exhausted;

- 2.1.2 CHARTER SCHOOL fails to construct significant capital outlay improvements on the Premises within five (5) years of the Commencement Date of this Agreement, in which case the term of this Agreement shall only be for five (5) years, or until June 30, 2020;
- 2.1.3 CHARTER SCHOOL's default under the terms and conditions herein and CHARTER SCHOOL's failure to complete any cure of such default as provided herein;
- 2.1.4 CHARTER SCHOOL's default under the MOU, as defined below, or the Funding Agreement, if applicable, and CHARTER SCHOOL's failure to complete any cure of such default as provided therein.

ARTICLE 3

CHARTER SCHOOL'S PAYMENT OBLIGATIONS

3.1 **Payments.** For and in consideration of the use of the Premises under this Agreement, CHARTER SCHOOL agrees to pay District Facilities Use Lease Rents ("Rent") as follows:

3.1.1 Through June 30, 2020, or the adjustment is made in Section 3.1.2 below, Rent shall be fixed at the 2015-16 Prop 39 rate of \$3.80 per square foot, based upon 29,531 square feet, or One Hundred and Twelve Thousand Two Hundred and Seventeen Dollars (\$112, 217.00) annually, subject to 3% annual increase effective July 1st of each year, with the first increase effective July 1, 2016.

3.1.2 Within three (3) months of completion and/or beneficial occupancy by CHARTER SCHOOL of the recreational improvements or other school facilities contemplated under this Agreement, the Parties will meet to fairly renegotiate an annual Rent for the remaining years under the Initial Term and any Additional Term(s), taking into consideration actual costs directly attributable to purchase, installation, and construction of the additional recreational improvements or facilities. If the Parties cannot agree, upon completion and/or beneficial occupancy by CHARTER SCHOOL of the Facilities/Improvements, CHARTER SCHOOL intends to build on the Premises, the Parties agree to follow the procedures set forth below:

- a) Each Party shall designate a senior official with authority to bind the Party to meet and confer to agree upon an annual Rent for the remaining years of the Agreement or a formula for calculating the annual Rent. If the two officials are not able to reach an agreement within 45 calendar days, the Parties agree to binding mediation with the State Mediation and Conciliation Service as described in b) below.
- b) If the Parties have not reached agreement within 45 days, either Party may notify the other Party of the intent to proceed to mediation of the dispute by requesting that the State Mediation and Conciliation Service ("SMCS") appoint a Mediator. The Parties shall prepare a joint statement to outlining

the issues and the dispute. SMCS shall appoint a Mediator within 30 calendar days if possible. The mediation procedure shall be entirely informal in nature. Subject to approval by the Boards of both Parties, the Parties agree to be bound by the recommendation of the Mediator.

3.1.3 Rent shall be paid quarterly as follows:

- July 1 - \$28,054.25
- October 1 - \$28,054.25
- January 1 - \$28,054.25
- April 1 - \$28,054.25

3.1.4 Rent does not include the utility charges, custodial or security costs. CHARTER SCHOOL shall pay for all utilities charges for the Premises. For purposes of this Agreement, utilities include water, irrigation, gas, electricity, telephone, security and fire alarm monitoring, data and communication lines and service, trash pick-up, and sewage fees.

3.1.5 CHARTER SCHOOL shall pay promptly to District, the Rent when due during any Term, without deduction, setoff, prior notice or demand.

3.1.6 CHARTER SCHOOL acknowledges that late payment by CHARTER SCHOOL to District of the Rent and other sums due hereunder will cause District to incur costs not contemplated by this Agreement, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, if District does not receive any installment of Rent or any other sum due from CHARTER SCHOOL by 4:00 p.m. within ten (10) days after such amount is due, CHARTER SCHOOL shall pay to District, as additional rent, a late charge equal to one percent (1%) of such overdue amount or the maximum amount allowed by law, whichever is less. The Parties hereby agree that such late charges represent a fair and reasonable estimate of the costs District will incur by reason of late payment by CHARTER SCHOOL. Acceptance of any late charge by District shall in no event constitute a waiver of CHARTER SCHOOL's default with respect to the overdue amount, nor prevent District from exercising any of its other rights and remedies granted hereunder.

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

3.1.8 CHARTER SCHOOL to Pay All Costs. CHARTER SCHOOL agrees that the Improvements and the educational program conducted by CHARTER SCHOOL are intended to be cost-neutral to OUSD because OUSD is merely a participant in CHARTER SCHOOL's transaction under the CSFP due to statutory provisions that require OUSD to hold title to the Improvements in trust for the California public school system and to undertake certain action in the event of CHARTER SCHOOL's default. Except to the extent of the costs and expenses incurred due to OUSD's negligence or willful misconduct in its actions or omissions, CHARTER SCHOOL agrees that CHARTER SCHOOL shall pay all costs, expenses and obligations of every kind or nature arising from: (i) the Improvements, (ii) the construction for which CHARTER SCHOOL received CSFP funding, (iii) the maintenance, repair, modernization or improvements, (iv) CHARTER SCHOOL's use and occupation, and (v) the educational program conducted thereon.

3.1.9 Exemption, Reduction. CHARTER SCHOOL, at its sole cost and expense, may seek an exemption or reduction of any cost or expense arising from the Facilities/Improvements, or may file and proceed with a protest, in its own name, of any cost or expense arising from the Facilities/Improvements so long as CHARTER SCHOOL shall first pay the cost or expense and then pursue said exemption, reduction or protest. OUSD, in good faith, shall cooperate and assist CHARTER SCHOOL in its pursuit of an exemption, reduction or protest so long as OUSD is not required to incur any cost or expense in connection with such exemption, reduction or protest, or exercise powers or rights statutorily provided to a school district (such as, but not limited to, a school district's right to declare its school sites exempt from local zoning) as opposed to a charter school.

ARTICLE 4

SERVICES AND UTILITIES

4.1 **In General.** CHARTER SCHOOL shall be solely responsible, at its sole cost and expense, for the furnishing of all services and utilities to the Facilities/Improvements, including, but not limited to heating, ventilation and air-conditioning, gas, electricity, water, telephone, trash collection, sewage disposal, janitorial and interior and exterior Facilities/Improvements security services. CHARTER SCHOOL shall pay the cost of all utilities and other services directly to the applicable utility or service provider. CHARTER SCHOOL agrees that nothing herein shall obligate OUSD to include the Facilities/Improvements on OUSD's bulk energy contracts.

4.2 **Interruption of Use.** Except to the extent the discontinuance, failure or interruption is caused or permitted by OUSD's negligence or willful misconduct, CHARTER SCHOOL agrees that OUSD shall not be liable for damages, by abatement of rent or otherwise, for the discontinuance, failure or interruption of any utility or other service (including telephone and telecommunication services), or for any diminution in the quality or quantity thereof; and such discontinuance, failure or interruption shall never be deemed to constitute an eviction or disturbance of CHARTER SCHOOL's use and possession of the Facilities/Improvements or relieve CHARTER SCHOOL from paying rent or other fees, costs or other amounts due and owing under this Use Agreement. Notwithstanding anything herein to the contrary, OUSD shall

use its good faith efforts to assist CHARTER SCHOOL in restoring such services so long as OUSD is not required to incur any costs or expenses.

ARTICLE 5

MAINTENANCE AND REPAIRS AND OTHER FUTURE WORK

5.1 **Maintenance and Repairs.** Pursuant to the terms of this Use Agreement including without limitation Article 7 hereof, CHARTER SCHOOL, at its sole cost and expense, shall keep, maintain, repair and improve, if necessary, the Facilities/Improvements, and every portion thereof, including all structural and non-structural components, without limitation, the roof and all ancillary components thereof; the foundation and floor covering; all pipes and conduits; interior and exterior glass, window sashes and window coverings, casements and frames (collectively, "Maintenance Items"), in good order, repair and condition at all times during the Term. Furthermore, but without limitation of the foregoing, CHARTER SCHOOL, at its sole cost and expense, shall promptly repair any damage to the Facilities/Improvements regardless of the cause of the damage in order to allow CHARTER SCHOOL to use the Facilities/Improvements for the Permitted Use in a safe and sanitary manner; provided, however, that such damage was caused or permitted to occur due to OUSD's gross negligence or willful misconduct, OUSD shall be responsible for such costs and expenses.

5.2 **OUSD Right to Inspect Work.** OUSD shall have the right, but not the obligation, to inspect the Facilities/Improvements upon 48 hours' prior written notice to CHARTER SCHOOL during reasonable operating hours; provided, that OUSD shall not be required to provide any notice in the event of an emergency. OUSD shall provide CHARTER SCHOOL with written notice of any deficiencies and a request for such deficiencies to be addressed, and, within 30 days of its receipt of OUSD's notice, CHARTER SCHOOL shall either perform the work necessary to rectify the deficiency to a safe and sanitary condition or provide OUSD with a written response explaining how it is addressing said deficiencies and CHARTER SCHOOL's timeline to rectify said deficiencies.

It is the intention of the parties that first and foremost, CHARTER SCHOOL shall perform all work and services necessary for the Facilities/Improvements to be in a good, safe and sanitary condition but if CHARTER SCHOOL fails to act within the time periods set forth in this Use Agreement, OUSD may elect, but shall not have an obligation, to perform the work or contract for the work to be performed by a third-party to address any deficiency or as required by any governmental agency, including regular janitorial/custodial services and maintenance of the Facilities/Improvements if needed. Prior to exercising such right, OUSD shall notify CHARTER SCHOOL in writing of its intention and if CHARTER SCHOOL does not commence the work to rectify the deficiency or provide a written response as set forth hereinabove within five (5) days of CHARTER SCHOOL's receipt of the notice, OUSD may perform such work. If OUSD performs work on behalf of CHARTER SCHOOL as provided herein, OUSD shall bill the cost of such work plus OUSD's actual costs and expenses incurred in performing the work and CHARTER SCHOOL shall remit payment. In connection therewith, OUSD may enter the Facilities/Improvements at all reasonable times to perform or cause to be performed the work. Nothing herein contained shall imply any duty on the part of OUSD to do any such work which, under any provision of this Use Agreement, CHARTER SCHOOL may be required to do, nor shall

OUSD's performance of any repairs on behalf of CHARTER SCHOOL constitute a waiver of CHARTER SCHOOL's default in failing to do the same. No exercise by OUSD of any rights herein reserved shall entitle CHARTER SCHOOL to any compensation, damages or abatement of rent from OUSD for any injury or inconvenience occasioned thereby. OUSD shall have no obligation whatsoever concerning the maintenance, repair or replacement of the Facilities/Improvements, or any portion thereof, or their compliance with laws. CHARTER SCHOOL hereby waives any and all rights under and benefits of subsection 1 of Section 1932 and Sections 1941 and 1942 of the California Civil Code or under any similar law, statute, or ordinance now or hereafter in effect.

5.3 Compliance with Field Act and OUSD Consent. Because the Facilities/Improvements were originally constructed, renovated or modernized in compliance with the Field Act, CHARTER SCHOOL agrees that all maintenance and repairs, if applicable, and any Future Work to the Facilities/Improvements, including any mechanical, electrical, plumbing or HVAC facilities or systems pertaining to the Facilities/Improvements, shall be in compliance with the Field Act. Prior to the commencement of any structural maintenance, structural repair, or Future Work, CHARTER SCHOOL shall comply with the conditions set forth in Section 1.4.1 above.

5.4 Conditions to and Manner of Work. Notwithstanding anything in this section to the contrary, the parties shall comply with the applicable sections of the CSFP. OUSD may impose upon CHARTER SCHOOL such requirements as OUSD, in its reasonable discretion, may deem desirable to protect itself from liability arising from CHARTER SCHOOL's maintenance, repair or Future Work.

5.5 Liens; Encumbrances. Except as required under the CSFP, CHARTER SCHOOL shall not allow any lien, charge or encumbrance to attach to or be claimed upon the Facilities/Improvements, including the real property, as the result of the initial construction, rehabilitation or modernization, and any repair or Future Work that may occur; provided, that the foregoing shall apply to OUSD in the event OUSD elects to undertake or perform any work for the Facilities/Improvements as may be permitted by this Use Agreement.

5.6 Status of Future Work, Fixtures, Equipment. All Future Work, fixtures, equipment and/or other appurtenances which exist as of the date hereof or which may be installed or placed in or about the Facilities/Improvements, from time to time, shall be at the sole cost of CHARTER SCHOOL and shall become part of the Facilities/Improvements that OUSD shall hold title to in trust for the California public school system unless the STATE, by written notice to CHARTER SCHOOL prior to the commencement of such Future Work or the installation of any fixtures, equipment and/or appurtenances, requires CHARTER SCHOOL, at CHARTER SCHOOL's sole cost and expense, to remove the Future Work, fixture, equipment or other appurtenance from the Facilities/Improvements on the Expiration Date, and to return the affected portion of the Facilities/Improvements to the condition existing prior to the installation of such. Nothing herein shall prohibit OUSD from requesting and obtaining STATE's consent to OUSD's preference to have any Future Work, fixtures, equipment and/or other appurtenances removed from the Facilities/Improvements.

If CHARTER SCHOOL fails to complete any such removal and/or restoration, then at the election of OUSD, in its sole and absolute discretion, OUSD may:

5.6.1 Deem CHARTER SCHOOL as holding over in the Facilities/Improvements and charge CHARTER SCHOOL a monthly rent in accordance with Article 14 below. OUSD shall collect the Hold Over Rent, as defined below, in accordance with Section 3.2 above; provided, that upon collection of the Hold Over Rent, OUSD shall deduct its administrative costs in handling this situation and remit the balance to the STATE; or

5.6.2 OUSD may declare CHARTER SCHOOL in default of this Use Agreement and pursue all available remedies for the termination of this Use Agreement and recovery of the cost to remove and dispose of any Future Work, fixture, equipment and/or other appurtenances and restore the Facilities/Improvements to the condition existing prior to the construction or installation of such.

Except to the extent of OUSD's negligence or willful misconduct, CHARTER SCHOOL hereby protects, defends, indemnifies and holds OUSD harmless from any liability, cost, obligation, expense or claim of lien in any manner relating to the installation, placement, removal or financing of any such Future Work, improvements, fixtures and/or equipment in, on or about the Facilities/Improvements by CHARTER SCHOOL, which indemnification of CHARTER SCHOOL shall survive the expiration or earlier termination of this Use Agreement for that period of time equivalent to the statute of limitations applicable to any dispute arising under this Use Agreement. The foregoing indemnity shall not apply to any liability, cost, obligation, expense or claim of lien to the extent arising from the negligence or willful misconduct of OUSD.

ARTICLE 6

COVENANT AGAINST LIENS

Except as provided by the CSFP, CHARTER SCHOOL shall, during the term hereof, keep the Facilities/Improvements free from any liens or encumbrances arising out of any work performed, materials furnished or obligations incurred by or on behalf of CHARTER SCHOOL, and shall protect, defend, indemnify and hold OUSD harmless from and against any claims, liabilities, judgments or costs (including, without limitation, reasonable attorneys' fees and costs) arising out of same or in connection therewith. The foregoing indemnity shall survive the expiration or earlier termination of this Use Agreement for that period of time equivalent to the statute of limitations applicable to any dispute arising under this Use Agreement. The foregoing indemnity shall not apply to any liability, cost, obligation, expense or claim of lien to the extent arising from the gross negligence or willful misconduct of OUSD.

CHARTER SCHOOL shall remove any such lien or encumbrance by bond or otherwise as soon as reasonably possible after receipt of written notice by OUSD but in any event CHARTER SCHOOL shall commence the necessary action to remove such lien or encumbrance within 30 days of CHARTER SCHOOL having knowledge of such lien or encumbrance and diligently prosecute to completion the removal of such lien or encumbrance. If CHARTER SCHOOL fails to commence the action as required in the foregoing sentence or OUSD believes that the removal of such lien or encumbrance is not being prosecuted diligently, OUSD may provide written notice to CHARTER SCHOOL and if CHARTER SCHOOL cannot cause the lien or encumbrance to be removed within 30 days its receipt of this second notice: (i) OUSD may pay the amount necessary to remove such lien or encumbrance, without being responsible for investigating the

validity thereof; (ii) The amount so paid and OUSD's actual costs and expenses in handling this matter culminating in OUSD's payment and release of the lien or encumbrance may be collected by OUSD in accordance with Section 3.2.1(a); and (iii) such lien or encumbrance, regardless of whether it is paid by OUSD, shall constitute a default under this Use Agreement. Notwithstanding the foregoing, OUSD shall not be required to observe the 30 day period if the holder of said lien or encumbrance files a motion in a court of competent jurisdiction in connection with said lien or encumbrance. Nothing contained in this Use Agreement shall authorize CHARTER SCHOOL to do any act which shall subject the title to the Facilities/Improvements to any liens or encumbrances whether claimed by operation of law or express or implied contract. Any claim to a lien or encumbrance upon the Facilities/Improvements arising in connection with any such work or respecting the Facilities/Improvements not performed by or at the request of OUSD shall be null and void, or at OUSD's option shall attach only against CHARTER SCHOOL's interest in the Facilities/Improvements and shall in all respects be subordinate to the title to the Facilities/Improvements held in trust by OUSD.

ARTICLE 7

INDEMNIFICATION AND INSURANCE

7.1 **Indemnification and Waiver.** CHARTER SCHOOL agrees that OUSD, its Board of Education, its officers, employees, agents, consultants and independent contractors (collectively, "OUSD Parties") shall not be liable for, and are hereby released from any responsibility for, any death or injury to person or damage to or destruction of property or resulting from the loss of use thereof, which damage is sustained by CHARTER SCHOOL or by other persons claiming through CHARTER SCHOOL; provided, that the foregoing release shall not apply to the gross negligence or willful misconduct of the OUSD Parties or OUSD's breach of any obligation or warranty under this Use Agreement.

CHARTER SCHOOL shall indemnify, defend, protect, and hold harmless the OUSD Parties from any and all loss, cost, damage, expense and liability (including without limitation court costs and reasonable attorneys' fees) incurred in connection with or arising from any cause in, on or about the Facilities/Improvements, any violation of any of the requirements, ordinances, statutes, regulations or other laws, including, without limitation, any environmental laws, or any breach of the terms of this Use Agreement (including, without limitation, Section 3.2 above), either prior to, during, or after the expiration of the Use Agreement Term; PROVIDED, THAT the terms of the foregoing indemnity shall not apply to the gross negligence or willful misconduct of the OUSD Parties or OUSD's breach of any obligation or warranty under this Use Agreement.

Should OUSD be named as a defendant in any suit brought against CHARTER SCHOOL in connection with or arising out of CHARTER SCHOOL's construction of the Facilities/Improvements or any Future Work, or its occupancy or use of the Facilities/Improvements, CHARTER SCHOOL shall pay to OUSD its costs and expenses incurred in such suit, including without limitation, its actual professional fees such as appraisers', accountants' and attorneys' fees; provided, however, that CHARTER SCHOOL shall not be liable for any costs or expenses arising from OUSD's gross negligence or willful misconduct.

Further, CHARTER SCHOOL's agreement to indemnify OUSD pursuant to this Section 7.1 is not intended and shall not relieve any insurance carrier of its obligations under policies required to be carried by CHARTER SCHOOL pursuant to the provisions of this Use Agreement or the requirements and conditions required by OUSD as the school district approving the petition of CHARTER SCHOOL, to the extent such policies cover the matters subject to CHARTER SCHOOL's indemnification obligations; nor shall they supersede any inconsistent agreement of the parties set forth in any other provision of this Use Agreement.

The provisions of this Section 7.1 shall survive the expiration or sooner termination of this Use Agreement for that period of time equivalent to the statute of limitations applicable to any dispute arising under this Use Agreement.

7.2 **Insurance.** CHARTER SCHOOL, at its sole cost and expense, shall observe and comply with the insurance requirements set forth in Exhibit B, attached hereto and incorporated herein by reference.

ARTICLE 8

DAMAGE AND DESTRUCTION

8.1 **Repair of Facilities/Improvements.** CHARTER SCHOOL shall promptly notify OUSD of any damage to the Facilities/Improvements resulting from fire, earthquake or any other casualty. In the case of damage or destruction, regardless of the nature of the casualty, CHARTER SCHOOL, at its sole cost and expense, whether or not the insurance proceeds, if any, shall be sufficient for the purpose, and irrespective of the amount of any loss, shall restore, repair, replace, rebuild or alter all aspects of the Facilities/Improvements and improvements located thereon to as nearly as possible to their value, condition and character immediately prior to such damage or destruction. CHARTER SCHOOL shall commence such restoration, repairs, replacements, rebuilding or alterations within 30 days following the occurrence of such damage or destruction and prosecuted to completion with due diligence and in good faith.

CHARTER SCHOOL shall comply with the conditions and requirements set forth above. OUSD shall not be liable for any inconvenience or annoyance to CHARTER SCHOOL or its visitors, or injury to CHARTER SCHOOL's business resulting in any way from such damage or the repair thereof; provided, that the foregoing sentence shall not apply to the extent OUSD's negligence or willful misconduct is the cause of such damage or destruction. The obligation of CHARTER SCHOOL to pay all fees and charges shall remain in full force and effect regardless of the extent of the casualty or the ability of CHARTER SCHOOL to operate its business or the ability of CHARTER SCHOOL to collect income from the Facilities/Improvements or from its insurance providers. CHARTER SCHOOL shall not be entitled to any compensation or damages from OUSD for loss of use of the whole or any part of the Facilities/Improvements, or CHARTER SCHOOL's personal property used or located at the Facilities/Improvements, or for any inconvenience or annoyance occasioned by such damage or destruction; provided, that the foregoing sentence shall not apply to any damage or destruction caused by the gross negligence or willful misconduct of OUSD.

8.2 **Disbursement of Insurance Proceeds.** All property insurance proceeds, from policies obtained and maintained by CHARTER SCHOOL, recovered on account of damage

or destruction to the Facilities/Improvements (the "Proceeds") shall be applied to the payment of the cost of repairing, restoring, and replacing the Facilities/Improvements so damaged or destroyed (the "Reconstruction"). All Proceeds shall be deposited with a depository selected by CHARTER SCHOOL and reasonably acceptable to OUSD and under the exclusive control of CHARTER SCHOOL but subject to instructions mutually agreed upon by CHARTER SCHOOL and OUSD (the "Depository"). If the Proceeds are insufficient to cover the anticipated cost of Reconstruction, then prior to the commencement of any Reconstruction work CHARTER SCHOOL shall deposit with the Depository funds in the amount of such deficiency ("CHARTER SCHOOL's Funds"). The Depository shall disburse the Proceeds and CHARTER SCHOOL's Funds, if applicable, during the course of reconstruction in accordance with customary construction disbursements, including a percentage retention that CHARTER SCHOOL and OUSD shall mutually agree upon and include in the initial instructions to the Depository. If there are funds remaining after the completion of the Reconstruction work in accordance with the terms of this Use Agreement, then such funds (after first deducting from such funds the fees and expenses of the Depository) shall be delivered to CHARTER SCHOOL. If OUSD is required to obtain any of the property insurance on behalf of and CHARTER SCHOOL is paying or has paid OUSD for said property insurance policy(ies), all insurance proceeds recovered on account of damage or destruction to the Facilities/Improvements from said insurance policies shall be placed into the Depository for application towards the costs and expenses of Restoration. If there are not sufficient funds remaining to pay for the Depository's fees and expenses, CHARTER SCHOOL shall be responsible for the payment of same.

If OUSD is required to or voluntarily (at the request of STATE or in the reasonable discretion of OUSD as prudent or beneficial) obtains any of the property insurance that CHARTER SCHOOL is required to obtain under this Use Agreement and CHARTER SCHOOL is not paying, has not paid or is disputing the payment or acquisition of said property insurance policy(ies) (the "**OUSD Acquired Policy**"), any act or event damaging or destroying all or a portion of the Facilities/Improvements shall cause to expire immediately any right of CHARTER SCHOOL to cure the default of not obtaining or maintaining the required insurance or cure the payment for said OUSD Acquired Policy. All proceeds recovered on account of damage or destruction to the Facilities/Improvements from said OUSD Acquired Policy shall be considered the property of OUSD, and OUSD shall determine the use of such proceeds.

8.3 Destruction Not a Release Event. Except as expressly set forth in this Use Agreement, no destruction of or damage to the Facilities/Improvements or any part thereof by earthquake, fire or any other cause shall permit CHARTER SCHOOL to terminate this Use Agreement or shall relieve CHARTER SCHOOL from its obligation to pay all fees, premiums, if applicable, charges, Hold Over Rent, if applicable, or other amounts due and owing under this Use Agreement or from any of its other obligations under this Use Agreement. CHARTER SCHOOL waives any rights now or hereafter conferred upon it by statute or otherwise to quit or surrender this Use Agreement or the Facilities/Improvements or any suspension, diminution, abatement or reduction of fees, premiums, charges, Hold Over Rent, if applicable, or other amounts due and owing on account of any such destruction or damage.

8.4 Waiver of Statutory Provisions. The provisions of this Use Agreement, including this Article 8, constitute an express agreement between OUSD and CHARTER SCHOOL with respect to any and all damage to, or destruction of, all or any part of the Facilities/Improvements, and any statute or regulation of the State of California, including,

without limitation, Sections 1932(2) and 1933(4) of the California Civil Code, with respect to any rights or obligations concerning damage or destruction in the absence of an express agreement between the parties, and any other statute or regulation, now or hereafter in effect, shall have no application to this Use Agreement or any damage or destruction to all or any part of the Facilities/Improvements.

ARTICLE 9

NONWAIVER

No provision of this Use Agreement shall be deemed waived by either party hereto unless expressly waived in a written instrument signed by a person on behalf of the party waiving the provision. The waiver by either party hereto of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of same or any other term, covenant or condition herein contained. The subsequent acceptance of any fee or other amounts due and owing under this Use Agreement by OUSD shall not be deemed to be a waiver of any preceding breach by CHARTER SCHOOL of any term, covenant or condition of this Use Agreement. No acceptance of a lesser amount than stipulated in this Use Agreement shall be deemed a waiver of OUSD's right to receive the full amount due, nor shall any endorsement or statement on any check or payment or any letter accompanying such check or payment be deemed an accord and satisfaction, and OUSD may accept such check or payment without prejudice to OUSD's right to recover the full amount due. No receipt of monies by OUSD from CHARTER SCHOOL after the termination of this Use Agreement shall in any way alter the length of the Term or of CHARTER SCHOOL's right of possession hereunder, or after the giving of any notice shall reinstate, continue or extend the Term or affect any notice given CHARTER SCHOOL prior to the receipt of such monies, it being agreed that after the service of notice or the commencement of a suit, or after final judgment for possession of the Facilities/Improvements, OUSD may receive and collect any fees or other amounts due and owing under this Use Agreement, and the payment of said amount(s) shall not waive or affect said notice, suit or judgment.

ARTICLE 10

CONDEMNATION

CHARTER SCHOOL hereby waives any and all rights it might otherwise have pursuant to Section 1265.130 of the California Code of Civil Procedure.

10.1 Condemnation of Entire Facilities/Improvements. In the event the entire Facilities/Improvements is taken by power of eminent domain or condemned by any competent authority for any public or quasi-public purpose, or if OUSD shall grant a deed or other instrument in lieu of any such taking by eminent domain or condemnation for the entire Facilities/Improvements (any such events to be referred to herein as a "Full Taking"), this Use Agreement shall automatically terminate on that date, whichever shall first occur, when: (i) CHARTER SCHOOL completely vacates the Facilities/Improvements and such vacation has been mutually agreed upon by CHARTER SCHOOL, OUSD and the condemning authority; or (ii) a court of competent jurisdiction over the condemnation proceeding issues an Order for Prejudgment Possession ("**OPP**") or similar order granting possession of the

Facilities/Improvements to the condemning entity and the condemning entity exercises its right to possession of the Facilities/Improvements; or (iii) if an OPP is not obtained, the condemnation proceeding is concluded.

10.2 Condemnation of a Portion of the Facilities/Improvements. In the event any portion of the Facilities/Improvements is taken by power of eminent domain or condemned by any competent authority for any public or quasi-public purpose, or if any adjacent property or street shall be so taken or condemned, or reconfigured or vacated by such authority in such manner so as to require the use, reconstruction, or remodeling of the Facilities/Improvements, or any portion thereof, or if OUSD shall grant a deed or other instrument in lieu of any such taking by eminent domain or condemnation for said portion of the Facilities/Improvements (any such events to be referred to herein as a "Partial Taking") the following shall apply:

10.2.1 Abatement. Any fees and other amounts due and owing to OUSD under this Use Agreement shall be abated or reduced as a result of any Partial Taking in direct proportion to the square footage taken by the condemning entity. The abatement or reduction shall not apply to: any insurance premiums or other fees, charges or amounts due and owing that do not correspondingly decrease with the reduction in the size of the Facilities/Improvements.

10.2.2 Right to Terminate. If the remaining portion of the Facilities/Improvements is such that CHARTER SCHOOL cannot operate its educational programs, CHARTER SCHOOL may terminate this Use Agreement by providing written notice to OUSD of its intention to do so. CHARTER SCHOOL may exercise this right of termination at any time after the condemning entity has commenced action to acquire a portion of the Facilities/Improvements and up to six (6) months after the occurrence of Section 10.1(ii) or (iii) above. OUSD discloses that it is allowing CHARTER SCHOOL the ability to terminate this Use Agreement for a period of six (6) months after the occurrence of Section 10.1(ii) or (iii) to allow CHARTER SCHOOL to make a good faith effort to adapt its educational programs to the remaining portion of the Facilities/Improvements. CHARTER SCHOOL's written notice of termination shall set forth the date when CHARTER SCHOOL shall vacate the remaining portion of the Facilities/Improvements. CHARTER SCHOOL's notice of termination shall effectuate a termination of any right to redeem provided in this Use Agreement and OUSD may proceed to observing the requirements of Section 17078.62(b)(2) through (5) inclusive.

10.3 Award and Payments.

10.3.1 Real Property. Regardless of whether it is a Full Taking or Partial Taking, OUSD shall be entitled to receive the entire award or payment in connection with the real property underlying the Facilities/Improvements and shall tender to STATE the award or payment less any actual costs or expenses incurred by OUSD arising from the Full Taking or Partial Taking.

10.3.2 Facilities/Improvements. Regardless of whether CHARTER SCHOOL has repaid or has not repaid its loan to STATE, OUSD shall receive the entire award or payment in connection with the Facilities/Improvements (excluding the underlying real property) and shall tender to STATE the award or payment less any actual costs or expenses incurred by OUSD arising from the Full Taking or Partial Taking, except that CHARTER SCHOOL shall be entitled to

any part of the award intended to compensate it for the unamortized value of its improvements or for the discharge of its obligations under CSFP. Nothing herein shall prevent CHARTER SCHOOL from discussing with STATE whether it is entitled to any portion of said award or payment.

10.3.3 Personal Property. CHARTER SCHOOL shall be entitled to any separate award or payment designated by the condemning entity, including, without limitation, for the Full Taking or Partial Taking of CHARTER SCHOOL's personal property, interruption to CHARTER SCHOOL's business, and relocating expenses.

ARTICLE 11

ASSIGNMENT AND SUBLETTING

11.1 **Transfers**. CHARTER SCHOOL shall not have the right to assign, mortgage, pledge, hypothecate, encumber, or permit any lien to attach to, or otherwise transfer, this Use Agreement or any interest hereunder, permit any assignment, or other transfer of this Use Agreement or any interest hereunder by operation of law, sublet the Facilities/Improvements or any part thereof, or otherwise permit the occupancy or use of the Facilities/Improvements or any part thereof by any persons other than CHARTER SCHOOL and its employees and contractors (all of the foregoing are hereinafter sometimes referred to collectively as "Transfers" and any person to whom any Transfer is made or sought to be made is hereinafter sometimes referred to as a "Transferee"), without first procuring the written consent of OUSD and STATE. CHARTER SCHOOL shall provide all such information requested by OUSD and STATE, if applicable, to allow the party to make an informed decision to consent or not consent to the requested Transfer; provided, that CHARTER SCHOOL shall provide written notice of any change in the information provided. Notwithstanding anything in this Article 11 to the contrary, CHARTER SCHOOL shall have the right to enter into license or concession agreements for the provision of services or goods to the educational programs operated by CHARTER SCHOOL without the consent of OUSD or STATE and such license or concession agreement shall not be deemed a Transfer. In conjunction with this Section 11.1, CHARTER SCHOOL acknowledges that the Facilities/Improvements were acquired and/or constructed, rehabilitated or modernized with funding from the CSFP, and, as a result, the Facilities/Improvements are not intended to be freely or easily transferred.

Any Transfer made without the prior written consent of OUSD and STATE, if applicable, shall be null, void and of no effect, and shall constitute a default by CHARTER SCHOOL under this Use Agreement. Any Transferee approved by OUSD and STATE, if applicable, shall agree at all times to comply with the terms of this Use Agreement, including, without limitation, the continuous use of the Facilities/Improvements for the purposes set forth in this Use Agreement. Whether or not OUSD consents to any proposed Transfer, CHARTER SCHOOL shall pay OUSD's and STATE's, if applicable, reasonable review and processing fees, as well as any reasonable professional fees (including, without limitation, attorneys', accountants', architects', engineers' and consultants' fees) actually incurred (which shall include the costs or expenses of the party's employees performing the review and processing if said party does not retain a third party to do so) by the party, within 10 business days of CHARTER SCHOOL's receipt of the invoice setting forth the expenses.

THE STATE:

STATE ALLOCATION BOARD:

By: _____

Name: _____

Title: _____

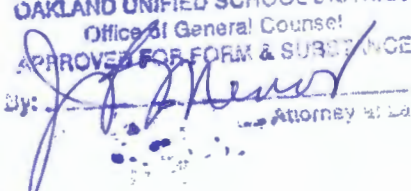
CALIFORNIA SCHOOL FINANCE AUTHORITY:

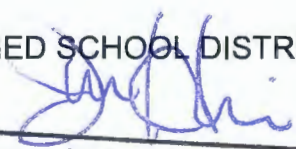
By: _____

Name: _____

Title: _____

THE SCHOOL DISTRICT: OAKLAND UNIFIED SCHOOL DISTRICT:

OAKLAND UNIFIED SCHOOL DISTRICT
Office of General Counsel
APPROVED FOR FORM & SUBSTANCE
By:  Attorney at Law

By:  _____

James Harris
President, Board of Education
Name: _____

Title:  _____

Antwan Wilson
Secretary, Board of Education

THE CHARTER SCHOOL: EDUCATION FOR CHANGE PUBLIC SCHOOLS ON
BEHALF OF LAZEAR CHARTER ACADEMY:

By: _____

Name: _____

Title: _____

ARTICLE 12

SURRENDER OF FACILITIES; OWNERSHIP AND REMOVAL OF TRADE FIXTURES

12.1 **Surrender of Facilities/Improvements.** No act or thing done by OUSD or any agent or employee of OUSD during the Use Agreement Term shall be deemed to constitute an acceptance by OUSD of a surrender of the Facilities/Improvements unless such intent is specifically acknowledged in writing by OUSD. The delivery of keys to the Facilities/Improvements to OUSD or any agent or employee of OUSD shall not constitute a surrender of the Facilities/Improvements or effect a termination of this Use Agreement, whether or not the keys are thereafter retained by OUSD, and notwithstanding such delivery CHARTER SCHOOL shall be entitled to the return of such keys at any reasonable time upon request until this Use Agreement shall have been properly terminated. The voluntary or other surrender of this Use Agreement by CHARTER SCHOOL, whether accepted by OUSD or not, or a mutual termination hereof, shall not work a merger, and at the option of OUSD shall operate as an assignment to OUSD of all sub-Use Agreements or sub-tenancies affecting the Facilities/Improvements or terminate any or all such sublessees or subtenancies.

12.2 **Removal of Personal Property by CHARTER SCHOOL.** Upon the expiration of the Term, or upon any earlier termination of this Use Agreement, CHARTER SCHOOL shall, subject to the provisions of this Article, quit and surrender possession of the Facilities/Improvements to OUSD in as good order and condition as when CHARTER SCHOOL completed its initial construction, rehabilitation or modernization, which was the basis of this transaction under the CSFP, and any Future Work, reasonable wear and tear excepted. Upon such expiration or termination, CHARTER SCHOOL shall, without expense to OUSD, remove or cause to be removed from the Facilities/Improvements all debris and rubbish, and such items of furniture, equipment, business and trade fixtures, free-standing cabinet work, movable partitions and other articles of personal property (including those items attached to the Facilities/Improvements but can easily be removed and the area of attachment repaired) owned by CHARTER SCHOOL or installed or placed by CHARTER SCHOOL at its expense in the Facilities/Improvements, and such similar articles of any other persons claiming under CHARTER SCHOOL, as OUSD may, in its sole discretion, require to be removed, and CHARTER SCHOOL shall repair at its own expense all damage to the Facilities/Improvements resulting from such removal. The foregoing shall not apply to those Alterations approved in writing by OUSD and having all applicable approvals or permits that may be required by any governmental agency.

ARTICLE 13

HOLDING OVER

If CHARTER SCHOOL holds over after the expiration of the Term or earlier termination thereof, without the express or implied consent of OUSD, such tenancy shall be from month-to-month only, and shall not constitute a renewal hereof or an extension for any further term, and in such case rent for such hold over period shall be 115% of the then current market rent for the Facilities/Improvements (as determined as if the Facilities/Improvements were zoned commercial) (the "Hold Over Rent"). Such month-to-month tenancy shall be subject to every

other applicable term, covenant and agreement contained herein. For purposes of this Article 13, a holding over shall include CHARTER SCHOOL's remaining in the Facilities/Improvements after the expiration or earlier termination of the Use Agreement Term, the failure to remove any improvements located within or upon the Facilities/Improvements and to restore the Facilities/Improvements as required pursuant to the terms of Article 12. Nothing contained in this Article 13 shall be construed as consent by OUSD to any holding over by CHARTER SCHOOL, and OUSD expressly reserves the right to require CHARTER SCHOOL to surrender possession of the Facilities/Improvements to OUSD as provided in this Use Agreement upon the expiration or other termination of this Use Agreement. The provisions of this Article 13 shall not be deemed to limit or constitute a waiver of any other rights or remedies of OUSD provided herein or at law. If CHARTER SCHOOL fails to surrender the Facilities/Improvements upon the expiration or earlier termination of this Use Agreement, in addition to any other liabilities to OUSD accruing therefrom, CHARTER SCHOOL shall protect, defend, indemnify and hold OUSD harmless from all loss, costs (including reasonable attorneys' fees) and liability resulting from such failure, including, without limiting the generality of the foregoing, any claims made by any succeeding CHARTER SCHOOL founded upon such failure to surrender and any lost profits to OUSD resulting therefrom; provided, that the foregoing indemnification shall not apply to the gross negligence or willful misconduct of OUSD.

ARTICLE 14

ESTOPPEL CERTIFICATES

Within 30 days following a request in writing by OUSD or CHARTER SCHOOL, CHARTER SCHOOL or OUSD, as the case may be, shall execute, acknowledge and deliver to the requesting party (the "Requesting Party") an estoppel certificate, which, as submitted by the Requesting Party, shall be substantially in the form of Exhibit C, attached hereto (or such other commercially reasonable form as may be required by any prospective mortgagee or purchaser, or any assignee or sublessee), indicating therein any exceptions thereto that may exist at that time, and shall also contain any other information reasonably requested by the Requesting Party or a mortgagee or prospective mortgagee or assignee or sublessee, as the case may be. Appropriate modification shall be made to Exhibit C to indicate when CHARTER SCHOOL is the Requesting Party. At any time during the Term, OUSD may require CHARTER SCHOOL to provide OUSD with a current financial statement and financial statements of the two (2) years prior to the current financial statement year. Such statements shall be prepared in accordance with generally accepted accounting principles and, if such is the normal practice of CHARTER SCHOOL, shall be audited by an independent certified public accountant.

ARTICLE 15

SUBORDINATION

The Funding Agreement and this Use Agreement shall not be subordinated to any security interest provided to any person or entity providing a substantial monetary contribution that is applied to the costs of the Facilities/Improvements in excess of the STATE's grant and the local matching share or to any other mortgage, trust deed or other encumbrances now or hereafter in force unless consented to in writing by OUSD and the STATE.

ARTICLE 16

DEFAULTS; REMEDIES

16.1 **Events of Default.** The occurrence of any of the following shall constitute a default of this Use Agreement by CHARTER SCHOOL:

16.1.1 Notwithstanding any provision in this Use Agreement, any failure by CHARTER SCHOOL to pay any fee, premium, if applicable, charge or other amounts dues and owing under this Use Agreement, or any part thereof, when due unless such failure is cured within 10 calendar days after CHARTER SCHOOL's receipt of written notice; or

16.1.2 Any failure by CHARTER SCHOOL to observe or perform any provision, covenant or condition of this Use Agreement to be observed or performed by CHARTER SCHOOL where such failure continues for 10 days after written notice thereof from OUSD to CHARTER SCHOOL; provided, that if the nature of such default is that the same cannot reasonably be cured within a 10 day period, CHARTER SCHOOL shall not be deemed to be in default if within said 10 day period it submits to OUSD its plan and a timeline reasonably acceptable to OUSD to cure said default and diligently commences and prosecutes to completion such cure; or

16.1.3 To the extent permitted by law, a general assignment by CHARTER SCHOOL or any guarantor of this Use Agreement for the benefit of creditors, or the taking of any corporate action in furtherance of bankruptcy or dissolution whether or not there exists any proceeding under an insolvency or bankruptcy law, or the filing by or against CHARTER SCHOOL or any guarantor of any proceeding under an insolvency or bankruptcy law, unless in the case of a proceeding filed against CHARTER SCHOOL or any guarantor the same is dismissed within 60 days, or the appointment of a trustee or receiver to take possession of all or substantially all of the assets of CHARTER SCHOOL or any guarantor, unless possession is restored to CHARTER SCHOOL or such guarantor within 60 days, or any execution or other judicially authorized seizure of all or substantially all of CHARTER SCHOOL's assets located upon the Facilities/Improvements or of CHARTER SCHOOL's interest in this Use Agreement, unless such seizure is discharged as soon as possible within 60 days; or

16.1.4 Abandonment of all or a substantial portion of the Facilities/Improvements by CHARTER SCHOOL; or

16.1.5 The failure by CHARTER SCHOOL to maintain a current and active charter petition approved by OUSD (which shall include, without limitation, those situations where OUSD revokes or refuses to renew CHARTER SCHOOL's charter petition) after the completion of all applicable review and appeal processes provided for in the Education Code; or

16.1.6 The failure by CHARTER SCHOOL to observe or perform according to (i) its charter provision, or (ii) any provision set forth in California Education Code Title 2, Division 4, Part 26.8., chapters 1 through 6, where such failure continues for more than 10 business days after notice from OUSD; or

16.1.7 CHARTER SCHOOL's failure to occupy the Facilities/Improvements for the conduct of CHARTER SCHOOL's business in accordance with the terms of this Use Agreement on or before the Use Agreement Commencement Date.

The notice periods provided herein are in lieu of, and not in addition to, any notice periods provided by law.

16.2 **Remedies Upon Default.** Upon the occurrence of any event of default by CHARTER SCHOOL and after the expiration of all notice and cure periods as provided in this Use Agreement, OUSD shall have, in addition to any other remedies available to OUSD at law or in equity (all of which remedies shall be distinct, separate and cumulative), the option to pursue any one or more of the following remedies, each and all of which shall be cumulative and nonexclusive, without any notice or demand whatsoever.

16.2.1 Terminate this Use Agreement, in which event CHARTER SCHOOL shall immediately surrender the Facilities/Improvements to OUSD, and if CHARTER SCHOOL fails to do so, OUSD may, without prejudice to any other remedy which it may have for possession or arrearages, enter upon and take possession of the Facilities/Improvements and expel or remove CHARTER SCHOOL and any other person who may be occupying the Facilities/Improvements or any part thereof, without being liable for prosecution or any claim or damages therefor; and OUSD may recover from CHARTER SCHOOL the full amount of any fees, charges or other amounts due under this Use Agreement.

This Section 16.2.1 shall be deemed to apply to and to mean all sums of every nature required to be paid by CHARTER SCHOOL pursuant to the terms of this Use Agreement.

16.2.2 OUSD shall have the remedy described in California Civil Code Section 1951.4 (lessor may continue Use Agreement in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has the right to sublet or assign, subject only to reasonable limitations). Accordingly, if OUSD does not elect to terminate this Use Agreement on account of any default by CHARTER SCHOOL, OUSD may, from time to time, without terminating this Use Agreement, enforce all of its rights and remedies under this Use Agreement, including the right to recover all rent as it becomes due.

16.2.3 OUSD shall at all times have the rights and remedies (which shall be cumulative with each other and cumulative and in addition to those rights and remedies available hereinabove, or any law or other provision of this Use Agreement), without prior demand or notice except as required by applicable law, to seek any declaratory, injunctive or other equitable relief, and specifically enforce this Use Agreement, or restrain or enjoin a violation or breach of any provision hereof.

16.3 **Subleases of CHARTER SCHOOL.** Whether or not OUSD elects to terminate this Use Agreement on account of any default by CHARTER SCHOOL, as set forth in this Article 16, if CHARTER SCHOOL remains in default after the expiration of the applicable notice and cure periods provided in this Use Agreement, OUSD shall have the right to terminate any and all subleases, licenses, concessions or other consensual arrangements for possession entered into by CHARTER SCHOOL and affecting the Facilities/Improvements or may, in OUSD's sole discretion, succeed to CHARTER SCHOOL's interest in such subleases, licenses, concessions or

arrangements. In the event of OUSD's election to succeed to CHARTER SCHOOL's interest in any such subleases, licenses, concessions or arrangements, CHARTER SCHOOL shall, as of the date of notice by OUSD of such election, have no further right to or interest in the rent or other consideration receivable thereunder.

16.4 **OUSD's Efforts**. No re-entry or repossession, repairs, maintenance, changes, alterations and additions, reletting, appointment of a receiver, or any other action or omission by OUSD shall be construed as an election by OUSD to terminate this Use Agreement or CHARTER SCHOOL's right to possession, or to accept a surrender of the Facilities/Improvements, nor shall same operate to release CHARTER SCHOOL in whole or in part from any of CHARTER SCHOOL's obligations hereunder, unless express written notice of such intention is sent by OUSD to CHARTER SCHOOL. CHARTER SCHOOL hereby irrevocably waives any right otherwise available under any law to redeem or reinstate this Use Agreement.

ARTICLE 17

COVENANT OF QUIET ENJOYMENT

OUSD covenants that CHARTER SCHOOL, on paying the fees, charges and other payments herein reserved and on keeping, observing and performing all the other terms, covenants, conditions, provisions and agreements herein contained on the part of CHARTER SCHOOL to be kept, observed and performed, shall, during the Term, exclusively, peaceably and quietly have, hold and enjoy the Facilities/Improvements subject to the terms, covenants, conditions, provisions and agreements hereof without interference by any persons lawfully claiming by or through OUSD. The foregoing covenant is in lieu of any other covenant express or implied.

ARTICLE 18

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ARTICLE 19

COMPLIANCE WITH LAW

CHARTER SCHOOL shall not do anything or suffer anything to be done in or about the Facilities/Improvements which will in any way conflict with any law, statute, ordinance or other governmental or quasi-governmental rule, regulation or requirement now in force or which may hereafter be enacted or promulgated, including, but not limited to, (i) any such measures promulgated by the Department of State Architecture, the Department of Toxic Substance Control, and/or the State Department of Education, (ii) any such measures promulgated under the California Environmental Quality Act ("CEQA") or arising from any CEQA proceedings, and (iii) any such measures which relate to CHARTER SCHOOL's use of the Facilities/Improvements as a school or which are applicable to the Facilities/Improvements by reason of CHARTER SCHOOL being an educational institution. At its sole cost and expense, CHARTER SCHOOL shall promptly comply with all such governmental measures, regardless of whether such measures may require structural or non-structural alterations or improvements to the Facilities/Improvements. Should any standard or regulation now or hereafter be imposed on OUSD or CHARTER SCHOOL in connection with the Facilities/Improvements by a state, federal

or local governmental body charged with the establishment, regulation and enforcement of occupational, health or safety standards for employers, employees, school districts or charter schools, then CHARTER SCHOOL agrees, at its sole cost and expense, to comply promptly with such standards or regulations. CHARTER SCHOOL shall be responsible, at its sole cost and expense, to make all improvements and alterations to the Facilities/Improvements as are required to comply with any applicable law, statute, ordinance or other governmental or quasi-governmental rule, regulation or requirement now in force or which may hereafter be enacted or promulgated.

ARTICLE 20

OUSD'S RIGHT TO CURE DEFAULT; PAYMENTS BY CHARTER SCHOOL

20.1 **OUSD's Cure.** All covenants and agreements to be kept or performed by CHARTER SCHOOL under this Use Agreement shall be performed by CHARTER SCHOOL at CHARTER SCHOOL's sole cost and expense and without any reduction of any amounts owing under this Use Agreement, except to the extent, if any, otherwise expressly provided herein. If CHARTER SCHOOL shall fail to perform any obligation under this Use Agreement, and such failure shall continue in excess of the time allowed under Section 16.1.2, above, unless a specific time period is otherwise stated in this Use Agreement, OUSD may, but shall not be obligated to, make any such payment or perform any such act on CHARTER SCHOOL's part without waiving its rights based upon any default of CHARTER SCHOOL and without releasing CHARTER SCHOOL from any obligations hereunder.

20.2 **CHARTER SCHOOL's Reimbursement.** Except as may be specifically provided to the contrary in this Use Agreement, CHARTER SCHOOL shall pay to OUSD, upon delivery by OUSD to CHARTER SCHOOL of statements therefor: (i) sums equal to expenditures reasonably made and obligations incurred by OUSD in connection with the remedying by OUSD of CHARTER SCHOOL's defaults pursuant to the provisions of Section 20.1; (ii) sums equal to all losses, costs, liabilities, damages and expenses incurred by or imposed upon OUSD as the result of CHARTER SCHOOL's act or failure to act in accordance with this Use Agreement; and (iii) sums equal to all expenditures made and obligations reasonably incurred by OUSD in collecting or attempting to collect any fees, charges or other amounts due and owing under this Use Agreement or in enforcing or attempting to enforce any rights of OUSD under this Use Agreement or pursuant to law, including, without limitation, all reasonable legal fees and other amounts so expended. CHARTER SCHOOL agrees that OUSD may elect to be reimbursed for (i), (ii) and (iii) herein in accordance with Section 3.2 above. CHARTER SCHOOL's obligations under this Section 20.2 shall survive the expiration or sooner termination of the Use Agreement Term.

ARTICLE 21

ENTRY BY OUSD

OUSD reserves the right at all reasonable times and upon 48 hours prior written notice to CHARTER SCHOOL (except in the case of an emergency) to enter the Facilities/Improvements to (i) inspect them; (ii) show the Facilities/Improvements to prospective charter schools; (iii) post notices of non-responsibility; or (iv) alter, improve or repair the Facilities/Improvements to the extent OUSD is permitted under this Use Agreement. Notwithstanding anything to the contrary contained in this Article 21 and after the expiration of the applicable notice and cure periods, OUSD may enter the Facilities/Improvements at any time to (A) take possession due to any breach of this Use Agreement in the manner provided herein; and (B) perform any covenants of CHARTER SCHOOL which CHARTER SCHOOL fails to perform. OUSD may make any such entries without the abatement of any amounts or other charges due under this Use Agreement and may take such reasonable steps as required to accomplish the stated purposes. At any time OUSD enters the facilities, OUSD shall use reasonable efforts not to interfere with CHARTER SCHOOL's quiet enjoyment of the Facilities/Improvements and not to damage any property nor cause injury to any persons. CHARTER SCHOOL hereby waives any claims for damages or for any injuries or inconvenience to or interference with CHARTER SCHOOL's business, lost profits, any loss of occupancy or quiet enjoyment of the Facilities/Improvements, and any other loss occasioned thereby; provided, that the foregoing shall not apply in the event of OUSD's negligence or willful misconduct. For each of the above purposes, CHARTER SCHOOL shall deliver to OUSD and OUSD shall at all times have a key with which to unlock all the doors in the Facilities/Improvements, excluding CHARTER SCHOOL's vaults, safes and special security areas designated in advance by CHARTER SCHOOL. In an emergency, OUSD shall have the right to use any means that OUSD may deem proper to open the doors in and to the Facilities/Improvements. Any entry into the Facilities/Improvements by OUSD in the manner hereinbefore described shall not be deemed to be a forcible or unlawful entry into, or a detainer of, the Facilities/Improvements, or an actual or constructive eviction of CHARTER SCHOOL from any portion of the Facilities/Improvements. No provision of this Use Agreement shall be construed as obligating OUSD to perform any repairs, alterations or decorations.

ARTICLE 22

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ARTICLE 23

MISCELLANEOUS PROVISIONS

23.1 **Terms; Captions.** The words "OUSD" and "CHARTER SCHOOL" and "STATE" as used herein shall include the plural as well as the singular. The necessary grammatical changes required to make the provisions hereof apply either to corporations or partnerships or individuals, as the case may require, shall in all cases be assumed as though in each case fully expressed. The captions of Articles and Sections are for convenience only and shall not be deemed to limit, construe, affect or alter the meaning of such Articles and Sections.

23.2 **Binding Effect.** Subject to all other provisions of this Use Agreement, each of the covenants, conditions and provisions of this Use Agreement shall extend to and shall, as the case may require, bind or inure to the benefit not only of OUSD and of CHARTER SCHOOL, but also of their respective heirs, personal representatives, successors or assigns, provided this clause shall not permit any assignment by CHARTER SCHOOL contrary to the provisions of Article 11 of this Use Agreement.

23.3 **No Air Rights.** No rights to any view or to light or air over any property, whether belonging to OUSD or any other person, are granted to CHARTER SCHOOL by this Use Agreement.

23.4 **Modification of Use Agreement.** This Use Agreement may only be modified or amended by written instrument executed by CHARTER SCHOOL and OUSD; provided, that if the local matching share has not been repaid to STATE by CHARTER SCHOOL, any proposed modification or amendment shall require the approval of STATE.

23.5 **Prohibition Against Recording.** Neither this Use Agreement, nor any memorandum, affidavit or other writing with respect thereto, shall be recorded by CHARTER SCHOOL or by anyone acting through, under or on behalf of CHARTER SCHOOL.

23.6 **OUSD's Title.** The fee title to the Improvements shall be held by OUSD in trust for the California public school system and such title is and always shall be paramount to any title or interest of CHARTER SCHOOL. Nothing herein contained shall empower CHARTER SCHOOL to do any act which can, shall or may encumber the fee title to the Improvements.

23.7 **Relationship of Parties.** Nothing contained in this Use Agreement shall be deemed or construed by the parties hereto or by any third party to (i) create the relationship of principal and agent, partnership, joint venturer or any association between OUSD and CHARTER SCHOOL, or (ii) convert CHARTER SCHOOL's status as an independent public charter school to that of a dependent charter school.

23.8 **Time of Essence.** Time is of the essence with respect to the performance of every provision of this Use Agreement in which time of performance is a factor.

23.9 **Partial Invalidity.** If any term, provision or condition contained in this Use Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Use Agreement, or the application of such term, provision or condition to persons or circumstances other than those with respect to which it is invalid or unenforceable, shall not be affected thereby, and each and every other term, provision and condition of this Use Agreement shall be valid and enforceable to the fullest extent possible permitted by law; provided, that if the remainder of the Use Agreement does not reflect the understanding and intention of OUSD under the CSFP, or will result in additional duties and obligations being imposed upon OUSD, OUSD may unilaterally terminate this Use Agreement by providing written notice of such intention to CHARTER SCHOOL and STATE and thereafter the parties in good faith shall negotiate a new agreement for CHARTER SCHOOL's use of the Facilities/Improvements or OUSD shall convey fee title to the Facilities/Improvements to a trustee appointed by a court of

competent jurisdiction or to a trustee mutually agreeable to CHARTER SCHOOL and STATE, and the fees and expenses of such trustee shall be paid by CHARTER SCHOOL.

23.10 **No Warranty.** In executing and delivering this Use Agreement, CHARTER SCHOOL has not relied on any representations, warranties or statements of OUSD which is not set forth herein or in one or more of the exhibits attached hereto.

23.11 **OUSD Exculpation.** Notwithstanding any contrary provision herein, neither OUSD nor the OUSD Parties shall be liable under any circumstances for injury or damage to, or interference with, CHARTER SCHOOL's business, including but not limited to, loss of profits, loss of rents or other revenues, loss of business opportunity, loss of goodwill or loss of use, in each case, however occurring, except as caused by the gross negligence or willful misconduct of OUSD.

23.12 **Entire Agreement.** It is understood and acknowledged that there are no oral agreements between the parties hereto affecting this Use Agreement and this Use Agreement constitutes the parties' entire agreement with respect to the use and occupancy of the Facilities/Improvements and supersedes and cancels any and all previous negotiations, arrangements, brochures, agreements and understandings, if any, between the parties hereto or displayed by OUSD to CHARTER SCHOOL with respect to the subject matter thereof, and none thereof shall be used to interpret or construe this Use Agreement.

23.13 **Force Majeure.** Notwithstanding anything to the contrary contained in this Use Agreement, any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain services, labor, or materials or reasonable substitutes therefor, governmental actions, civil commotions, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform (collectively, a "Force Majeure"), shall excuse the performance of such party for a period equal to any such prevention, delay or stoppage and, therefore, if this Use Agreement specifies a time period for performance of an obligation of either party, that time period shall be extended by the period of any delay in such party's performance caused by a Force Majeure; provided, however, that this Force Majeure exception to timely performance shall not apply to any obligations imposed with regard to amounts due under this Use Agreement to be paid by CHARTER SCHOOL.

23.14 **Notices.** All notices, demands, statements, designations, approvals or other communications (collectively, "Notices") given or required to be given by either party to the other hereunder or by law shall be in writing, shall be (A) sent by United States certified or registered mail, postage prepaid, return receipt requested ("Mail"), (B) transmitted by telecopy, if such telecopy is promptly followed by a Notice sent by Mail, (C) delivered by a nationally recognized overnight courier, or (D) delivered personally. Any Notice shall be sent, transmitted, or delivered, as the case may be, to the respective party's address, or to such other place as the respective party may from time to time designate in a Notice to the other party. Any Notice will be deemed given (i) three (3) days after the date it is posted if sent by Mail, (ii) the date the telecopy is transmitted, (iii) the date the overnight courier delivery is made, or (iv) the date personal delivery is made or attempted to be made.

23.15 **Authority.** If CHARTER SCHOOL is a corporation, trust or partnership, each individual executing this Use Agreement on behalf of CHARTER SCHOOL hereby represents and

warrants that CHARTER SCHOOL is a duly formed and existing entity qualified to do business in California and that CHARTER SCHOOL has full right and authority to execute and deliver this Use Agreement and that each person signing on behalf of CHARTER SCHOOL is authorized to do so. In such event, CHARTER SCHOOL shall, within 10 days after execution of this Use Agreement, deliver to OUSD satisfactory evidence of such authority and, if a corporation, upon demand by OUSD, also deliver to OUSD satisfactory evidence of (i) good standing in CHARTER SCHOOL's state of incorporation and (ii) qualification to do business in California.

23.16 **Attorneys' Fees.** In the event that either OUSD or CHARTER SCHOOL should bring suit for the possession of the Facilities/Improvements, for the recovery of any sum due under this Use Agreement, or because of the breach of any provision of this Use Agreement or for any other relief against the other, then all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party therein shall be paid by the other party, which obligation on the part of the other party shall be deemed to have accrued on the date of the commencement of such action and shall be enforceable whether or not the action is prosecuted to judgment.

23.17 **Governing Law; WAIVER OF TRIAL BY JURY.** This Use Agreement shall be construed and enforced in accordance with the laws of the State of California. IN ANY ACTION OR PROCEEDING ARISING HEREFROM, OUSD AND CHARTER SCHOOL HEREBY CONSENT TO (I) THE JURISDICTION OF ANY COMPETENT COURT WITHIN THE STATE OF CALIFORNIA, (II) SERVICE OF PROCESS BY ANY MEANS AUTHORIZED BY CALIFORNIA LAW, AND (III) IN THE INTEREST OF SAVING TIME AND EXPENSE, TRIAL WITHOUT A JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER OR THEIR SUCCESSORS IN RESPECT OF ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS USE AGREEMENT, THE RELATIONSHIP OF OUSD AND CHARTER SCHOOL, CHARTER SCHOOL'S USE OR OCCUPANCY OF THE FACILITIES, AND/OR ANY CLAIM FOR INJURY OR DAMAGE, OR ANY EMERGENCY OR STATUTORY REMEDY.

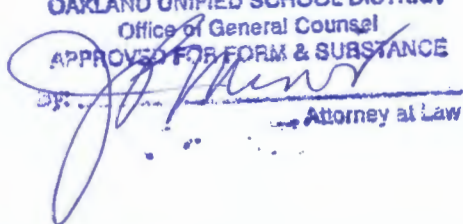
23.18 **Submission of Use Agreement.** Submission of this instrument for examination or signature by CHARTER SCHOOL does not constitute a reservation of, option for or option to use the Facilities/Improvements, and it is not effective as a Use Agreement or otherwise until execution and delivery by both OUSD and CHARTER SCHOOL.

23.19 **No Violation.** CHARTER SCHOOL and OUSD hereby warrant and represent to each other that neither its execution of nor performance under this Use Agreement shall cause CHARTER SCHOOL or OUSD, as applicable, to be in violation of any agreement, instrument, contract, law, rule or regulation by which CHARTER SCHOOL or OUSD, as applicable, is bound, and CHARTER SCHOOL or OUSD, as applicable, shall protect, defend, indemnify and hold the other party harmless against any claims, demands, losses, damages, liabilities, costs and expenses, including, without limitation, reasonable attorneys' fees and costs, arising from CHARTER SCHOOL's or OUSD's breach of this warranty and representation.

IN WITNESS WHEREOF, OUSD and CHARTER SCHOOL have caused this Use Agreement to be executed on the day and date set forth adjacent to their respective signatures.

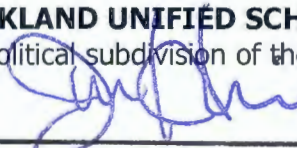
Dated: _____

OAKLAND UNIFIED SCHOOL DISTRICT
Office of General Counsel
APPROVED FOR FORM & SUBSTANCE


Attorney at Law

Dated: _____

OAKLAND UNIFIED SCHOOL DISTRICT,
a political subdivision of the State of California

By: 
James Harris
Name: **President, Board of Education**

Its: **Antwan Wilson**
Secretary, Board of Education

**EDUCATION FOR CHANGE PUBLIC SCHOOLS –
LAZEAR CHARTER ACADEMY**

By: _____

Name: _____

Its: _____

By: _____

Name: _____

Its: _____

EXHIBIT A

LEGAL DESCRIPTION OF FACILITIES

[TO BE PROVIDED]

EXHIBIT B

INSURANCE

Throughout the Term of the Use Agreement, CHARTER SCHOOL shall secure and maintain, as a minimum, all of the insurance as set forth below with insurance companies acceptable to OUSD and with a rating of A.M. Best A-, VII or better:

1. Worker's Compensation Insurance in accordance with provisions of the California Labor Code, adequate to protect CHARTER SCHOOL from claims under Workers' Compensation Acts which may arise from its operations, including Employers Liability limits of \$1,000,000/\$1,000,000/\$1,000,000.
2. Commercial General Liability coverage of not less than \$5,000,000 for each occurrence. The policy shall be endorsed to name OUSD and the Board of Education of the Oakland Unified School District as additional insurers and shall provide specifically that any insurance carried by OUSD which may be applicable to any claims or loss shall be deemed excess and CHARTER SCHOOL's insurance primary despite any conflicting provisions in CHARTER SCHOOL's policy. Coverage shall be maintained with no self-insured retention above \$25,000 without approval of OUSD.
3. Commercial Auto Liability coverage with limits of \$1,000,000 combined single limit unless CHARTER SCHOOL operates bus services for students; provided, that if CHARTER SCHOOL is providing any bus services for students, CHARTER SCHOOL shall maintain coverage limits not less than \$5,000,000 combined single limit.
4. Fidelity Bond coverage shall be maintained by CHARTER SCHOOL to cover all CHARTER SCHOOL employees who handle, process, or otherwise have responsibility for CHARTER SCHOOL funds, supplies, equipment or other assets. Minimum amount of Fidelity Bond coverage shall be \$50,000 per occurrence, with no self-insured retention.
5. Professional Educators Errors and Omissions liability coverage including sexual molestation and abuse coverage (if that coverage is not afforded elsewhere in the CGL or by separate policy) with minimum limits of \$3,000,000 per occurrence.
6. Excess/Umbrella insurance with limits of not less than \$10,000,000 required of all high schools and any school which participates in competitive interscholastic or intramural sports programs.
7. Insurance covering the loss, damage or destruction of the Facilities/Improvements for 100% of the full replacement cost of the Facilities/Improvements, which shall provide protection against all perils including, but not limited to, fire, extended coverage, vandalism, malicious mischief and causes of loss-special form.

CHARTER SCHOOL agrees that the following terms and conditions shall also apply to its obligations to secure and maintain insurance coverage during the Term of the Use Agreement:

B.1 CHARTER SCHOOL understands and agrees that OUSD may review the insurance coverage maintained by CHARTER SCHOOL and/or the insurance requirements of this **Exhibit B** at any time during the Term of the Use Agreement, and may adjust the insurance requirements as OUSD, in its sole and absolute discretion, deems appropriate. Upon receipt of written notice of any adjustment in the insurance coverage required under this Use Agreement, CHARTER SCHOOL shall deliver evidence of compliance with said insurance requirements within 10 days of CHARTER SCHOOL's receipt of the written notice.

B.2 **No coverage shall be provided to CHARTER SCHOOL by OUSD under any of OUSD's self-insured programs or commercial insurance policies. OUSD shall not have any obligation to secure insurance coverage for CHARTER SCHOOL.**

B.3 CHARTER SCHOOL's insurance coverage shall be primary and any insurance carried by OUSD that may be applicable to any claims or loss shall be deemed excess despite any conflicting provisions in the insurance coverages maintained by CHARTER SCHOOL.

B.4 Coverages and limits of insurance may be accomplished through individual primary policies or through a combination of primary and excess policies.

B.5 Within 10 days of CHARTER SCHOOL's execution of the Use Agreement, CHARTER SCHOOL shall furnish to OUSD's Risk Management and Insurance Services evidence of insurance in compliance with this **Exhibit B**. If CHARTER SCHOOL fails to submit evidence of insurance in compliance with this **Exhibit B** or OUSD Risk Management determines that CHARTER SCHOOL has not complied with the insurance requirements set forth in this **Exhibit B**, OUSD and/or the STATE may deny the occupancy and use of the Facilities/Improvements until CHARTER SCHOOL provides satisfactory evidence of compliance or OUSD and/or the STATE may declare CHARTER SCHOOL in default of the Use Agreement.

Thereafter, CHARTER SCHOOL shall furnish to the OUSD Risk Management within 30 days of all new policies inception, renewals or changes, certificates of such insurance signed by an authorized representative of the insurance carrier.

Certificates shall be endorsed as follows:

The insurance afforded by this policy shall not be suspended, cancelled, reduced in coverage or limits, or non-renewed except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to Oakland Unified School District (Attn: Director, Office of Risk Management).

B.6 Nothing in this Exhibit B shall prohibit CHARTER SCHOOL, at its sole cost and expense, from purchasing and maintaining additional insurance coverage for damage or theft to the Facilities/Improvements, personal property, business interruption, employee or student property, for student accident or any other type of insurance coverage not listed above in 1 through 7, inclusive.

EXHIBIT C

FORM OF ESTOPPEL CERTIFICATE

The undersigned as CHARTER SCHOOL under that certain Use Agreement (the "Agreement") made and entered into as of _____ and between **OAKLAND UNIFIED SCHOOL DISTRICT**, a school district duly formed and existing under the laws of the State of California, as OUSD, as the occupant for the "Facilities/Improvements" located at and having a U.S. Postal address of _____, California certifies as follows:

1. Attached hereto as Exhibit A is a true and correct copy of the Memorandum of Understanding and Use Agreement and all amendments and modifications thereto. The documents contained in Exhibit A represent the entire agreement between the parties as to the Facilities/Improvements.
2. The undersigned has commenced occupancy of the Facilities/Improvements described in the Agreement, currently occupies the Facilities/Improvements, and any improvements required under the Agreement to be constructed, rehabilitated or modified by CHARTER SCHOOL has been completed in accordance with the scope and definition of the project as set forth in CHARTER SCHOOL's application for funds under the Charter School Finance Program ("CSFP"). CHARTER SCHOOL has not made any repairs, replacements or improvements to the Facilities/Improvements that have not been reviewed and approved or exempted from the appropriate agencies which had review and jurisdiction of the Facilities/Improvements initially.
3. The Term of the Agreement commenced _____ and shall expire _____. The Agreement is in full force and effect and has not been modified, supplemented or amended in any way except as provided in Exhibit A.
4. CHARTER SCHOOL has not transferred, assigned, or sublet any portion of the Facilities/Improvements nor entered into any license or concession agreement with respect thereto except as follows:
_____.
5. CHARTER SCHOOL shall not modify the documents contained in Exhibit A or prepay any amounts owing under the Agreement to OUSD in excess of sixty (60) days without the prior written consent of the State of California, by and through its Charter School Finance Authority and Office of Public School Construction or such other succeeding State agency(s) (collectively referred to as the "STATE"), and OUSD.
6. CHARTER SCHOOL has no option, right of first refusal or other right to purchase the Facilities/Improvements or any portion thereof or any interest therein. The only interest of CHARTER SCHOOL in the Facilities/Improvements is that of an occupant pursuant to the terms of the Agreement.

7. As of the date of this Estoppel Certificate, CHARTER SCHOOL does not pay rent for the occupancy and use of the Facilities/Improvements. If CHARTER SCHOOL borrowed money from the STATE under the CSFP, CHARTER SCHOOL is repaying the STATE as follows:

OUSD is holding title to the Facilities/Improvements as a trustee for the California public school system as required under the CSFP and CHARTER SCHOOL is solely liable for all costs and expenses in operating a charter school program from the Facilities/Improvements and for the maintenance, repairs, replacements and improvements of the Facilities/Improvements.

8. The insurance policies or other evidence of insurance coverage submitted to OUSD are true and accurate, and there have been no changes to the terms and conditions of such insurance coverage.
9. As of the date hereof, there are no existing defenses or offsets that the undersigned has, which precludes enforcement of the Agreement by OUSD.
10. The undersigned acknowledges that this estoppel certificate may be delivered to the STATE and/or OUSD, and their respective related or affiliated agencies or committees, and the statements contained herein may be relied upon without further investigation or evaluation.
11. CHARTER SCHOOL represents and warrants that CHARTER SCHOOL is a duly formed and existing entity qualified to do business in the state in which the Facilities/Improvements is located, that CHARTER SCHOOL's petition is valid and in full effect, and that CHARTER SCHOOL has full right and authority to execute and deliver this Estoppel Certificate and that each person signing on behalf of CHARTER SCHOOL is authorized to do so.

Executed at _____ on the ____ day of _____, 20____.

"CHARTER SCHOOL"

By: _____

Its: _____