

**CHARTER SCHOOL FACILITIES AGREEMENT  
FOR A TERM OF July 1, 2021 through June 30, 2036**

THIS CHARTER SCHOOL FACILITIES AGREEMENT (hereinafter referred to as this “Agreement”) is made and entered into as of December 9, 2020 (hereinafter referred to as the “Date of this Agreement”), by and between the Oakland Unified School District, a California Public School district (hereinafter referred to as the “District”) and Education for Change, Inc., a California non-profit public benefit corporation (“EFC”) operating Achieve Academy (the non-profit corporation and Achieve Academy are hereinafter collectively referred to as “CHARTER SCHOOL,” except that the District and EFC agree and understand that any debts or other liabilities incurred under this Agreement can only be satisfied with the assets and insurance coverage of Achieve Academy, and that the assets of any other charter school operated by EFC cannot be used for that purpose), for use of the facilities located at 1700 28th Ave., Oakland, CA 94601, as more fully described in Exhibit “A” attached hereto (hereinafter referred to as “Site”).

**RECITALS**

WHEREAS, the District intends to provide facilities to the CHARTER SCHOOL, and the CHARTER SCHOOL intends to obtain its facilities from the District for the operation of Achieve Academy in lieu of an allocation of facilities pursuant to California Proposition 39 (Education Code section 47614) and its implementing regulations (“Proposition 39”).

WHEREAS, the District has found that the CHARTER SCHOOL’s use and occupation of the Site as set forth herein in lieu of Proposition 39 are authorized under Education Code section 47614, as implemented by 5 C.C.R. section 11969.1(b), provides that “[i]f a charter school and a school district mutually agree to an alternative to specific compliance with any of the provisions of this article, nothing in this article shall prohibit implementation of that alternative.”

WHEREAS, the parties intend that CHARTER SCHOOL may make certain improvements to portions of the Site, as set forth more fully herein, with CHARTER SCHOOL bearing all the costs of making such improvements, except as expressly set forth herein, and bearing full responsibility for compliance with all legal requirements in the course of making such improvements.

NOW, THEREFORE, for and in consideration of the facilities use payments and of the covenants and agreements hereinafter set forth to be kept and performed by the CHARTER SCHOOL, the District hereby grants use to the CHARTER SCHOOL of the Site, subject to and upon all of the terms, covenants, and agreements hereinafter set forth. It is the intent of the parties that this written agreement supersede all previous facilities agreements, written or unwritten, related to the use and occupation of the Site by the CHARTER SCHOOL.

**APPLICABILITY**

This Agreement shall only relate to District’s provision of facilities for Achieve Academy.

1. **SITE**

The CHARTER SCHOOL's exclusive use of the Site shall consist of the entire real property (including, without limitation, all improvements located thereon) located at 1700 28th Ave., Oakland, CA 94621 and set forth in **Exhibit "A"** hereto, except for the UPA Portables as defined in Exhibit B. However, the terms of Education Code section 17078.52 *et seq.* ("Proposition 51"), and the Charter School's "Right to Make Improvements" under Section 3(D) of this Agreement, shall only apply to the "Proposed Site Development Area" 1 on **Exhibit A** hereto, and the facilities contained therein. **Nothing in this Agreement shall be construed to give the Charter School any rights conferred under Proposition 51 to, or any rights to make improvements to, any area outside of the Proposed Site Development Area.**

2. **TERM**

**Prior to and during construction of the Eligible Improvements, as defined below, CHARTER SCHOOL shall have exclusive use and occupation of the Site. Immediately upon the completion of the Eligible Improvements, CHARTER SCHOOL shall occupy the newly constructed Eligible Improvements. These Eligible Improvements shall be included in the Site for the remainder of this Agreement.**

The term of this Agreement shall be for fifteen (15) consecutive school years, commencing on July 1, 2021 and ending on June 30 of the 15th year thereafter ("Initial Term"), subject to earlier termination as set forth in this Agreement ("Initial Term"). The CHARTER SCHOOL shall have the right to renew this Agreement for two additional terms, the first for Fifteen (15) years and the second for ten (10) years ("Extension Term", and the Initial Term and Extension Term(s) together are referred to as the "Term") by giving the District written notification of its desire to do so no later than July 1 of the last fiscal year of the term preceding the applicable Extension Term. At the time CHARTER SCHOOL gives the District its written notification to exercise one of the Extension Terms, the District or CHARTER SCHOOL may indicate its desire to meet and confer regarding the potential renegotiation of the terms of this Agreement and the parties shall meet and confer in good faith regarding whether there are revisions to terms of the Agreement that both Parties agree to. If both Parties agree to revisions to the terms of the Agreement, the Parties shall execute an amendment to this Agreement memorializing same.

This Agreement terminates automatically if CHARTER SCHOOL's program ceases to operate after a revocation, nonrenewal or surrender of CHARTER SCHOOL's charter, and all statutory, administrative, and non-judicial appeals have been exhausted. CHARTER SCHOOL shall quit the Site and Proposed Site Development Area and remove its possessions therefrom as of the effective date of termination, or upon the expiration of this Agreement. CHARTER SCHOOL shall have no obligations under this Agreement as of the effective date of the termination, except for those obligations set forth herein, and except for those obligations that expressly or impliedly survive the termination of this Agreement.

No later than July 15 of the final year of the Initial Term if the CHARTER SCHOOL has not exercised its first Extension Term, and/or no later than July 15 of the final year of any Extension Term if CHARTER SCHOOL elects to extend the Agreement, CHARTER SCHOOL

shall contact the District to request a meeting with the District Superintendent or his/her designee to discuss whether the parties desire to enter into a successor agreement. In the alternative, CHARTER SCHOOL may make a Proposition 39 request for facilities for the year following the termination or expiration of the Agreement.

The DISTRICT and CHARTER SCHOOL shall, upon mutual written agreement, execute an amendment to this Agreement to include any terms specifically required by the California School Finance Authority or Office of Public School Construction as a condition of Charter School's receipt of funding under Charter School Facilities Program (Proposition 51) for the construction or rehabilitation of facilities during the Term of this Agreement.

### **3. CHARTER SCHOOL'S OBLIGATIONS**

#### **A. Rent**

In recognition of the substantial financial commitment that CHARTER SCHOOL is making to improve the District's asset, as well as the long-term debt being incurred by the CHARTER SCHOOL for same, the CHARTER SCHOOL shall pay an additional yearly fee pursuant to Education Code Section 47613(b), in addition to the oversight fee charged by DISTRICT pursuant to Education Code Section 47613(a), as occasionally amended, which is currently set at 1%, payable to the District's general fund.

For Year 1 of the Term through the school year that CHARTER SCHOOL's loan repayment for the Proposition 51 funds received by CHARTER SCHOOL in order to accomplish the Project, as defined below, commences with the State ("Term of Initial Payment"), the CHARTER SCHOOL will pay the District's pro rata fee amount as determined pursuant to Proposition 39 and as calculated on a school year to school year basis. CHARTER SCHOOL shall pay the pro rata fee consistent with the District's then-current method of calculating and charging such fees in compliance with Prop. 39, which practice is currently to charge pro rata share fees based solely on the building square footage of the Site and excluding any outdoor space.

After the Term of Initial Payment is over, for all enrollment attending the CHARTER SCHOOL at the Site, CHARTER SCHOOL shall pay the following facilities use fee on a yearly basis in addition to the oversight fee charged by DISTRICT pursuant to Education Code Section 47613(a), as occasionally amended:

1. For the school year following expiration of the CHARTER SCHOOL's obligation to pay the District's pro-rata fee, as described above, through Year 15 of the Term, the CHARTER SCHOOL shall pay a yearly fee in the amount of 0.5% of CHARTER SCHOOL's yearly revenue, as defined in Education Code Section 47613(b) and (f).
2. For Years 16-25 of the Term, the CHARTER SCHOOL shall pay a yearly fee in the amount of 0.75%.

3. For Years 26-35 of the Term, the CHARTER SCHOOL shall pay a yearly fee in the amount of 1%.
4. For Years 36-40 of the Term, the CHARTER SCHOOL shall pay a yearly fee in the amount of 2.0%.

For any school year in which the percentage of out of District students enrolled at the CHARTER SCHOOL is greater than ten percent (10%), for all out of District enrollment attending the CHARTER SCHOOL, the CHARTER SCHOOL shall, instead of the yearly fee schedule described in 3.A.1 through 3.A.4, pay the following facilities use fee on a yearly basis in addition to the oversight fee charged by DISTRICT pursuant to Education Code Section 47613(a) and all other applicable law, and the facilities use fee described in 3.A.1 through 3.A.4 will be paid for all in-district enrollment:

5. For the school year following expiration of the CHARTER SCHOOL's obligation to pay the District's pro-rata fee, as described above, through Year 15 of the Term, the CHARTER SCHOOL shall pay a yearly fee in the amount of 0.95% of CHARTER SCHOOL's yearly revenue, as defined in Education Code Section 47613(b) and (f).
6. For Years 16-25 of the Term, the CHARTER SCHOOL shall pay a yearly fee in the amount of 1.2%.
7. For Years 26-35 of the Term, the CHARTER SCHOOL shall pay a yearly fee in the amount of 1.45%.
8. For Years 36-40 of the Term, the CHARTER SCHOOL shall pay a yearly fee in the amount of 2.45%.

B. Notwithstanding the above, and instead of the facilities use fees specified under sections 3.A.1 through 3.A.8, after the CHARTER SCHOOL has repaid its debt to the State of California through the Charter School Facilities Program through the remainder of the Term, the CHARTER SCHOOL shall pay a yearly facilities use fee of 2% for all in-District enrollment attending the CHARTER SCHOOL, and 2.45% for all out-of-District enrollment attending the CHARTER SCHOOL.

C. The payments described in Paragraph 3(A) and Paragraph 3(B) shall be made in quarterly installments payable upon invoice by the District. If any of the payments described in Paragraph 3(A) and Paragraph 3 (B) is made more than fifteen (15) days late, District shall notify the CHARTER SCHOOL and may assess a late fee of 1% (one percent) of the installment payment due and interest shall accrue after the installment payment is thirty (30) days late at the rate of 5% (five percent) per annum. The payment of late fees and/or interest shall not by itself excuse or cure any default by CHARTER SCHOOL, and shall not estop the District from commencing legal action to regain possession of the facilities based on default by CHARTER SCHOOL under Section 11 of this Agreement.

D. Charter School's Right to Make Improvements on the Proposed Site Development Area

1. CHARTER SCHOOL shall have the right and obligation, with the exceptions set forth herein, to make some or all of the improvements set forth in Exhibit B (collectively the improvements are referred to as the "Eligible Improvements," and construction of some or all of the improvements is referred to as the "Project") only on the Proposed Site Development Area at its own expense.

Notwithstanding the foregoing, unless the CHARTER SCHOOL terminates this Agreement pursuant to section 3.C.2, the CHARTER SCHOOL agrees that it will expend Proposition 51 funds in the amount of no less than ten million dollars (\$10,000,000.00) to complete the Project.

2. At any time within the first five (5) years of this Agreement, CHARTER SCHOOL at its option, and without any penalties, damages or other compensation to the District, may abandon or elect not to proceed with the Project if CHARTER SCHOOL is unable to obtain approval for Proposition 51 funding, and alternate financing is not available on terms acceptable to both Parties, or CHARTER SCHOOL has reasonably determined that the Project is not feasible, in which case the Term of this Agreement shall automatically terminate on June 30 of the following fiscal year. If the CHARTER SCHOOL elects to abandon or not to proceed with the Project, the CHARTER SCHOOL may submit a request for Prop. 39 facilities during the school year that begins in the fall as per the Prop. 39 implementing regulations for an allocation of facilities from the District for the following school year. The Eligible Improvements, if made, shall become the property of the District at the end of the Term of this Agreement (including any options or mutually agreed-to extensions).

All improvements, including Eligible Improvements, are subject to the following procedures and requirements:

- a. CHARTER SCHOOL must bear financial responsibility for all improvements, and must hold the District harmless for claims for payment by any contractors, subcontractors or other parties, as well as any liens assessed as result of work performed. CHARTER SCHOOL agrees to defend and indemnify the District against any claims arising out of or related to performance of the work related to the improvements, subject to Section 8 ("Indemnification") of this Agreement.
- b. CHARTER SCHOOL agrees to bear responsibility for paying for and performing any required unanticipated upgrades related to

disability access triggered by the performance of any work done by CHARTER SCHOOL.

- c. CHARTER SCHOOL must follow all applicable procurement laws with respect to the Eligible Improvements; issue requests for proposals for all projects to obtain competitive pricing ; adhere to prevailing wage laws; and shall make best efforts to comply with the local hiring requirements in accordance with District Administrative Regulation and Board Policy 7115 (“Capital Program / Construction Related Local, Small Local and Small Local Resident Business Enterprise Program, and Board Policy”); and adhere to all applicable minimum wage requirements.
- d. CHARTER SCHOOL’s contractors shall be duly licensed in the State of California.
- e. The District reserves the right to review CHARTER SCHOOL’s selection of contractors. Contract prices are subject to District approval, which shall not be unreasonably withheld. Contractors retained by CHARTER SCHOOL with respect to the construction or installation of improvements shall be fully licensed and bonded as required by law and must maintain levels of casualty, liability and workers’ compensation insurance and performance and payment bonds consistent with District construction requirements. The District shall be named as an additional insured on any applicable insurance policies and bonds. CHARTER SCHOOL shall bear full responsibility for ensuring that the construction or installation of improvements shall be performed in a sound and workmanlike manner, in compliance with all laws applicable to public schools including building codes and prevailing wage laws.
- f. The CHARTER SCHOOL agrees to provide a copy of documentation related to the work, including requests for proposals, bids/proposals, schematic designs, specifications, work plans, work schedules, change orders, etc.
- g. All work performed, including designs (if applicable), specifications, work plans and work schedules, are subject to prior approval, which shall not be unreasonably withheld, and periodic inspection by the District upon District request. CHARTER SCHOOL shall comply with all DISTRICT facilities design standards to the extent reasonably feasible and as required by the Division of State Architect (“DSA”).

- h. CHARTER SCHOOL shall provide and pay for project management for all work performed, subject to compliance and progress reports to the District as requested by the District.
- i. CHARTER SCHOOL shall bear the exclusive responsibility, and bear the exclusive cost for, full compliance with any and all improvements or modifications made under this Agreement with all legal requirements, including but not limited to the Field Act (Education Code section 17280 et seq.); all requirements of DSA; any other applicable Building Code requirements; the California Environmental Quality Act (Government Code section 21000 et seq.) (“CEQA”); Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 and applicable State law governing access to facilities; and any applicable federal, local and state requirements governing building construction, building occupancy, fire safety, food storage and preparation. Notwithstanding the foregoing, District assumes full responsibility for all DSA tickets that were open as of the date the Agreement was executed.
- j. CHARTER SCHOOL shall be responsible for maintaining required fire and smoke detection/alarm systems and all telephone and data communication lines.
- k. CHARTER SCHOOL shall pay for all utilities charges for the Site other than the UPA Portables. 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. CHARTER SCHOOL shall be responsible, at its sole cost and expense, for the furnishing of all services and utilities to the Site, including, but not limited to heating, ventilation and air-conditioning, gas, electricity, water, telephone, trash collection, sewage disposal, and interior and exterior Site 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 the District 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 Site or Proposed Site Development Area or relieve CHARTER SCHOOL from paying rent or other fees, costs or other amounts due and owing under this Agreement.

- l. CHARTER SCHOOL shall pay any assessment on the Site, including any improvements which CHARTER SCHOOL constructs or causes to be constructed under this Agreement, whether real estate, general, special, ordinary or extraordinary, or rental levy or tax, improvement bond, and/or fee imposed upon or levied against the Site 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 Site address and where the proceeds so generated are applied by the city, county or other local taxing authority having jurisdiction. The provisions of this Section shall survive the expiration or earlier termination of this Agreement.
- m. Subject to and in accordance with Section 8 of this Agreement, CHARTER SCHOOL agrees to defend and indemnify the District against any and all claims arising out of any and all improvements that it makes under this Agreement in accordance with Section 8 ("Indemnification") of this Agreement.
- n. Section 6.B of this Agreement ("Alterations and Additions") shall apply to any and all improvements performed by CHARTER SCHOOL under this Agreement, provided that if there is a conflict between Section 6.B. and this Section 3.D., the provisions of this Section 3.D. shall prevail.
- o. CHARTER SCHOOL shall keep the Site and Proposed Site Development Area and any facilities built thereon free from any liens arising out of any work performed, materials furnished or obligations incurred by or on behalf of CHARTER SCHOOL. Notwithstanding anything stated herein to the contrary, if CHARTER SCHOOL fails to promptly release and remove any such lien, District, at its sole option, may immediately (but shall not be obligated to) take all action necessary to release and remove such lien, without any duty to investigate the validity thereof, and all sums, costs and expenses, including reasonable attorneys' fees and costs, incurred by District in connection with such lien shall be immediately due and payable by CHARTER SCHOOL.
- p. CHARTER SCHOOL shall not uninstall or remove any fixtures or improvements made at the Proposed Site Development Area or Site, if such removal or de-installation will materially adversely affect the structure of any of the Buildings, without prior written approval of the District.



- q. CHARTER SCHOOL may only make improvements to facilities within the Proposed Site Development Area. CHARTER SCHOOL shall be expressly prohibited from making alterations, additions, improvements, or modifications not exclusively contained within CHARTER SCHOOL's Proposed Site Development Area. Notwithstanding the foregoing, District acknowledges and agrees that certain improvements may be required to the road owned by the City of Oakland, and the District agrees to reasonably cooperate with CHARTER SCHOOL to obtain any approvals required with respect to such improvements, all in accordance with Section 3.D.3. of this Agreement.
- r. CHARTER SCHOOL acknowledges that the District holds title to the Site, the Proposed Site Development Area, and all existing facilities, structures, fixtures, and appurtenances thereto. The District shall hold title to any Eligible Improvements made by CHARTER SCHOOL, including but not limited to those that are constructed with Proposition 51 funds. All Eligible Improvements at the expiration or earlier termination of the Term of this Agreement, or any options or mutually agreed to extensions, shall become District's property. Except as set forth herein with respect to the Eligible Improvements, CHARTER SCHOOL expressly waives any liens, encumbrances, rights in equity, or any other claim of ownership or title thereto based upon any improvements made by CHARTER SCHOOL.
- s. Within 30 days of the completion of work, 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 the District 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 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.
- t. Except as specifically agreed upon between the District and CHARTER SCHOOL pursuant to this Agreement, CHARTER SCHOOL shall not construct any alterations, additions, or improvements on the Site or the Proposed Site Development Area that would cause an increase in the Site's and/or the Proposed Site Development Area's capacity. "Capacity" for purposes of this section shall be calculated in accordance with Education Code section 17071.10, et seq., except that the assumed capacity of each

teaching station as referenced in section 17071.10(a)(2)(A) shall be calculated using 33.5 pupils for each teaching station used for transitional kindergarten, kindergarten or grades 1 to 6, inclusive, and 35 pupils for each teaching station used for grades 7 to 12, inclusive, and all portable classrooms shall be considered “permanent teaching stations” in the calculation of capacity for purposes of this Agreement. The parties acknowledge that CHARTER SCHOOL may be replacing some or all of the existing portable classrooms on the Site with new portable classrooms, and that this replacement shall not constitute an increase to the Site and/or Proposed Site Development Area’s capacity for purposes of this section so long as CHARTER SCHOOL does not cause the total number of portable classrooms on the Site to increase from the total number of portable classrooms on the Site on the Date of this Agreement. The parties also acknowledge that the CHARTER SCHOOL will be providing certain portables for the District’s use in the Proposed Site Development Area. Notwithstanding the above, and subject to all other terms of this Agreement, CHARTER SCHOOL may construct additional facilities for uses other than as general education classrooms (including but not limited to special education spaces, resource or other support spaces, library or computer lab space, administrative space, or space for pre-kindergarten) if permitted by the District in writing, which permission shall not be unreasonably withheld. CHARTER SCHOOL shall request permission from the District prior to commencing construction of any such improvements.

3. Approvals

CHARTER SCHOOL shall submit all requests for approval under this Section 3.D.3. to the Office of the General Counsel by email. District shall respond to the request for approval within ten (10) business days. If District fails to respond to the request for approval within ten (10) business days, a District employee with the approval authority will attend a meeting or conduct a conference call with CHARTER SCHOOL within five (5) business days after expiration of the above ten-day period to review and approve the requests.

4. Compliance with California Environmental Quality Act

District agrees to act as “lead agency” for any required compliance with the California Environmental Quality Act (Pub. Resources Code, §§ 21000, et seq., Cal. Code Regs., tit. 14, §§ 15000, et seq. (“CEQA”), including any determination that the Project qualifies for an exemption from CEQA, using all appropriate and necessary documents, which will be prepared by CHARTER SCHOOL or its consultants. District shall retain authority over

review and approval of such documents, and shall not be responsible or liable for errors in and/or omissions from such documents by CHARTER SCHOOL or its consultants. CHARTER SCHOOL agrees to enter into a reimbursement agreement with the District, if necessary, and fund all reasonable costs of third party professionals and consultants necessary to comply with CEQA. In the event of any legal challenge to the Project under CEQA, District agrees to tender its defense of such challenge to CHARTER SCHOOL and to cooperate promptly thereafter as requested by CHARTER SCHOOL. Except where caused by the District's negligence or misconduct, CHARTER SCHOOL agrees to indemnify, defend by counsel approved by the District in writing (such approval not being unreasonably withheld or delayed), and hold harmless the District, its employees, officers, governing board and members thereof, agents, and representatives, from and against any claims, liabilities, losses, costs, or damages arising out of or resulting from any claim or contention arising out of this Agreement, or CHARTER SCHOOL's use of the Site or construction of any Eligible Improvements thereon, including but not limited to, any third party challenge or contention based on CEQA.

5. District Cooperation

District will reasonably and timely cooperate with CHARTER SCHOOL in connection with the processing by District of all third party and governmental approvals and permits required in order to construct the Eligible Improvements. District acknowledges that District's agreement to provide such cooperation is a material inducement to CHARTER SCHOOL's agreement to enter into this Agreement and that such cooperation shall include timely, reasonable, and prompt actions as may be reasonably required to enable CHARTER SCHOOL to process such approvals and permits. Such cooperation shall include, without limitation, executing, as may be requested by any governmental authority having jurisdiction over the Site or Proposed Site Development Area, applications, permits or approvals required for the construction of the Eligible Improvements. In addition, after completion of the Project, if CHARTER SCHOOL uses non-Prop. 51 funds to construct additional facilities on the Site or Proposed Site Development Area with the District's approval pursuant to Section 6.B., at CHARTER SCHOOL's request, the District and CHARTER SCHOOL will meet and confer to amend this Agreement confirming that Prop. 51 funds were not used to perform the improvements, in a form that will enable the CHARTER SCHOOL to receive rent or lease reimbursements through the Charter School Facility Grant Program. In addition, if the CHARTER SCHOOL elects to seek reimbursement through the Charter School Facilities Incentive Grant Program, the District will, at no cost to the District, cooperate with the CHARTER SCHOOL in

providing any documentation related to this Agreement to enable the CHARTER SCHOOL to apply for and confirm eligibility for the CSFIG.

#### 4. USE

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

B. Use. The facilities on the Site and Proposed Site Development Area shall be used and occupied by CHARTER SCHOOL for the sole purpose of operating a California public charter school and all its related school activities and for no other purpose without the prior written consent of District, except that the District acknowledges and agrees that one of the portables on the Site is currently used as a health clinic operated by Clinica de la Raza, and that one of the portable classrooms on the Site may continue to be used as a health clinic benefitting its students, operated by CHARTER SCHOOL or a third party approved by the District, which shall not be unreasonably withheld, for the Term. In addition, the District acknowledges and agrees that the CHARTER SCHOOL currently uses one of its classrooms as a Family Resource Center ("FRC") for its families, currently operated by the East Bay Agency for Children, and that it may continue to do so (operated by a third party or the CHARTER SCHOOL) for the Term. The CHARTER SCHOOL and District agree that they will meet and confer to determine whether the operations of the FRC can be expanded to also benefit the Urban Promise Academy community, with some sharing of associated expenses between the District and CHARTER SCHOOL. CHARTER SCHOOL's compliance with the provisions of the Civic Center Act (Education Code Section 38131, et seq.) in making use of the Site and Proposed Site Development Area accessible to members of the community shall be included in the permissible uses of the Site and Proposed Site Development Area under this Agreement. CHARTER SCHOOL ACKNOWLEDGES AND AGREES (I) THAT, EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH HEREIN, IN ENTERING INTO THIS AGREEMENT, THE CHARTER SCHOOL HAS NOT RELIED ON ANY REPRESENTATION, STATEMENT, OR WARRANTY BY DISTRICT, OR ANYONE ACTING FOR OR ON BEHALF OF DISTRICT, AND THAT ALL MATTERS CONCERNING THE SITE AND PROPOSED SITE DEVELOPMENT AREA HAVE BEEN INDEPENDENTLY VERIFIED BY CHARTER SCHOOL; (II) THAT CHARTER SCHOOL IS TAKING/CONTINUING POSSESSION OF THE SITE AND PROPOSED SITE DEVELOPMENT AREA BASED ON ITS OWN INSPECTION AND EXAMINATION THEREOF AND ON AN "AS IS" BASIS; AND (III) THAT DISTRICT MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF CONDITION, HABITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE WITH RESPECT TO THE SITE AND PROPOSED SITE DEVELOPMENT AREA.

C. Restrictions. CHARTER SCHOOL shall have no rights to the air above or the subjacent terrain below any area of the Site or Proposed Site Development Area outside of CHARTER SCHOOL's Site or Proposed Site Development Area.

D. Uses Prohibited.

1. CHARTER SCHOOL shall not do or permit anything to be done in or about the Site or Proposed Site Development Area nor bring or keep anything therein which would fall under an exclusion from coverage or cause a cancellation of any insurance policy covering said Site or Proposed Site Development Area or any part thereof or any of its contents, nor shall CHARTER SCHOOL sell or permit to be kept, used, or sold in or about said Site or Proposed Site Development Area any articles which may be prohibited by a standard form policy of fire insurance.
2. Neither party shall do or permit anything to be done in or about the Site or Proposed Site Development Area that will in any way obstruct or interfere with the rights of the other party or injure or annoy the other party or use or allow the Site or Proposed Site Development Area to be used for any unlawful or objectionable purpose nor shall either party cause, maintain or permit any nuisance in or about the Site or Proposed Site Development Area. Neither party shall not commit or suffer to be committed any waste in or upon the Site or Proposed Site Development Area.
3. CHARTER SCHOOL shall not use the Site or Proposed Site Development Area or permit anything to be done in or about the Site or Proposed Site Development Area that will in any way conflict with any applicable law, statute, ordinance or governmental rule, or regulation now in force or which may hereafter be enacted or promulgated, or with CHARTER SCHOOL's charter. CHARTER SCHOOL shall comply with District policies and/or procedures or practices regarding plant operations at the Site or Proposed Site Development Area. District will provide CHARTER SCHOOL with copies of all relevant written plant operations policies. District will provide any such written policies that are amended during the term of the Agreement.

E. No Increases in Enrollment. The Parties enter this Agreement with the intent to provide safe facilities to the CHARTER SCHOOL and to ensure that the CHARTER SCHOOL's facilities are safely occupied and not at over-capacity. Therefore, the CHARTER SCHOOL will not exceed the authorized enrollment projected in the charter petition. The CHARTER SCHOOL will not seek to revise its charter petition for the purpose of requesting an increase in enrollment during the term of this Agreement unless mutually agreed upon by the Parties.

F. Remedies for Overallocation of Facilities

1) Once the Eligible Improvements are constructed and occupied by CHARTER SCHOOL students, if CHARTER SCHOOL's total enrollment at P-2 in any given year drops more than 20% below the target enrollment in CHARTER SCHOOL's current approved charter petition, CHARTER SCHOOL shall make all excess space not constructed or improved using Proposition 51 funding available to the DISTRICT for DISTRICT use, including for allocation to other charter

schools pursuant to Prop. 39. For the purposes of this subdivision, any reclamation of facilities shall take place in the following school year. If this provision is triggered, for the following school year, the DISTRICT and CHARTER SCHOOL shall calculate the amount of space to be made available to the DISTRICT in the following year as follows:

a. The DISTRICT and CHARTER SCHOOL shall calculate the number of teaching stations, and the total square footage of specialized classroom and non-teaching station space, which the CHARTER SCHOOL would be entitled to pursuant to Title 5, California Code of Regulations Section 11969.3(a) and (b), using the CHARTER SCHOOL's P-2 ADA and the District's P-2 ADA and comparison school usage information for that year ("Facility Entitlement").

b. The DISTRICT and CHARTER SCHOOL shall compare the Facility Entitlement to the number of teaching stations, and the total square footage of specialized classroom and non-teaching station space allocated to CHARTER SCHOOL under this Agreement ("Facility Allocation"), and subtract the Facility Entitlement from the Facility Allocation ("Overallocation Facilities").

c. The CHARTER SCHOOL shall be required to make available for DISTRICT use, including for allocation to other charter schools pursuant to Prop. 39, all teaching stations, and all specialized classroom and non-teaching station space square footage, that is 10% above the Overallocation Facilities. As an example but not a limitation, if the DISTRICT and CHARTER SCHOOL determine that the Overallocation Facilities includes ten (10) teaching stations and 5,000 square feet of specialized classroom space, the DISTRICT shall be entitled to reclaim for its use nine (9) teaching stations and 4,500 square feet of specialized classroom space.

d. If the District elects to place another charter school on the Site, the co-located charter school shall pay the pro rata share for its use of the space, calculated pursuant to Title 5, California Code of Regulations Section 11969.7, directly to the CHARTER SCHOOL.

e. For the purposes of implementing this Overallocation provision:

i. For the purposes of determining whether an overallocation exists under this provision, the parties shall use all facilities occupied by the Charter School, whether or not they were subsidized by Proposition 51 funding. In the event that the District reclaims facilities under this provision, the District may only reclaim space that was not constructed or improved using Proposition 51 funding.

f. The CHARTER SCHOOL and the DISTRICT, and any co-located charter school if applicable, shall work together collaboratively to identify the facilities to be reclaimed with the goal of minimizing the disruption to both programs.

g. If the CHARTER SCHOOL's total enrollment at P-2 in any subsequent year rises to less than **20%** below the target enrollment in CHARTER SCHOOL's current approved charter petition, the CHARTER SCHOOL shall be entitled to reclaim the space used by the

DISTRICT for its use until and if its total enrollment at P-2 in any subsequent year again falls to **20%** below the target enrollment in CHARTER SCHOOL's current approved charter petition, in which case the process set forth in this Section shall be triggered. It is the intent of the Parties that this analysis will be performed on a yearly basis, such that any reclamation of space by the DISTRICT shall be in one year increments.

G. Representations and Covenants. CHARTER SCHOOL represents and covenants that, as of the date hereof and during the entire term hereof:

(1) Organization. It is and shall remain a California non-profit public benefit corporation, duly organized, qualified to do business and in good standing in California and any other jurisdiction where the nature of its operations require it to be so qualified.

(2) Tax-Exempt Status. It has obtained, and shall maintain in full force and effect, all required approvals, consents and qualifications to be a not for profit entity under Section 501(c)(3) of the Internal Revenue Code and comparable provisions of California law.

(3) Charter. It has obtained and shall maintain a valid charter to operate Achieve Academy.

## **5. FURNISHINGS AND EQUIPMENT**

CHARTER SCHOOL shall be solely responsible for providing its own furnishings and equipment at its Site, except that all furnishing and equipment at the Site previously provided by the District shall not be removed by the District. District shall have no obligation to provide additional furnishings or equipment to CHARTER SCHOOL.

## **6. MAINTENANCE AND REPAIRS; ALTERATIONS AND ADDITIONS**

A. Maintenance and Repairs. The ongoing daily operations and maintenance of the facilities and equipment on the Site is the responsibility of CHARTER SCHOOL. CHARTER SCHOOL and CHARTER SCHOOL's agents and employees shall observe and comply fully and faithfully with all policies, rules, and regulations adopted by the District for the maintenance, care, protection, and cleanliness, and operation of the Site (except where the District's practice is different from its policies, rules and regulations, in which case the CHARTER SCHOOL will comply with the District's practice), and the facilities, furnishings and equipment thereon, and shall comply with all applicable laws. CHARTER SCHOOL's students, visitors, and invitees shall observe and comply fully and faithfully with all policies, rules, and regulations adopted by the District for the use and care of the Site. The District will provide CHARTER SCHOOL with copies of all relevant written use, care, maintenance and operations policies. The District will provide any such written policies that are amended during the term of the Agreement.



B. Alterations and Additions.

1. CHARTER SCHOOL must obtain prior written consent of the Superintendent or their designee for any alterations, additions or improvements that exceed \$50,000 or that involve “major repair or replacement of plumbing, heating, air conditioning, electrical, roofing, and floor systems, the exterior and interior painting of school buildings, the inspection, sampling, and analysis of building materials to determine the presence of asbestos-containing materials, the encapsulation or removal of asbestos-containing materials, the inspection, identification, sampling, and analysis of building materials to determine the presence of lead-containing materials, the control, management, and removal of lead-containing materials” under Education Code section 17582. Alterations, additions, or improvements are defined as changes that would be deemed to be a “fixture” (in accordance with California Civil Code section 660) to the Site, Proposed Site Development Area, or any part thereof without obtaining the prior written consent of District. Civil Code section 660 defines a fixture as follows: “A thing is deemed to be affixed to land when it is attached to it by roots, as in the case of trees, vines, or shrubs; or imbedded in it, as in the case of walls; or permanently resting upon it, as in the case of buildings; or permanently attached to what is thus permanent, as by means of cement, plaster, nails, bolts, or screws; except that for the purposes of sale, emblements, industrial growing crops and things attached to or forming part of the land, which are agreed to be severed before sale or under the contract of sale, shall be treated as goods and be governed by the provisions of the title of this code regulating the sales of goods.”
2. Consent for alterations, additions, or improvements may not be unreasonably withheld. District has the sole discretion to impose as a condition to the aforesaid consent any reasonable requirements the District may deem necessary, including but not limited to, the manner in which the work is done, a right of approval of the contractor by whom the work is to be performed, the times during which the work is to be accomplished, the manner in which the work is inspected, and the requirement that upon written request of District prior to the expiration or earlier termination of the Agreement, CHARTER SCHOOL will remove any and all alterations, additions or improvements installed by CHARTER SCHOOL pursuant to this provision, except for the Eligible Improvements, and only if such removal requirement is set forth in writing at the time of District’s approval of the addition, alteration or improvement to be removed. District reserves the right to require approval of all terms, including but not limited to construction schedule, work hours, and modifications, as well as requiring licensing and bonding of contractors (including performance and payment bonds covering 100% of contract price), as well as compliance with applicable prevailing wage laws in relation to public works projects, all



required approvals shall not be unreasonably withheld. CHARTER SCHOOL agrees to name District as an intended third party beneficiary of any contract for the construction of alterations, additions, or improvements made by CHARTER SCHOOL.

3. CHARTER SCHOOL is encouraged to incorporate Collaborative for High-Performance Schools standards into the design of all improvements made under this Agreement and is encouraged to incorporate all editions of the California Green Building Standards Code. In addition to the public notice and participation requirement of CEQA, CHARTER SCHOOL agrees to use reasonable efforts to promote community knowledge and participation in the project and improvements described herein and to designate a community liaison for the project. In order to provide economic opportunity for residents and businesses and stimulate economic development, CHARTER SCHOOL shall make its best efforts to comply with District Administrative Regulation and Board Policy 7115 (“Capital Program / Construction Related Local, Small Local and Small Local Resident Business Enterprise Program, and Board Policy,” though it shall adopt a local hiring and local small business participation program, and agree to at least 25% local hiring/local business participation for all improvements under this Agreement. CHARTER SCHOOL is encouraged to incorporate all sustainability guidelines under the Division of the State Architect’s 7x7x7: Design Energy Water sustainability initiative.
4. All such alterations, additions or improvements that were permitted to be made consistent with Section 6.A and 6.B shall at the expiration or earlier termination of the Agreement become the property of District and remain upon and be surrendered with the Site, unless the District requests its removal as specified in Section 6.B above.
5. All articles of personal property owned by CHARTER SCHOOL or installed by CHARTER SCHOOL at its sole expense on the Site shall be and will remain the property of CHARTER SCHOOL and may be removed by CHARTER SCHOOL at any time during the Agreement Term.
6. CHARTER SCHOOL shall be allowed to post signs that identify its location and name on the Site in a manner that is customary and equivalent to what other District school sites have established, and subject to District’s prior approval.

## **7. ENTRY BY DISTRICT**

District reserves the right to enter CHARTER SCHOOL’s Site and Proposed Site Development Area to inspect the same, to supply any service to be provided by District to CHARTER SCHOOL hereunder, to submit said Site and Proposed Site Development Area to prospective purchasers or future tenants to post notices of non-responsibility and “for lease” signs,

providing always that the entrance to the Site and Proposed Site Development Area shall not be blocked thereby, and further providing that the business of CHARTER SCHOOL shall not be unreasonably interfered with. Except in an emergency or a situation involving a threat to health and safety, the District will provide the CHARTER SCHOOL with at least 24 hours notice prior to entering on the Site or Proposed Site Development Area, and shall comply with the CHARTER SCHOOL's visitor policies when entering upon the Site or Proposed Site Development Area. CHARTER SCHOOL hereby waives any claim for damages for any injury or inconvenience to or interference with CHARTER SCHOOL's business, any loss or occupancy or quiet enjoyment of the Site or Proposed Site Development Area. For each of the aforesaid purposes District shall at all times have and retain a key with which to unlock all of the doors in, upon and about the Site and Proposed Site Development Area, excluding CHARTER SCHOOL's vaults and safes, and District shall have the right to use any and all means which District may deem proper to open said doors in an emergency, in order to obtain entry to the Site and Proposed Site Development Area, and any entry to the Site and Proposed Site Development Area obtained by District by any of said means, or otherwise, shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into or a detainer of the Site and Proposed Site Development Area, or an eviction of CHARTER SCHOOL from the Site or any portion thereof.

## **8. INDEMNITY**

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

B. District shall indemnify, hold harmless, and defend CHARTER SCHOOL, its Board Members, trustees, officers, administrators, attorneys, volunteers, employees and agents against and from any and all claims, demands, actions, suits, losses, liability, loss, expenses and costs related to or resulting from or arising from District's negligence or misconduct in connection with the conduct of its business or from District's negligence or misconduct in connection with the any activity, work, or other things done, permitted or suffered by District, its trustees, officers, employees and agents in or about the Site or Proposed Site Development Area; provided, however, that District shall not have any obligation to indemnify, hold harmless or defend the CHARTER SCHOOL, its trustees, officers, employees and agents against and from any and all claims, demands, actions, suits, losses, liability, expenses and costs for any injury, death or damage to any person or property occurring in, on or about the Site or Proposed Site Development Area resulting

{SR518561} Achieve Academy Facilities Agreement

from or arising out of the negligence or misconduct of the CHARTER SCHOOL, its trustees, officers, employees and agents.

## 9. INSURANCE

Without in any way limiting Charter School's liability pursuant to the "Indemnification" section of this Agreement, CHARTER SCHOOL shall procure and maintain during the full term of this Agreement the following insurance amounts and coverage:

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

1. Comprehensive or commercial general liability insurance with limits not less than Ten Million Dollars (\$10,000,000) each occurrence and \$20,000,000 (twenty million dollars) in the aggregate for bodily injury and property damage.
2. Comprehensive or Business Automobile Liability Insurance with limits not less than Two Million Dollars (\$2,000,000) each occurrence Combined Single Limit for Bodily Injury and Property Damage including coverage for Owned, Non-owned and Hired Vehicles, as applicable. District reserves the right to require CHARTER SCHOOL to maintain limits required of other tenants on District property.
3. Workers' Compensation as required by law, with Employer's Liability limits not less than One Million Dollars (\$1,000,000) each.
4. Professional Liability (Errors and Omissions or Directors and Officers) Insurance with limits not less than Two Million Dollars (\$2,000,000) each occurrence.
5. Crime coverage for losses resulting from employee dishonesty naming the District as a loss payee with limits of no less than \$1,000,000 (one million dollars) per occurrence. Such coverage should be primary and noncontributory to any other coverage available to the District with respect to claims arising out of Charter School's performance under this Agreement.
6. If any policies are written on a claims-made form, CHARTER SCHOOL agrees to maintain such insurance continuously in force for three years following termination or revocation or termination of the Charter or extend the period for reporting claims for three years following the termination or revocation of the Charter to the effect that occurrences which take place during this time frame shall be insured.

7. CHARTER SCHOOL shall be responsible, at its sole expense, for separately insuring its personal property.
8. CHARTER SCHOOL shall add the District as a named additional insured on its insurance policies related to the Site and Proposed Site Development Area, or those potentially covering any risk arising out of CHARTER SCHOOL's improvement of the Site and Proposed Site Development Area under this Agreement, to the extent permissible, and shall provide the District with certificates of insurance and endorsement page no later than 30 days prior to the commencement of instruction.

CHARTER SCHOOL bears exclusive responsibility for procuring insurance with respect to the improvements set forth in Section 3.D of this Agreement, including but not limited to liability, automotive, workers compensation, professional liability, and property insurance for any and all personal property and structures erected by the CHARTER SCHOOL.

B. District's Coverage. The District shall maintain the same levels of insurance on the Site (except for the Eligible Improvements) as it would maintain on the Site if it was an existing District school. The District is permissibly self-insured for all losses pursuant to California Education Code Section 17566. The District's election in this regard is sufficient to satisfy any and all legal obligations that require it to provide evidence of liability or property damage.

#### **10. ASSIGNMENT AND SUBLETTING**

CHARTER SCHOOL may not assign its rights or sublet any portion of the Site or Proposed Site Development Area without the written consent of the District. CHARTER SCHOOL shall not have the right to assign, mortgage, pledge, hypothecate, encumber, or permit any lien to attach to, or otherwise transfer, this Agreement or any interest hereunder, permit any assignment, or other transfer of this Agreement or any interest hereunder by operation of law, sublet the Site or any portion or improvements or any part thereof, or otherwise permit the occupancy or use of the Site or Proposed Site Development Area or 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 the District. Any Transfer made without the prior written consent of the District shall be null, void and of no effect, and shall constitute a default by CHARTER SCHOOL under this Agreement. Any Transferee approved by the District shall agree at all times to comply with the terms of this Agreement, including, without limitation, the continuous use of the Site or Proposed Site Development Area for the purposes set forth in this Agreement. Notwithstanding anything in this Section to the contrary, (i) CHARTER SCHOOL shall have the right to enter into license or concession agreements for the provision of services or goods to the students of CHARTER SCHOOL and/or to the educational programs operated by CHARTER SCHOOL, and (ii) CHARTER SCHOOL shall only have the right to assign this Agreement and all of its rights with respect to the Site and Proposed Site Development Area to an affiliate of CHARTER SCHOOL, in each case under clause (i) and (ii) above (A) with the consent of the District and (B) such license or concession agreement or assignment to an affiliate shall not be deemed a Transfer

to the extent necessary to obtain funding under the Charter School Facility Grant program under Education Code section 47614.5. CHARTER SCHOOL shall receive approval of any such assignment from the DISTRICT either through a written amendment to this Agreement or a material revision to its Charter, which shall not be unreasonably withheld or delayed.

A. Although CHARTER SCHOOL shall have the exclusive use of its Site and Proposed Site Development Area as provided for in this Agreement, CHARTER SCHOOL agrees to comply with the provisions of the Civic Center Act (Education Code section 38131 et seq.) in making use of the facilities accessible to members of the community. For purposes of compliance with the Civic Center Act with respect to the Site and Proposed Site Development Area, the CHARTER SCHOOL shall hold the same powers and obligations applicable to School District Boards of Trustees under Education Code sections 38130-38139.

## **11. DEFAULT; REMEDIES**

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

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

2. Any failure by CHARTER SCHOOL to use and occupy the Site or Proposed Site Development Area for the operation of a charter school as required by this Agreement and/or the authorized charter petition. Notwithstanding the foregoing, the Parties acknowledge that Clinica de la Raza currently operates a health clinic on the Site, and that use of one of the classrooms as a health clinic, either operated by a third party or the CHARTER SCHOOL pursuant to Paragraph 4(B), is an approved use of the Site and Proposed Site Development Area.

3. Any failure by CHARTER SCHOOL to maintain insurance on the Site or Proposed Site Development Area as outlined herein or to provide evidence of insurance as required by this Agreement, and where the failure continues for thirty (30) days after receiving written notice of the failure to make payment or cancellation of insurance.

4. Any failure by CHARTER SCHOOL to observe and perform any other provision of this Agreement to be observed or performed by CHARTER SCHOOL, where such failure continues for thirty (30) days after receipt of written notice thereof by District to CHARTER SCHOOL, unless, however, the nature of the default is such that the same cannot reasonably be cured within said thirty (30) day period. CHARTER SCHOOL shall not be deemed to be in default if CHARTER SCHOOL shall within the thirty (30) day period commence such cure, and by determination of the District, diligently prosecute the cure to completion. In the event that the District has to issue written notice to CHARTER SCHOOL for violation of the same material obligation or provision of this Agreement on three or more occasions in the same fiscal year, the District may commence legal proceedings to terminate this Agreement, or take any other remedy provided in this Agreement, without the necessity of providing written notice to CHARTER SCHOOL.

5. The making by CHARTER SCHOOL of any general assignment or general arrangement for the benefit of creditors; the filing by or against CHARTER SCHOOL of a petition to have CHARTER SCHOOL adjudged bankrupt or of a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against CHARTER SCHOOL, the same is dismissed within 60 days); the appointment of a trustee or receiver to take possession of substantially all of CHARTER SCHOOL's assets located at the Site or Proposed Site Development Area or of CHARTER SCHOOL's interest in this Agreement, where possession is not restored to CHARTER SCHOOL within 30 days; or the attachment execution or other judicial seizure of substantially all of CHARTER SCHOOL's assets located at the Site or Proposed Site Development Area or of CHARTER SCHOOL's interest in this Agreement, where such seizure is not discharged within 30 days.

6. The failure of the charter school to perform, in the judgment of the District, any of the payment obligations set forth in Section 3 of this Agreement, subject to the cure provision set forth in subdivision (e) of Section 11.1 of this Agreement.

B. District Default and CHARTER SCHOOL Remedies: District shall not be in material breach and default unless District fails to perform obligations required of District within a reasonable time, but in no event later than 30 days after receipt of written notice by CHARTER SCHOOL to District specifying wherein District has failed to perform such obligations; provided, however, that if the nature of the District's obligation is such that more than 30 days are required for performance, then the District shall not be in default if the District commences performance within such 30 day period and thereafter diligently prosecutes the same to completion.

C. Remedies: If CHARTER SCHOOL commits any default or breach, including but not limited to the obligations set forth in Section 3 of this Agreement, then District may, at any time thereafter without limiting District in the exercise of any right or remedy at law or in equity which District may have by reason or such default or breach:

1. Maintain this Agreement in full force and effect and recover use payments and other monetary charges as they become due, without terminating CHARTER SCHOOL's right to possession irrespective of whether CHARTER SCHOOL shall have abandoned the Site or Proposed Site Development Area. If District elects not to terminate the Agreement, then District shall have the right to attempt to lease the Site or Proposed Site Development Area at such rent and upon such conditions and for such a term, and to do all acts necessary to maintain or preserve the Site and Proposed Site Development Area as District deems reasonable and necessary without being deemed to have elected to terminate the Agreement, including removal of all persons and property from the Site and Proposed Site Development Area; such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of CHARTER SCHOOL. If any such re-letting occurs, then this Agreement shall terminate automatically.

2. Terminate CHARTER SCHOOL's right to possession by any lawful means, in which case this Agreement shall terminate and CHARTER SCHOOL shall immediately surrender possession of the Site and Proposed Site Development Area to District. In such event District shall be entitled to recover from CHARTER SCHOOL all damages incurred by District by reason of CHARTER SCHOOL's default, including without limitations thereto, the following:



(i) the worth at the time of award of any unpaid use payments which had been earned at the time of such termination; plus (ii) any other damages to which the District would be entitled under the law. Upon any such re-entry District shall have the right to make any reasonable repairs, alterations or modifications to the Site and Proposed Site Development Area, which District in its sole discretion deems reasonable and necessary. As used in (i) above, the “worth at the time of award” is computed by allowing interest at the rate of 10% per year from the date of default. As used in (ii) and (iii) the “worth at the time of award” is computed by discounting such amount at the discount rate of the U.S. Federal Reserve Bank at the time of award plus 1%. The term “use payments”, as used in this Section 11.C.2., shall be deemed to be and to mean the payments to be paid pursuant to Section 3 and all other monetary sums required to be paid by CHARTER SCHOOL pursuant to the terms of this Agreement.

D. If District commits any default or breach, then CHARTER SCHOOL may, at any time thereafter without limiting CHARTER SCHOOL in the exercise of any right or remedy at law or in equity which CHARTER SCHOOL may have by reason or such default or breach, proceed in equity or at law to compel District to perform its obligations and/or to recover damages proximately caused by such failure to perform or cure any default of District at District’s cost.

E. No remedy conferred or reserved to the District or CHARTER SCHOOL is intended to be exclusive and every remedy shall be cumulative and in addition to every other remedy given under this Agreement or existing at law or in equity. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. The District and CHARTER SCHOOL are entitled to exercise any remedy reserved to it in this section without giving any notice other than such notice as is required under the Agreement. All remedies reserved to the District and CHARTER SCHOOL shall survive the termination of the Agreement.

## **12. CONDEMNATION**

The rights and obligations of the parties shall be determined as follows: If Site or Proposed Site Development Area are totally taken by condemnation; this Agreement shall terminate on the date of taking. If any portion of Site or Proposed Site Development Area is taken by condemnation, CHARTER SCHOOL shall have the right to either terminate this Agreement or to continue in possession of the remainder of the Site or Proposed Site Development Area under the terms of this Agreement, provided that the rent shall be reduced on an equitable basis, taking into account the relative value of the portion of the Site or Proposed Site Development Area taken as compared to the portion of the Site or Proposed Site Development Area remaining. Such right to terminate must be exercised by notifying District within ninety (90) days after possession of the part taken by eminent domain. All damages awarded for such taking shall belong to and is the property of District; provided, however, that CHARTER SCHOOL, not District, shall be entitled to any portion of the award to which it is entitled under applicable law.

### 13. DESTRUCTION

A. If any of the improvements made by CHARTER SCHOOL are damaged by any casualty, CHARTER SCHOOL shall bear exclusive financial responsibility for replacement, but only to the extent that Proceeds (as defined below) are available to pay the costs of rebuilding, storing, repairing and replacing such improvements. CHARTER SCHOOL shall obtain adequate insurance pursuant to Section 9 of this Agreement to cover all structures, and CHARTER SCHOOL's personal property. If the DISTRICT obtains any property insurance for any facility on the Site but outside of the Proposed Site Development Area, in the event of any act or event damaging or destroying all or a portion of facilities located outside of the Proposed Site Development Area, all proceeds recovered on account of such damage or destruction to any facility outside of the Proposed Site Development Area from the DISTRICT-acquired insurance shall be considered the property of the DISTRICT, and the DISTRICT shall determine the use of such proceeds, except that if the District elects not to use the proceeds to repair the damaged or destroyed facilities on the Site, the CHARTER SCHOOL may elect to terminate this Agreement.

B. The District 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 the District's negligence or willful misconduct is the cause of such damage or destruction. CHARTER SCHOOL shall not be entitled to any compensation or damages from the District for loss of use of the whole or any part of the Site, or CHARTER SCHOOL's personal property used or located at the Site or Proposed Site Development Area, 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 negligence or willful misconduct of the District or limit the provisions of Section 19 below.

C. 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 improvements made in the Proposed Site Development Area ("the Proceeds") shall be applied to the payment of the cost of repairing, restoring, and replacing the improvements so damaged or destroyed (the "Reconstruction"). All Proceeds shall be deposited with a depository selected by CHARTER SCHOOL and reasonably acceptable to the District and under the exclusive control of CHARTER SCHOOL ("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 may deposit with the Depository funds in the amount of such deficiency ("CHARTER SCHOOL's Funds"), or re-scope the repairs so that they can be covered by Proceeds. 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 the District shall mutually agree upon.

D. If there are funds remaining after the completion of the Reconstruction work in accordance with the terms of this Agreement, then such funds (after first deducting from such funds the fees and expenses of the Depository) shall be delivered to CHARTER SCHOOL.



If the District voluntarily obtains any of the property insurance on behalf of CHARTER SCHOOL for facilities within the Proposed Site Development Area, or CHARTER SCHOOL is paying or has paid the District for said property insurance policy(ies), all insurance proceeds recovered on account of damage or destruction to the improvements from said insurance policies shall be placed into the Depository for application towards the costs and expenses of Reconstruction. 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. The rights hereunder shall be subject to and subordinate to the rights of a Leasehold Mortgagee with regard to rebuilding and insurance proceeds.

E. Waiver of Statutory Provisions. The provisions of this Agreement, including this Section, constitute an express agreement between the District and CHARTER SCHOOL with respect to any and all damage to, or destruction of, all or any part of the 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 Agreement or any damage or destruction to all or any part of the improvements.

#### **14. HAZARDOUS MATERIALS DISCLOSURE**

A. Lead: CHARTER SCHOOL shall assume that all ceramic tile and painted or varnished surfaces in the Site and Proposed Site Development Area contain detectable levels of lead which may trigger compliance with California Code of Regulations, Title 8, Sections 1532.1. In addition, waste products from these materials could contain lead at levels that are subject to the hazardous waste requirements in the California Code of Regulations, Title 22, Sections 66260.1-66263.12 and 66268.1-66268.124 and the Health and Safety Code Section 25163, subdivision (c). Should CHARTER SCHOOL perform work that disturbs these materials, it is CHARTER SCHOOL's responsibility to handle and dispose of these materials in accordance with the regulations. If the CHARTER SCHOOL fails to comply with these regulations in performing work and this results in a Site (including the Proposed Site Development Area) or worker contamination, then CHARTER SCHOOL will be held solely responsible for all costs involved in any required corrective action, and shall indemnify the District against all claims arising therefrom, subject to and in accordance with Section 8 of the Agreement.

B. Asbestos: CHARTER SCHOOL shall be responsible to review the site Asbestos Report. The District shall provide a copy of the site Asbestos Report to the CHARTER SCHOOL at the time of execution of this Agreement. CHARTER SCHOOL is responsible for complying with all applicable laws pertaining to the safe handling of asbestos-containing material (ACM) if the CHARTER SCHOOL is performing any modifications to the Site or Proposed Site Development Area. Should CHARTER SCHOOL perform work that disturbs these materials, it is CHARTER SCHOOL's responsibility to handle and dispose of these materials in accordance with the regulations. If failure to comply with these regulations results in a Site (including Proposed Site Development Area) or worker contamination, then CHARTER SCHOOL will be held solely responsible for all costs involved in any required corrective action, and shall indemnify the District against all claims arising therefrom-, subject to and in accordance with Section 8 of the Agreement.

C. CHARTER SCHOOL, at its expense, shall comply with all applicable laws, regulations, rules and orders with respect to its use and occupancy of the Site and Proposed Site Development Area, including, without limitation, those relating to health, safety, noise, environmental protection, waste disposal, and water and air quality. The CHARTER SCHOOL shall be responsible for any and all environmental conditions proximately caused by the CHARTER SCHOOL's occupancy of the Site and Proposed Site Development Area.

Should any discharge, leakage, spillage, emission, or pollution of any type occur upon or from the Site or Proposed Site Development Area due to the CHARTER SCHOOL's use and occupancy thereof, CHARTER SCHOOL, at its expense, shall be obligated to clean all the property affected, to the satisfaction of District and any governmental agencies having jurisdiction over the Site or Proposed Site Development Area.

D. CHARTER SCHOOL shall not, nor shall CHARTER SCHOOL allow any party to, transport, use, store, maintain, generate, manufacture, handle, dispose, release or discharge any hazardous substance upon or about the Site or Proposed Site Development Area in violation of environmental laws, nor permit any subtenant, employee, agent, invitees or contractor to engage in such activities in violation of environmental laws upon or about the Site or Proposed Site Development Area, during the Term of the Agreement. CHARTER SCHOOL will promptly notify District in writing if CHARTER SCHOOL has or acquires notice or knowledge that any hazardous substance has been or is threatened to be, released, discharged, disposed of, transported, or stored on, in, or under or from the Site or Proposed Site Development Area in violation of Environmental Laws. CHARTER SCHOOL shall promptly provide copies to District of all written assessments, complaints, claims, citations, demands, fines, inquiries, reports, violations or notices relating to the conditions of the Site or Proposed Site Development Area or compliance with Environmental Laws. CHARTER SCHOOL shall promptly supply District with copies of all notices, reports, correspondence, and submissions made by CHARTER SCHOOL to the United States Environmental Protection Agency, the United States Occupational Safety and Health Administration, and any other local, state, or federal authority that requires submission of any information concerning environmental matters or Hazardous Substances pursuant to Environmental Laws. CHARTER SCHOOL shall promptly notify District of any liens threatened or attached against the Site or Proposed Site Development Area pursuant to any Environmental Laws.

## 15. **SURRENDER**

A. Surrender of Site. No act or thing done by the District or any agent or employee of District during the Agreement Term shall be deemed to constitute an acceptance by District of a surrender of the Site or Proposed Site Development Area.

B. Removal of Personal Property by CHARTER SCHOOL. Upon the expiration of the Term, or upon any earlier termination of this Agreement, CHARTER SCHOOL shall, subject to the provisions of this Article, quit and surrender possession of the Site and Proposed Site Development Area to the District in as good order and condition as when CHARTER SCHOOL completed its initial construction, rehabilitation or modernization, reasonable wear and tear excepted. Upon such expiration or termination, CHARTER SCHOOL shall, without expense to

the District, remove or cause to be removed from the Site and Proposed Site Development Area 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 Site or Proposed Site Development Area but can easily be removed and the area of attachment repaired) owned by CHARTER SCHOOL.

C. If CHARTER SCHOOL holds over after the expiration of the Term or earlier termination thereof, without the express or implied consent of the District, such holding over shall not constitute a renewal hereof or an extension for any further term, and in such case the CHARTER SCHOOL shall pay during such hold over period 150% of the then current rent for the Site or Proposed Site Development Area (the "Hold Over Rent") as liquidated damages, as the District's damages under such an occurrence would be difficult to ascertain. Nothing contained in this Section shall be construed as consent by the District to any holding over by CHARTER SCHOOL, and the District expressly reserves the right to require CHARTER SCHOOL to surrender possession as provided in this Agreement upon the expiration or other termination of this Agreement. If CHARTER SCHOOL fails to surrender the Site or Proposed Site Development Area upon the expiration or earlier termination of this Agreement, in addition to any other liabilities to the District accruing therefrom, CHARTER SCHOOL shall protect, defend, indemnify and hold the District 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 losses to the District resulting therefrom subject to and in accordance with Section 8 of this Agreement.

## **16. DISPUTE RESOLUTION**

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

## **17. FINGERPRINTING**

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

## **18. SECURITY**

CHARTER SCHOOL shall be responsible for securing the Site and Proposed Site Development Area, including all of the equipment and furnishings contained therein, in manner

that reasonably prevents or deters the theft or destruction of District property. Such reasonable measures may include but are not limited to locking doors, locking windows, setting alarms, keeping valuable materials out of public view or restricting access to the Site and Proposed Site Development Area. The responsibility to maintain the security of the Site and Proposed Site Development Area under this subparagraph shall not be interpreted as the District's authorization of the alteration of the Site or Proposed Site Development Area.

19. **WAIVER**

**CHARTER SCHOOL agrees to waive its right to seek and/or obtain facilities from the District under Proposition 39 for Achieve Academy, or any other provision of law, beginning at such time as the CHARTER SCHOOL's students occupy the Eligible Improvements, unless the CHARTER SCHOOL is not able to construct the Eligible Improvements, in which case the CHARTER SCHOOL shall still be entitled to request facilities from the District pursuant to Proposition 39. If (i) the CHARTER SCHOOL can no longer utilize some or all of the Site and/or Proposed Site Development Area for school instruction as intended by the Agreement due to damage, destruction or condemnation, or (ii) this Agreement is terminated for any reason other than a default by CHARTER SCHOOL, CHARTER SCHOOL may exercise all rights under Proposition 39, and the District shall use best efforts to provide facilities under the terms of Proposition 39. In the case where the CHARTER SCHOOL seeks Prop. 39 facilities pursuant to (i), any rights exercised under Prop. 39 are limited to the number of in-District students displaced by said damage, destruction or condemnation. Moreover, if the CHARTER SCHOOL can no longer utilize some or all of the Site and Proposed Site Development Area for school instruction as intended by the Agreement due to damage, destruction or condemnation, District shall make best efforts to provide temporary space for the operation of CHARTER SCHOOL for those students displaced. Except as otherwise stated herein, CHARTER SCHOOL agrees to waive any and all claims, causes of action, and other legal actions against the District arising out of CHARTER SCHOOL's occupation of the Site and Proposed Site Development Area based on Proposition 39. Nothing in this provision shall bar the application of Section 8 ("Indemnification") of this Agreement. Waiver and Release. With regard to the waiver of CHARTER SCHOOL's right to seek and/or obtain facilities from the District for Achieve Academy under Proposition 39 for the Term except under certain circumstances as set forth in this Section 19, CHARTER SCHOOL, its affiliated entities and supporting organizations, and its respective present and former officers, directors, employees, agents, representatives, successors and assigns, and each of them does hereby fully and settle, release, relieve, acquit and forever discharge the District and the directors, employees, administrators, assigns, agents, representatives, attorneys, and insurers, from any and all claims, claims for indemnification or contribution, complaints, causes of action, demands, liabilities, losses, or damages, including attorneys' fees and costs, experts' and consultants' fees and costs, known or unknown, which CHARTER SCHOOL may now or hereafter have against the District and the directors, employees, administrators, assigns, agents, representatives, trustees, attorneys, insurers, experts and consultants, arising out of the District's obligations to provide CHARTER SCHOOL with reasonably equivalent facilities except as set forth herein. CHARTER SCHOOL acknowledges that they are familiar with Section 1542 of the**

**California Civil Code which provides as follows: A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her, must have materially affected his or her settlement with the debtor. Except as provided for specifically in this Agreement, CHARTER SCHOOL waives and relinquishes any and all rights and benefits which they may have under, or which may be conferred upon them by the provisions of Section 1542 of the California Civil Code, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the subject matter of this Agreement. In connection with such waiver and relinquishment, CHARTER SCHOOL hereby acknowledges that it is aware that it or its attorneys may hereafter discover claims or facts in addition to or different from those which they now know or believe to exist with respect to the subject matter of this Agreement, but that it is the intention of the Parties to this Agreement to hereby fully, finally and forever waive said claims, whether known or unknown, suspected or unsuspected, which concern or arise out of the District's obligations, to provide Proposition 39 facilities to CHARTER SCHOOL except as set forth herein.**

## 20. MISCELLANEOUS

A. Transfer of District's Interest. If District sells or conveys its interest in the Site or Proposed Site Development Area (other than a transfer for security purposes only), then District shall be relieved from and after the date specified in any such notice of transfer of all obligations and liabilities accruing thereafter on the part of District, provided that any funds in the hands of District at the time of transfer in which CHARTER SCHOOL has an interest, shall be delivered to the successor of District. This Agreement shall not be affected by any such sale, transfer or conveyance, excepting that within 10 days of the effective date of sale, CHARTER SCHOOL shall have the right to terminate the Agreement upon 30 days written notice. CHARTER SCHOOL agrees to attorn to the purchaser or assignee provided all District's obligations hereunder are assumed in writing by the transferee.

### B. Captions; Attachments; Defined Terms, Amendments.

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

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

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

C. Entire Agreement. This instrument, along with any exhibits and attachments hereto, constitutes the entire agreement between District and CHARTER SCHOOL relative to the Site and Proposed Site Development Area. District and CHARTER SCHOOL agree hereby that all prior or contemporaneous oral or written facilities agreements between and among themselves and



their agents or representatives relative to the leasing of the Site and Proposed Site Development Area are merged in, revoked by, and superseded by this Agreement.

D. Severability. If any term or provision of this Agreement shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, then the remainder of this Agreement shall not be affected thereby, and each term and provision of this Agreement shall be valued and be enforceable to the fullest extent permitted by law.

E. Binding Effect; Choice of Law. The parties hereto agree that all provisions hereof are to be construed as both covenants and conditions as though the words importing such covenants and conditions were used in each separate paragraph hereof. Subject to any provisions hereof restricting assignment or subletting by CHARTER SCHOOL, all of the provisions hereof shall bind and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns. The laws of the State of California shall govern this Agreement. In the event of any suit or proceeding arising out of or related to this Agreement, Alameda County Superior Court of California will have exclusive jurisdiction and the parties will submit to the jurisdiction of that court.

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

No provision of this 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 Agreement by the District shall not be deemed to be a waiver of any preceding breach by CHARTER SCHOOL of any term, covenant or condition of this Agreement. No receipt of monies by the District from CHARTER SCHOOL after the termination of this 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 Site, the District may receive and collect any fees or other amounts due and owing under this Agreement, and the payment of said amount(s) shall not waive or affect said notice, suit or judgment.

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

H. Notices. All Notices or demands of any kind required or desired to be given by District or CHARTER SCHOOL hereunder shall be in writing and shall be deemed delivered three (3) business days after depositing the notice or demand in the United States mail, certified or registered, postage prepaid, addressed to the District or CHARTER SCHOOL respectively at the following addresses:

Superintendent  
Oakland Unified School District  
1000 Broadway, Suite 680  
Oakland, CA 94607

Superintendent of Schools  
Education for Change  
333 Hegenberger Rd Suite 600  
Oakland, CA 94621

I. Corporate Authority. Each individual executing this Agreement on behalf of the CHARTER SCHOOL represents and warrants that he is duly authorized to execute and deliver this Agreement on behalf of the CHARTER SCHOOL in accordance with a duly adopted resolution of the Board of Directors of said corporation or in accordance with the Bylaws of said corporation, and that this Agreement is binding upon said corporation in accordance with its terms. CHARTER SCHOOL shall, within thirty (30) days after execution of this Agreement, deliver to District a copy of a resolution of the Board of Directors of the CHARTER SCHOOL authorizing or ratifying the execution of this Agreement.

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

IN WITNESS WHEREOF, District and CHARTER SCHOOL execute this Agreement effective the date and year first above written.

OAKLAND UNIFIED SCHOOL DISTRICT



Jody London, President 12/10/2020  
Board of Education  
Oakland Unified School District



Kyla Johnson Trammell, Secretary 12/10/2020  
Board of Education  
Oakland Unified School District

Legislative File No.: 20-2407  
Introduction Date: 12/2/2020  
Enactment No.: 20-1843  
Enactment Date: 12/9/2020 er

EDUCATION FOR CHANGE

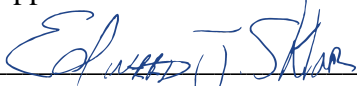
{SR518561} Achieve Academy Facilities Agreement



Title Superintendent Education for Change  
Achieve Academy

Date: November 25, 2020

Approved As to Form:



Edward J. Sklar  
OUSD Legal Counsel

Date: November 25, 2020



Exhibit “A”

The Site and Proposed Site Development Area

## Exhibit “B”

### Project Description

Achieve Academy’s Prop 51 rehabilitation proposal located on the Hawthorne Campus at 1700 28th Avenue, Oakland, 94601 consists of rehabilitating all 11 classrooms in Building A totaling 26,925 regular square feet and 1,115 square feet of bathroom space.

Also, Achieve Academy plans to rehabilitate all 13 classrooms in Modular Z consisting of 11,767 normal square feet and 542 square feet of toilet space. Additionally, we are proposing to rehabilitate portables P4, P5, P6, P7 and P8 (each 782 square feet totaling 3,910 regular square feet).

Also portable P9 is proposed for rehabilitation consisting of 300 square feet of toilet space.

Finally Portables Q (781 square feet), R (864 square feet), S (864 Square feet) and T (713 square feet) are also proposed for rehabilitation.

In total, this will represent 45,824 normal square feet and 1,957 toilet square feet.

We estimate the scope of the project to be approximately eleven million dollars (\$11,000,000.00). We are proposing to rehabilitate all locations in the existing space to cut down on site work cost requirements.

The current location of Portables P1, P2 and P3 interferes with the CHARTER SCHOOL’s ability to implement its programming needs to be achieved through the Project. CHARTER SCHOOL will also be moving current portables P1, P2 and P3 to the northern boundary of the Site where portables P6, P7 and P8 currently sit , where they will be available for exclusive use by Urban Promise Academy (“UPA Portables”), with the cost for the move to be paid solely by the CHARTER SCHOOL using Prop. 51 funds. Should Prop. 51 funds not be available, the cost to move Portables P1, P2, and P3 will be split equally between the District and CHARTER SCHOOL. CHARTER SCHOOL shall utilize best efforts and professional standards in moving the UPA Portables and shall be responsible for damages sustained to the Portables during the moving process. The District will be responsible for all costs and expenses to operationalize the UPA Portables, including but not limited to trenching and laying conduit for utilities, alarm and fire infrastructure, etc. Notwithstanding anything to the contrary in this Agreement, once Achieve Academy has moved the UPA Portables, Achieve Academy shall have no further responsibility of any kind for the UPA Portables save for responsibility for any damage sustained to the UPA Portables as a result of CHARTER SCHOOL’s moving efforts, and the District shall take full responsibility for the cost to operationalize the UPA Portables, and the use, maintenance and operations, repairs, utility costs, legal compliance, and liability associated with the UPA Portables. It is intended by both parties

that CHARTER SCHOOL shall have no obligations, costs, or liability whatsoever related to the UPA Portables except as set forth herein, and the District will indemnify, defend by counsel approved by the CHARTER SCHOOL in writing (such approval not being unreasonably withheld or delayed), and hold harmless the CHARTER SCHOOL, its employees, officers, governing board and members thereof, agents, and representatives, from and against any claims, liabilities, losses, costs, or damages arising out of or resulting from any claim or contention arising out of the District's use or occupancy or operation of its business in or about the UPA Portables, except for claims that are solely caused by the CHARTER SCHOOL's gross negligence or willful misconduct.