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# Board Cover Memorandum

**To** Board of Education

**From** Kyle Johnson-Trammell, Superintendent  
Joshua R. Daniels, Chief Governance Officer  
Kelly Krag-Arnold, Kelly Krag-Arnold, Director, Office of Charter Schools

**Meeting Date** August 9, 2023

**Subject** Facilities Use Agreement for the Marshall Campus with EBIA

**Ask of the Board** Approval by the Board of Education of the Facilities Use Agreement Between Oakland Unified School District and East Bay Innovation Academy for the latter to use the Marshall Campus for 2024-25 and 2025-26

**Background** East Bay Innovation Academy (EBIA) is a non-profit public benefit corporation that is operating a charter properly approved pursuant to California law. There is an existing Facilities Use Agreement for the Marshall Campus between OUSD and EBIA for the use of classroom space for educational purposes for grades 6-8 for the 2021-22, 2022-23, and 2023-24 school years.

OUSD and EBIA properly entered into the Compromise and Release Agreement (“Settlement”), effective June 28, 2023, which resolved all claims, issues, disputes, and appeals related to the District’s obligation to provide reasonably equivalent facilities to EBIA for grades 9-12 for the 2023-24 school year pursuant to Proposition 39. Under the Settlement, the Board agreed to consider and approve a Facilities Use Agreement with EBIA that grants EBIA use of the Marshall campus for the 2024-25 and 2025-26 school years.

**Discussion** Under the proposed Facilities Use Agreement (FUA), OUSD would continue to permit EBIA to use the Marshall Campus during the 2024-25 and 2025-26 school years. As part of the FUA, EBIA would acknowledge that it is not necessarily receiving the exact number of rooms and/or square footage (e.g., number of teaching stations, specialized classroom space) for which it is eligible under Proposition 39 for grades 6-8 and EBIA would waive its right under Proposition 39 to be provided with such rooms and/or square footage for the 2024-2025 and 2025-26 school years.

**Fiscal Impact** Under the FUA, EBIA’s annual rate for 2024-25 would be the 2024-25 Prop. 39 rate and for 2025-26 would be the 2025-26 Prop. 39 rate multiplied by 1.05. Neither of these Prop.

39 rates are currently known. (For comparison purposes, the 2023-24 Prop. 39 rate is \$4.77, which, multiplied by the 27,428 square feet at the Marshall Campus, equates to \$130,831.56.)

**Attachment**

- Facilities Use Agreement Between Oakland Unified School District and East Bay Innovation Academy for the latter to use the Marshall Campus for 2024-25 and 2025-26



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

This Facilities Use Agreement (“Agreement”) is by and between the Oakland Unified School District (“OUSD” or “District”), a California public school district and East Bay Innovation Academy (“EBIA”), a California non-profit public benefit corporation, for use of classroom space for educational purposes. District and EBIA may be referred to herein individually as a “Party” or collectively as the “Parties.”

**RECITALS**

**WHEREAS**, EBIA is a non-profit public benefit corporation that is operating a charter properly approved pursuant to California law;

**WHEREAS**, there is an existing Facilities Use Agreement between OUSD and EBIA for the use of classroom space for educational purposes for grades 6-8 for the 2021-22, 2022-23, and 2023-24 school years;

**WHEREAS**, OUSD and EBIA properly entered into the Compromise and Release Agreement (“Settlement”), effective June 28, 2023, which resolved all claims, issues, disputes, and appeals related to the District’s obligation to provide reasonably equivalent facilities to EBIA for grades 9-12 for the 2023-24 school year pursuant to Proposition 39;

**WHEREAS**, under the Settlement, the Board agreed to consider and approve a Facilities Use Agreement with EBIA that grants EBIA use of the Marshall campus for the 2024-25 and 2025-26 school years;

**WHEREAS**, District and EBIA enter into this Agreement wherein District and EBIA mutually agree that, during the 2024-25 and 2025-26 school years, EBIA will occupy classrooms and use facilities (“Premises”), as particularly described in Exhibit A, located at: 3400 Malcolm Avenue, Oakland, CA 94605;

**WHEREAS**, under this Agreement, EBIA acknowledges that it is not necessarily receiving the exact number of rooms and/or square footage (e.g., number of teaching stations, specialized classroom space) for which it is eligible under Proposition 39 for grades 6-8 and, via this Agreement, EBIA is waiving its right under Proposition 39 to be provided with such rooms and/or square footage for the 2024-2025 and 2025-26 school years; and

**WHEREAS**, the effect of this Agreement is to, among other things, satisfy any and all District obligations to provide facilities for EBIA for grades 6-8, including (but not limited to) those under Proposition 39 for the 2024-2025 and 2025-26 school years.

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

1. **Use of Premises.** District agrees to allow use of the Premises by EBIA for the sole purpose of operating EBIA’s educational program, and all associated uses therewith, for grades 6-8 in accordance with its approved Charter Petition and this Agreement as well as all applicable federal, state, and local laws and regulations as well as District policies, regulations, and directives. EBIA shall not use the Premises for any use other than that specified in this Agreement and its Charter Petition without the prior written consent of District.
  - 1.1. EBIA shall not commit, or suffer to be committed, any waste on or about the Premises, or allow any sale by auction upon the Premises, or allow the Premises to be used for any unlawful purpose, or place any loads upon the floor, walls, or ceiling which endanger the structure, or place any harmful liquids in the plumbing, sewer, or storm water drainage system of the Premises. No waste materials or refuse shall be dumped upon or permitted to remain on or about Premises except in trash containers designated for that purpose.
  - 1.2. Any uses which involve the serving and/or sale of alcoholic beverages and the conducting of games of chance are prohibited on the Premises. At all times, EBIA shall prohibit the use of tobacco products on the Premises and comply with all related federal, state, local, and District laws, regulations, and policies.
  - 1.3. EBIA shall not use or permit the use of the Premises or any part thereof for any purpose not consistent with a public educational facility.
  - 1.4. EBIA shall require all invitees and guests to use the Premises only in conformance with the permitted use and with applicable governmental laws, regulations, rules, and ordinances. EBIA shall comply with District policies and District administrative regulations—as updated from time to time—regarding the operations and maintenance of the school facility and furnishings and equipment, except to the extent variation is approved in writing in advance by District. However, EBIA need not comply with policies in cases where actual District practice substantially differs from official policies, in which case EBIA shall comply with actual District practice. Where the Premises are damaged by EBIA’s invitees and/or guests and EBIA’s negligence in supervising its invitees and guests was a contributing factor, EBIA’s insurance shall be primary for such damage.
  - 1.5. EBIA shall be liable for actual damages to District if EBIA does or permits anything to be done on or about the Premises or brings or keeps anything therein which in any way increases District’s existing insurance rate or affects any fire or other insurance upon the Premises, or causes a cancellation of any insurance policy covering the Premises or any part thereof or any of the contents of the Premises,

or if EBIA sells or permits to be kept, used, or sold on or about the Premises anything which may be prohibited by a standard form policy of fire insurance.

- 1.6. EBIA agrees to comply with the provisions of the Civic Center Act (Education Code § 38131 *et seq.*) to make the Premises accessible to members of the community. The Parties understand that the Premises are to be used primarily for educational programs and activities and, as such, any use of the Premises by members of the community shall not interfere with EBIA's educational program or activities. Any request received by EBIA for use of the Premises pursuant to the Civic Center Act shall be promptly forwarded to District. District shall be responsible for coordinating access to the Premises under the Civic Center Act, and any fee paid for use of the Premises under the Civic Center Act shall be paid to District, unless EBIA under this Agreement bears the responsibility of paying for day-to-day or routine maintenance and custodial services, in which case the fee shall be paid to EBIA.
  - 1.7. EBIA shall respond in a timely manner to concerns or complaint raised by members of the community directed at EBIA or related to EBIA activities and shall work to resolve such concerns or complaints, including but not limited to trash removal, traffic, parking, littering, and noise.
  - 1.8. In the event of an emergency, all District facilities, including the Premises, shall be available for use by the American Red Cross or public agencies as emergency locations, which may disrupt or prevent EBIA from conducting its educational programs. Whether the Premises are selected or used as emergency locations shall be at the sole discretion of District.
2. **Term.** The term of this Agreement shall be for two (2) years ("Term"). The commencement date shall be July 1, 2024, ("Commencement Date"), and, unless sooner terminated under any provision herein, this Agreement shall end on June 30, 2026 ("End Date").
3. **Use Fee and Utilities.**
- 3.1. For and in consideration of the use of the Premises for the Term of this Agreement, EBIA agrees to pay District the following annual rate(s) ("Use Fee") for the 27,428 square feet of the Premises:
    - 3.1.1. For the 2024-25 fiscal year: 2024-25 Proposition 39 per square foot rate (excluding utilizes and custodial).
    - 3.1.2. For the 2025-26 fiscal year: 2024-25 Proposition 39 per square foot rate (excluding utilizes and custodial) times 1.05.

- 3.2. The Use Fee shall be paid quarterly during the school year, according to the following schedule: 25% by October 1; 25% by December 1; 25% by March 1; 25% by June 30.
  - 3.3. The Use Fee shall not include the utility charges for the Premises. EBIA shall be responsible—at its sole cost, expense, and responsibility—for the cost of all services and utilities to the Premises, including, but not limited to, heating, ventilation and air-conditioning, gas, electricity, water, telephone, pest management, trash collection, sewage disposal, security and fire alarm monitoring, janitorial, fire abatement, gardening/landscaping, and interior and exterior Premises security services. EBIA shall pay the cost of all utilities and other services directly to the applicable utility or service provider. District shall remain responsible, as set forth in Section 14 (Maintenance), for all major maintenance necessary to bring utilities to the Premises.
  - 3.4. EBIA acknowledges that late payment by EBIA to District of the Use Fee and other sums due to District under this Agreement will cause District to incur costs not contemplated by this Agreement, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, if District does not receive any installment of the Use Fee or any other sum due from EBIA by 4:00 p.m. within ten (10) days after such amount is due, EBIA shall pay to District, in addition to the Use Fee, a late charge (“Late Charge”) equal to five percent (5%) of such overdue amount or the maximum amount allowed by law, whichever is less. The Parties hereby agree that each Late Charge represents a fair and reasonable estimate of the costs District will incur by reason of each late payment by EBIA. Acceptance of any Late Charge by District shall in no event constitute a waiver of EBIA’s default with respect to the overdue amount, nor prevent District from exercising any of its other rights and remedies granted hereunder.
4. **Internet.** Notwithstanding Section 3 (Use Fee and Utilities), EBIA shall obtain its own internet service and telephone provider and shall assume sole responsibility for obtaining all hardware at its own expense as well as upkeep and maintenance of all telephone systems, data lines, and related equipment, software, and hardware. EBIA may use any pre-existing T-1 Line located in the Premises, if any. In the event EBIA uses a pre-existing T-1 Line, EBIA shall transfer billing of the line to EBIA upon approval from District’s Technology Services Department. EBIA shall be responsible for any and all improvements to the facilities made in order to allow upgrades to utilities, and shall obtain District’s prior written consent and approval for any such improvements pursuant to Section 15 (Title to and Removal of EBIA’s Improvements/Premises; Equipment Requirements) of this Agreement.
  5. **Furnishings and Equipment.** The furnishings and equipment to be provided by District for EBIA are those furnishings and equipment that exist at the Premises as of the effective

date. Said furnishings and equipment fulfill any and all District legal obligations to under Proposition 39. EBIA is responsible for any furnishings and equipment over and above those provided by District as of the effective date. EBIA shall return all District-owned furniture, fixtures, and equipment to District in like condition at the end of the Term or upon termination under this Agreement, excepting ordinary wear and tear. EBIA shall be fully and solely responsible for costs to repair or replace any damaged furniture, fixtures, and equipment to like condition, excepting ordinary wear and tear.

6. **Additional Services.** EBIA and District may negotiate additional services or equipment as requested by EBIA. District shall assess EBIA separately for the cost to provide the additional services or equipment, if any.
7. **Parking.** EBIA shall abide by District policies, regulations, and directives concerning the use of parking such as those related to the drop-off and pick-up of students. EBIA shall instruct its visitors, invitees, and guests to park on available street parking consistent with applicable laws and ordinances. EBIA shall not abandon any inoperative vehicles or equipment on any portion of District property. District shall not be liable for any personal injury suffered by EBIA or EBIA's visitors, invitees, and guests arising out of the use of parking at or near the School Site. District shall not be responsible for any damage to or destruction or loss of any of EBIA or EBIA's visitors, invitees, or guests' personal property located or stored in street parking, or on District property except where caused by District's negligence or misconduct. EBIA accepts any portion of the Premises available for parking "as is" and EBIA acknowledges that District has not made and is not making any warranties whatsoever with respect to such parking.
8. **Full Satisfaction of Proposition 39/Release of Claims.** Parties agree that this is a negotiated agreement and that, upon execution of this Agreement, all obligations of District to EBIA under Proposition 39 have been satisfied with respect to requests for and offers of facilities for the 2024-25 and 2025-26 school years for grades 6-8 and EBIA agrees to waive its right to bring a legal action based on any claims arising out of or relating to alleged compliance or noncompliance with Proposition 39 for the 2024-25 and 2025-26 school years for grades 6-8. This waiver does not extend to the rights and obligations of the Parties set forth in this Agreement.
9. **Condition of Premises.**
  - 9.1. District shall not be required to make or construct any alterations—including but not limited to structural changes, additions, or improvements—to the Premises except as set forth herein. District shall remain responsible for ensuring the Premises is in compliance with the requirements of the Americans with Disabilities Act, California Fair Employment and Housing Act, and other applicable building code standards except that EBIA, and not District, shall be responsible for compliance with the Americans with Disabilities Act, California Fair Employment and Housing Act, and other applicable building code standards in connection with

any modification of the Premises by EBIA after EBIA takes possession of the Premises at the start of the Term. EBIA shall obtain District's prior written consent and approval for any such modification pursuant to Section 15 (Title to and Removal of EBIA's Improvements/Premises; Equipment Requirements) of this Agreement. By entry and taking possession of the Premises pursuant to this Agreement, EBIA accepts the Premises.

- 9.2. EBIA acknowledges that neither District nor District's agents have made any representation or warranty as to the suitability of the Premises for EBIA's Program except as set forth herein. District warrants that the Premises may be used to operate the EBIA's educational program. Any agreements, warranties, or representations not expressly contained in this Agreement shall in no way bind District or EBIA, and District and EBIA expressly waive all claims for damages by reason of any statement, representation, warranty, promise, or agreement, if any, not contained in this Agreement.
  - 9.3. If structural damage occurs to the Premises, making the structure damaged to a lesser condition than existed on the effective date, then District will, at its sole discretion, either provide reasonably equivalent alternative facilities to EBIA to accommodate its projected in-District ADA for the remaining term of this Agreement, or repair the damage in order to bring it back to a condition which is similar to the condition which existed on the effective date. District shall provide temporary facilities to accommodate any in-District students displaced during any repair. District shall, in good faith, pro-rate the Use Fee during the "repair" period, if the resulting structural damage prohibits EBIA from carrying out its normal daily activities and the temporary facilities cannot serve as an adequate replacement.
  - 9.4. EBIA shall not change the locks on the building without written approval by OUSD's Buildings and Grounds Department. If EBIA chooses to change the locks on the building after such written approval, EBIA is responsible for the cost of District rekeying the building prior to vacating the site.
10. **Title to Premises.** The Parties acknowledge that title to the Premises and all associated real property is held by District.
  11. **District's Entry and Access to Premises.** District and its authorized representatives shall have the right, with two school-days' prior written notice to EBIA, to enter the Premises during normal business hours for the purpose of inspection ("Inspection"). However, District may provide less than two school-days' prior written notice with good cause and that no prior notice shall be required in an emergency situation. In an emergency, District shall make its best efforts to give notice to EBIA immediately upon District's receipt of notification of any emergency. If EBIA is not present to open and permit an entry into the Premises in an emergency situation as reasonably determined by District, District may enter by means of a master key without liability.



- 11.1. If EBIA is violating the any of the use restrictions of this Agreement or is not in material compliance with any applicable law related to its use of the Premises, then all reasonable costs and expenses reasonably and actually incurred by District in connection with any Inspection shall become due and payable by EBIA due District (beyond any Use Fees or other payments due District), within ten (10) days of written demand.
- 11.2. If EBIA fails to perform any covenant or condition required to be performed by EBIA pursuant to this Agreement, District and its authorized representative shall have the right, after reasonable prior written notice to EBIA, to enter the Premises during normal business hours for the purpose of performing the covenant or condition at District's option after thirty (30) days' written notice to and failure to perform by EBIA. However, no such prior written notice is required in the case of emergencies. EBIA shall reimburse District for all costs incurred by District within ten (10) days of written demand, together with interest at the Interest Rate computed from the date incurred by District until paid. Any performance by District of EBIA's obligations shall not waive or cure the default. All reasonable out-of-pocket costs and expenses actually incurred by District, including reasonable attorneys' fees (whether or not legal proceedings are instituted), in collecting the fees herein or enforcing the obligations of EBIA under this Agreement shall be paid by EBIA to District within ten (10) days of written demand. District may, during the progress of any work authorized by this Subsection (11.2), keep and store on the Premises all necessary materials, tools, supplies and equipment, but shall do so in a manner designed to limit the inconvenience, annoyance, disturbance, loss of business, or other damage to EBIA. District shall not be liable for inconvenience, annoyance, disturbance, loss of business, or other damage to EBIA by reason of making the repairs or the performance of any work.
- 11.3. Notwithstanding the foregoing and without further notice, District shall have the right to enter the Premises to conduct its own operations, to perform any routine or deferred maintenance, or conduct inspections of the Premises, or any other legally permissible purposes. District will use reasonable efforts during the course of any access of the Premises to not disrupt EBIA's classroom and instructional activities consistent with District's practices at its schools. Where practicable, District shall provide relevant scheduling information to EBIA.
- 11.4. EBIA expressly waives any claim for damages for any inconvenience to or interference with EBIA's educational program and for any loss or use of quiet enjoyment of the Premises related to District's entry into the Premises for the purposes identified in this Section (11).

## 12. Surrender of Premises.

- 12.1. On the last day of the Term, or upon any termination under this Agreement, EBIA shall surrender in good order, condition, and repair the Premises to District and any existing improvements made by EBIA that were approved by District, and any structural improvements made by District subsequent to the Commencement Date, excepting normal ordinary wear and tear, and free and clear of all liens, claims, and encumbrances, though nothing in this provision shall be construed to authorize EBIA to allow or cause to be placed any liens, claims, and/or encumbrances of any kind, unless expressly permitted in this Agreement. This Agreement shall operate as a conveyance and assignment to District of any improvements identified by District to remain on the Premises.
  - 12.2. EBIA shall remove from the Premises all of EBIA's personal property, trade fixtures, and any improvements made by EBIA which EBIA and District agreed would be removed by EBIA. Removal of EBIA's property shall be subject to all applicable laws, including any local permits and/or approval by the California Department of General Services, Division of the State Architect ("DSA").
  - 12.3. All property that is not removed on or before the end of the Term shall be deemed abandoned by EBIA and associated costs to store, remove, or dispose of such abandoned property shall be the responsibility of EBIA.
  - 12.4. If EBIA remains in possession of the Premises or any part thereof after the end of the Term or upon termination under this Agreement without the express written consent of District, EBIA shall indemnify District against loss or liability resulting from delay by EBIA in surrendering the Premises including, without limitation, any claims made by any succeeding EBIA or loss to District due to lost opportunities to timely obtain succeeding tenants.
  - 12.5. If EBIA remains in possession of the Premises or any part thereof after the end of the Term or upon termination under this Agreement without the express written consent of District, EBIA's occupancy shall be a tenancy on a month-to-month basis for a pro rata share equal to one hundred fifty percent (150%) of all monthly sums charged and owing the previous thirty (30) calendar day period, subject to the limitations set forth in this Section (12). No payment of money by EBIA after (i) the end of the Term, (ii) earlier termination of this Agreement, or (iii) the giving of notice of early termination by either Party shall reinstate, continue, or extend the Term.
13. **Taxes and Assessments.** EBIA shall pay any assessment on the Premises, such as any fee or tax on any improvements EBIA constructs or causes to be constructed on the Premises, whether real estate, general, special, ordinary or extraordinary, any rental levy or tax, improvement bond, and/or fee imposed upon or levied against the Premises or EBIA's legal or equitable interest created by this Agreement, and any taxes assessed against and levied upon EBIA's alterations and utility installations that may be imposed by any authority

having the direct or indirect power to tax and where the funds are generated with reference to the Premises' address and where the proceeds so generated are applied by the city, county, or other local taxing authority having jurisdiction. The provisions of this Section (13) shall survive the expiration or termination under this Agreement. Nothing in this Section (13) shall be construed to override the requirement in Section 15 (Title to and Removal of EBIA's Improvements/Premises; Equipment Requirements) that EBIA obtain the express written consent of District to perform any improvements on the site, unless expressly permitted by this Agreement.

#### **14. Maintenance.**

- 14.1. EBIA agrees to provide, at its own cost and expense, any and all day to day upkeep and operations for the Premises, including (without limitation) routine repair, cleaning, and general maintenance. Maintenance to be provided by EBIA shall be consistent with the standards set forth by this Agreement and shall insure safe and healthful use.
- 14.2. District shall have no day to day maintenance or repair obligations with respect to the Premises. EBIA hereby expressly waives the provisions of subsection 1 of section 1932 and sections 1941 and 1942 of the Civil Code of California and all rights to make day to day repairs at the expense of District as provided in section 1942 of the Civil Code.
- 14.3. District shall be responsible for the major maintenance of the Premises. For purposes of this Agreement, "major maintenance" includes (but is not limited to) all non-routine maintenance, replacement and repair services, including the major repair or replacement of the roof, flooring, mechanical systems (plumbing, heating, ventilation, air conditioning, electrical), exterior and interior painting, and any other items considered deferred maintenance under Education Code section 17582. Pursuant to Section 5 (Furniture and Equipment), EBIA shall be responsible for replacement and repair of furnishings and equipment.

#### **15. Title to and Removal of EBIA's Improvements/Premises; Equipment Requirements.**

- 15.1. EBIA shall not construct or cause to be constructed on the Premises any improvements ("EBIA's Improvements") without express prior written consent from District. At the time District considers EBIA's request to construct improvements on the Premises, District will inform EBIA, in writing, whether it will require EBIA to remove EBIA Improvements at the expiration or earlier termination of the Term.
- 15.2. EBIA shall, at its expense, obtain all necessary environmental and governmental approvals and permits, including, without limitation, the California Environmental Quality Act (Government Code section 21000 *et seq.*) ("CEQA"), the Field Act

(Education Code section 17280 *et seq.*), any other applicable Building Code requirements, the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101), and applicable State law governing access to facilities, as well as any necessary approvals from any local authority including any grading, zoning, design review and other required permits or approvals, if applicable, prior to commencing construction, and shall provide District with evidence of approval by all applicable governmental agencies. To the extent that District assumes lead agency status for any “project” under CEQA related to the provision of facilities under this Agreement, EBIA agrees to reimburse District for any and all reasonable costs and expenses related to achieving compliance with CEQA.

- 15.3. Any modifications to the Premises, including (without limitation) construction, creation of gardens, painting, and addition of play structures or shade structures, must be approved in writing in advance by District’s Buildings and Grounds Department, and such approval shall not be unreasonably withheld, conditioned, or delayed. EBIA’s contractor must be approved in writing in advance by District, and such approval shall not be unreasonably withheld. All contractors and subcontractors of EBIA, if any, shall be: duly licensed in the State of California; bonded as required by law; maintain levels of casualty, liability, and workers’ compensation insurance; and performance and payment bonds consistent with District construction requirements. EBIA must follow all applicable procurement laws with respect to EBIA’s Improvements including (without limitation): issuing requests for proposals to obtain competitive pricing as required by law; adhering to prevailing wage laws; making 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 adhering to all applicable minimum wage requirements. EBIA 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.
- 15.4. Under all circumstances, EBIA must seek and receive approval from DSA for any of EBIA’s Improvements if required by DSA.
- 15.5. Notwithstanding any other provision herein, EBIA shall not install any ovens, stoves, hot plates, toasters, or similar items (not including microwave ovens) without the prior written consent of District.
- 15.6. EBIA shall, at all times, indemnify and hold District harmless from all claims for labor or materials in connection with construction, repair, alteration, or installation of structures or improvements by, at the direction of, for the benefit of, or on behalf of EBIA within the Premises, and from the cost of defending against such claims, including (without limitation) attorney’s fees. EBIA shall provide District with at

least ten (10) days written notice prior to commencement of any work which could give rise to a mechanics' lien or stop payment notice. District has the right to enter upon the Premises for the purpose of posting Notices of Non-responsibility. In the event a lien is imposed upon the Premises as a result of such construction, repair, alteration, or installation, EBIA shall:

15.6.1. Record a valid Release of Lien; or

15.6.2. Deposit sufficient cash with District to cover the amount of the claim on the lien in question and authorize payment to the extent of the deposit to any subsequent judgment holder that may arise as a matter of public record from litigation with regard to the lien-holder claim; or

15.6.3. Procure and record necessary bonds that frees the Premises and all associated real property from the claim of the lien from any action brought to foreclose the lien.

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

15.7. If required by District at the time it approves EBIA's Improvements, on or before the expiration of this Agreement, or within thirty (30) days after any termination under this Agreement, EBIA shall remove EBIA's Improvements, at its sole expense. EBIA shall repair any damage to the Premises or other District property caused by removal of EBIA's Improvements and restore the Premises and all other District property damaged by the removal to good condition, less ordinary wear and tear. In the event that EBIA fails to timely remove EBIA's Improvements, District, upon fifteen (15) days written notice, may either (i) accept ownership of EBIA's Improvements with no cost to District, or (ii) remove EBIA's Improvements at EBIA's sole expense. If District chooses to accept ownership of EBIA's Improvements, EBIA shall execute any necessary documents to effectuate the change in ownership of EBIA's Improvements. If District removes EBIA's Improvements, EBIA shall pay all invoices for the removal of EBIA's Improvements within thirty (30) days of written demand.

**16. Safety of Premises.** Consistent with the requirement of Section 1 (Use of Premises), EBIA is responsible for safety and security on the Premises. EBIA specifically acknowledges, understands, and agrees that District is neither responsible for, nor has the obligation to supply, provide, establish, maintain, or operate security and safety measures for either EBIA or the Premises.

**17. Incident/Accident/Mandated Reporting.**

- 17.1. EBIA shall notify OUSD, via email pursuant to Section 23 (Notices), within twelve (12) hours of learning of any significant accident or incident. Examples of a significant accident or incident include (without limitation) an accident or incident that involves serious injury or death or referral to law enforcement or possible or alleged criminal activity.
- 17.2. EBIA agrees to comply with all applicable federal, state, local, and District laws, statutes, ordinances, regulations, orders, and directives, regardless of form, with respect to COVID-19 health and safety requirements, guidance, and protocols, including but not limiting to proper face coverings, vaccination status, social distancing, hygiene practices, and maintenance of required cohorts, if applicable.
- 17.2.1. If District uses the property on which Premises is located (regardless of whether EBIA and District share indoor space), EBIA agrees to immediately adhere to and follow any OUSD directives regards health and safety protocols including, but not limited to, providing OUSD with information regarding possible exposure of OUSD employees and students to any employee, contractor, subcontractor, agent, representative, or student of EBIA and information necessary to perform contact tracing.
- 17.3. To the extent that an employee, subcontractor, agent, or representative of EBIA is included on the list of mandated reporters found in Penal Code section 11165.7, EBIA agrees to inform the individual, in writing, that they are a mandated reporter, and describing the associated obligations to report suspected cases of abuse and neglect pursuant to Penal Code section 11166.5.
- 17.4. EBIA shall bear all costs of compliance with this Section (17).

**18. Fingerprinting and Criminal Background Verification.** EBIA shall be responsible for ensuring compliance with all applicable fingerprinting and criminal background investigation requirements described in California Education Code sections 44237, 44830.1, and 45125.1 and other applicable statutes or regulations.

**19. Default and Termination.**

- 19.1. EBIA's Default. The occurrence of any one of the following events shall be considered a default of this Agreement by EBIA:
- 19.1.1. The failure of EBIA to promptly pay the Use Fee, Late Charge, or other fees, payments, or indebtedness identified or required by this Agreement when such failure continues fifteen (15) days after written notice, provided that such a notice shall not be exclusive to, and shall be cumulative to, the procedure set forth under Code of Civil Procedure Section 1161.

- 19.1.2. The expiration of EBIA's charter without renewal.
- 19.1.3. The revocation of EBIA's charter by their authorizer. EBIA shall not be deemed in default while any administrative, non-judicial appeals are pending under Education Code section 47605 *et seq.* as amended from time to time.
- 19.1.4. The failure of EBIA to observe or perform any of its other covenants or obligations hereunder, which failure continues for thirty (30) days after written notice thereof by District to EBIA (unless the nature of the default is such that more than thirty (30) days are required for its cure and EBIA shall have commenced a cure within the thirty (30) day period and thereafter diligently prosecute the same to completion; provided, however, in no event shall the default continue for more than ninety (90) days after written notice thereof by District to EBIA); provided, however, that any notice shall be in lieu of, and not in addition to, any notice required under Code of Civil Procedure section 1161, and the thirty (30) day cure period shall run concurrently with any cure period required under California law, including Code of Civil Procedure section 1161.
- 19.1.5. EBIA's abandonment of the Premises for a period of fifteen (15) consecutive days (with or without the payment of fees), it being agreed that the fact that any of EBIA's property remains in the Premises shall not be evidence that EBIA has not vacated or abandoned the Premises; provided, however, any normal holidays or vacation days shall not constitute abandonment of the Premises. A move by EBIA to provide only virtual instruction as a result of EBIA students' or employees' quarantine due to exposure to, or infection with, COVID-19 or pursuant to local or state public health guidance or order shall not be deemed abandonment for purposes of this Subsection (19.1.5).
- 19.1.6. The making by EBIA of any general assignment or general arrangement for the benefit of creditors; the filing by or against EBIA or any guarantor of this Agreement of a petition to have EBIA or any guarantor of this Agreement adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against EBIA or any guarantor of this Agreement, the same is dismissed within sixty (60) days); the appointment of a trustee or receiver to take possession of substantially all of EBIA's assets located at the Premises, or of EBIA's interest in this Agreement, where possession is not restored to EBIA within thirty (30) days; or the attachment, execution, or other judicial seizure of substantially all of EBIA's assets located at the Premises or of EBIA's interest in this Agreement, where such seizure is not discharged within thirty (30) days.

19.1.7. The making or furnishing by EBIA of any warranty, representation, or statement to District in connection with this Agreement, which is false or misleading in any material respect when made or furnished.

19.1.8. The assignment, subletting, or other transfer, or any attempted assignment, subletting, or other transfer, of this Agreement.

In the event of one or more of such defaults by EBIA, District shall have the right, in addition to all other rights available to District under this Agreement or now or later permitted by law or equity, to terminate this Agreement by providing EBIA with a notice of termination. Upon termination of this Agreement, District may recover from EBIA the worth at the time of award any unpaid Use Fees, Late Charges, or other fees or payments owed to District by EBIA. In addition, upon termination, EBIA shall immediately vacate the Premises.

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

19.2. Early Termination by EBIA. EBIA shall have the option to terminate this Agreement effective June 30, 2024 by giving written notice to OUSD by no later than February 1, 2024, and on June 30, 2025 by giving written notice to OUSD by no later than February 1, 2025. EBIA shall, in good faith, notify the District in writing by no later than January 2, 2024 (for a June 30, 2024 termination date) and January 2, 2025 (for a June 30, 2025 termination date) if there is a possibility that EBIA will terminate the Marshall FUA by February 1 of that year. However, if the OUSD Board of Education does not approve any material revision submitted by EBIA for the sole purpose of moving all or a portion of its program off the Premises to a new site, any termination by EBIA under this Section (19) shall be deemed void and EBIA may remain in occupancy of the Premises for the remaining term of this Agreement (through June 30, 2026).

19.3. District's Default. District shall not be in default of any of its obligations under this Agreement unless District fails to perform such obligations within a reasonable time, but in no event less than thirty (30) days, after written notice by EBIA to District specifying that District has failed to perform its obligations; provided, however, that if the nature of District's default requires more than thirty (30) days to cure, District shall not be in default if District commences a cure within thirty (30) days and thereafter diligently prosecutes the same to completion. If District defaults hereunder, then EBIA may have by reason of such default all remedies available at law or equity, which includes the remedy of self-help and deduction of reasonable self-repair costs from the pro rata share payments owed, provided that nothing in this provision shall be construed so as to nullify, supersede, or render



inapplicable to any such self-help remedies the requirement that any EBIA's Improvements require express prior written consent from District.

EBIA shall have no rights as a result of any default by District until EBIA gives thirty (30) days' notice to District specifying the nature of the default. If District defaults hereunder after receipt of EBIA's written notice, then EBIA may have by reason of such default remedies including the remedy of self-help and deduction of reasonable self-repair costs from the pro rata share payments owed, provided that nothing in this provision shall be construed so as to nullify, supersede, or render inapplicable to any such self-help remedies the requirement that any EBIA's Improvements require express prior written consent from District.

Upon termination of this Agreement, District may recover from EBIA the worth at the time of award any unpaid Use Fees, Late Charges, or other fees or payments owed to District by EBIA. In addition, upon termination, EBIA shall immediately vacate the Premises.

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

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

- (a) Any default by EBIA in the observance or performance of any of the terms, covenants, or conditions of this Agreement on EBIA's part to be observed or performed;
- (b) The use or occupancy of the Premises by EBIA of any person claiming by, through or under EBIA or EBIA's employees, agents, contractors, licensees, directors, officers, partners, trustees, visitors or invites, or any such person in, on or about the Premises either prior to, during, or after the expiration of the Term of this Agreement (singularly, "Liability"; collectively, "Liabilities"); or

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

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

- (d) Any default by District in the observance or performance of any of the terms, covenants or conditions of this Agreement on District's part to be observed or performed;
- (e) The use or occupancy of the Premises by District or any person claiming by, through or under District or District's employees, agents, contractors, licensees, directors, officers, partners, trustees, visitors or invitees, or any such person in, on or about the Premises either prior to, during, or after the expiration of the Term of this Agreement (singularly, "Liability"; collectively, "Liabilities"); and
- (f) Any claim by a third party that EBIA is responsible for any actions by District in connection with any use or occupancy of the Premises or in any way related to this Agreement.

The provisions of this Section (20) shall survive the expiration or sooner termination of this Use Agreement. The applicable Party shall, upon receiving a proper request by a District or Charter Indemnified Party, undertake the defense of any Liabilities threatened or asserted against such Indemnified Party on all of the following terms and conditions:

- (g) Notice of the assumption of such defense ("Notice") shall be delivered to such Indemnified Party within fifteen (15) days after transmittal.
- (h) Such defense shall be conducted by reputable attorneys retained by District or Charter Indemnifying Party and approved by the other Party if choice of counsel is included in the relevant insurance policy, and with the prior written approval of all District and Charter Indemnified Parties against whom such Liability has been asserted or threatened, which approval shall not be unreasonably withheld, delayed or

conditioned, all at District or Charter Indemnifying Party's sole cost and expense. In the event the interests of District or Charter Indemnifying Party and any such District or Charter Indemnified Parties in the action conflict in such manner and to such an extent as to require, consistent with applicable standards of professional responsibility or the retention of separate counsel for each of District or Charter Indemnified Parties involved in the action, District or Charter Indemnifying Party shall pay all fees and costs charged or incurred by separate counsel.

- (i) District or Charter Indemnifying Party agrees to promptly notify the other Party of the commencement of any litigation or proceedings pending, threatened, or commenced (whether or not served) against Indemnifying Party, or any of the board members, directors, officers, agents, or employees of Indemnifying Party, in connection with the matters set forth in this Agreement. The provisions of this Section (20) shall survive the expiration or sooner termination of this Use Agreement.

## **21. Insurance.**

- 21.1. As specified in this Section (21), EBIA is to purchase and maintain insurance with insurers with a current A.M. Best Insurance rating of no less than A-minus: VII and subject to the approval of District, except that insurance through a Joint Powers Authority shall be deemed sufficient under this Agreement. EBIA shall furnish District with the original certificates and amendatory endorsements effecting coverage required.
- 21.2. EBIA acknowledges that any insurance maintained by District will not insure any of EBIA's property or improvements made by EBIA.
- 21.3. EBIA shall, at EBIA's expense, obtain and keep in force, during the term of this Agreement, and any extensions thereto, a policy of commercial general liability insurance and a comprehensive auto liability policy insuring District and EBIA against claims and liabilities arising out of the operation, condition, use, or occupancy of the Premises and all areas appurtenant thereto, including parking areas. EBIA's comprehensive auto liability policy shall insure all vehicle(s), whether hired, owned or non-owned. EBIA's commercial general insurance shall be at least as broad as the Insurance Service Office (ISO) CG 00-01 form and in an amount of not less than Two Million dollars (\$2,000,000) for bodily injury or death and property damage as a result of any one occurrence and Five Million dollars (\$5,000,000) general aggregate policy limit. In addition, EBIA shall obtain a products/completed operations aggregate policy in the amount of Two Million dollars (\$2,000,000). The insurance carrier, deductibles, and/or self-insured retentions shall be approved by District, which approval shall not be unreasonably withheld. Prior to the Commencement Date, EBIA shall deliver to District a certificate of insurance evidencing the existence of the policies required hereunder and copies of endorsements stating that such policies shall:

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

21.3.2. Contain a cross liability endorsement; and

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

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

- 21.4. During the Term of this Agreement, and any extensions thereto, District shall maintain at its cost a policy of standard fire and casualty insurance limited to the value of all buildings and improvements located on the site of the Premises (including those not part of the Premises) as of the Commencement Date. District's insurance policy shall be primary in the case of any damage or destruction to the Premises (but not to EBIA's personal property or alterations or improvements constructed by EBIA).

EBIA shall make no use of or permit any use to be made of the Premises and EBIA shall take no action or permit any action to be taken that will increase the existing rate of insurance upon the building or buildings of the Premises or cause the cancellation of any insurance policy, covering same, or any part thereof, nor shall EBIA sell, or permit to be kept, used, or sold in or about the Premises any article that may be prohibited by the standard form of fire insurance policies. EBIA shall, at its sole cost and expense, comply with any and all requirements pertaining to the Premises of any insurance organization or company necessary for the maintenance of reasonable fire and casualty insurance covering the Premises' buildings or appurtenances. Fire and casualty insurance premium increases to District due to equipment and/or activities of EBIA (other than based only on EBIA's occupancy of the Premises) shall be charged to EBIA.

- 21.5. During the Term of this Agreement, and any extensions thereto, EBIA shall comply with all provisions of law applicable to EBIA with respect to obtaining and maintaining workers' compensation insurance. Prior to the commencement and any renewal of this Agreement and EBIA's occupancy of the Premises, EBIA shall provide District, as evidence of this required coverage, a certificate in a form satisfactory to District on or before the commencement or renewal date, providing that insurance coverage shall not be canceled or reduced without thirty (30) days prior written notice to District. If the insurer does not provide such notice, EBIA shall provide District with notice of cancellation of coverage as soon as it becomes aware of such cancellation.

22. **Signs.** EBIA may, at EBIA's sole cost, have the right and entitlement to place onsite signs on the Premises to advertise EBIA's educational program, provided EBIA obtains the prior written approval from District. District's approval shall not be unreasonably withheld. Any signs shall be at EBIA's cost and in compliance with all applicable state, local, and District legal requirements pertaining thereto. In connection with the placement of any of EBIA's signs, District agrees to cooperate with EBIA in obtaining any governmental permits which may be necessary. Throughout the Term of this Agreement, and any extensions thereto, EBIA shall, at its sole cost and expense, maintain any of its signage and all appurtenances in good condition and repair. At the termination of this Agreement, EBIA shall remove any signs which it has placed on the Premises and District property, and shall repair any damage caused by the installation or removal of EBIA's signs.

23. **Notice.** Any notice required or permitted to be given under this Agreement must be sent via email to the below address and may also be given or served in person or sent via the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, addressed as follows:

**DISTRICT:**

Oakland Unified School District  
Attn: Legal Department  
1011 Union St., Site 946  
Oakland, CA 94607  
ousdlegal@ousd.org

**CHARTER SCHOOL:**

East Bay Innovation Academy  
3400 Malcolm Avenue  
Oakland, CA 94605  
info@eastbayia.org

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

24. **Subcontract, Assignment and Sublease.** EBIA shall not have the right, voluntarily or involuntarily, to assign, license, transfer, or encumber this Agreement or sublet all or part of the Premises. Any purported transfer shall be void and shall, at District's election, constitute a default. No consent to transfer shall constitute a waiver of the provisions of this Section (24).

25. **Joint and Several Liability.** If EBIA is more than one person or entity, each person or entity shall be jointly and severally liable for the obligations of EBIA hereunder.

26. **Independent Contractor Status.** This Agreement is by and between two independent entities and is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, or association.
27. **Entire Agreement of Parties.** This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties. Nothing in this provision shall be construed so as to limit, nullify, abridge or modify EBIA's obligations under its Charter, or the its authorizer's oversight authority.
28. **California Law.** This Agreement shall be governed by, and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with, the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in Alameda County.
29. **Compliance with All Laws.**
- 29.1. EBIA shall at EBIA's expense comply with all requirements of all governmental authorities, in force either now or in the future, affecting EBIA's use of the Premises, and shall faithfully observe in EBIA's use of the Premises all laws, regulations and ordinances of these authorities, in force either now or in the future including, without limitation, all applicable federal, state and local laws, regulations, and ordinances pertaining to air and water quality, hazardous material, waste disposal, air emission and other environmental matters (including but not limited to CEQA and its implementing regulations in EBIA's use of the Premises), and all District policies, rules and regulations ("Environmental Laws").
- 29.2. The judgment of a court of competent jurisdiction, or EBIA's admission in an action or a proceeding against EBIA, whether District be a party to it or not, that EBIA has violated any law or regulation or ordinance in EBIA's use of the Premises shall be considered conclusive evidence of that fact as between District and EBIA. If EBIA fails to comply with any law, regulation or ordinance, District reserves the right to take necessary remedial measures at EBIA's expense, for which EBIA agrees to reimburse District on demand.
- 29.3. EBIA shall not cause or permit any Hazardous Material to be generated, brought onto, used, stored, or disposed of in or about the Premises or in connection with any improvements by EBIA or its agents, employees, contractors, subtenants, or invitees, except for limited quantities of standard office, classroom and janitorial supplies (which shall be used and stored in strict compliance with Environmental Laws). EBIA shall comply with all Environmental Laws. As used herein, the term "Hazardous Materials" means any hazardous or toxic substance, material or waste

which is or becomes regulated by any local governmental authority, the State of California or the United States Government. The term "Hazardous Materials" includes, without limitation, petroleum products, asbestos, PCB's, and any material or substance which is (i) defined as hazardous or extremely hazardous pursuant to Title 22 of the California Code of Regulations, Division 4.5, Chapter 11, Article 4, section 66261.30 *et seq.* (ii) defined as a "hazardous waste" pursuant to section 14 of the federal Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.* (42 U.S.C. 6903), or (iii) defined as a "hazardous substance" pursuant to section 10 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq.* (42 U.S.C. 9601). As used herein, the term "Hazardous Materials Law" shall mean any statute, law, ordinance, or regulation of any governmental body or agency (including the U.S. Environmental Protection Agency, the California Regional Water Quality Control Board and the California Department of Health Services) which regulates the use, storage, release or disposal of any Hazardous Material.

- 29.4. Notice of Hazardous Substance. EBIA will promptly notify District in writing if EBIA has or acquires notice or knowledge that any Hazardous Substance has been or is threatened to be, released, discharged, disposed of, transported, or stored on, in, or under or from the Premises in violation of Environmental Laws. EBIA shall promptly provide copies to District of all written assessments, complaints, claims, citations, demands, fines, inquiries, reports, violations or notices relating to the conditions of the Premises or compliance with Environmental Laws. EBIA shall promptly supply District with copies of all notices, reports, correspondence, and submissions made by EBIA 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. EBIA shall promptly notify District of any liens threatened or attached against the Premises pursuant to any Environmental Laws.
- 29.5. Inspection. District and District's agents, servants, and employees including, without limitation, legal counsel and environmental consultants and engineers retained by District, may (but without the obligation or duty to do so), at any time and from time to time, on not less than two (2) business days' notice to EBIA (except in the event of an emergency, in which case, no notice will be required), inspect the Premises to determine whether EBIA is complying with EBIA's obligations set forth in this Section (29), and to perform environmental inspections and samplings, during regular business hours (except in the event of an emergency) or during such other hours as District and EBIA may agree.
- 29.6. Indemnification. EBIA's indemnification and defense obligations in this Agreement shall include any and all Claims arising from any breach of EBIA's covenants under this Section (29).

30. **Attorneys' Fees.** If either Party files any action or brings any proceedings against the other arising out of this Agreement, the prevailing party shall not be entitled to recover reasonable attorneys' fees.
31. **Waiver.** The waiver by either Party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.
32. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors, and assigns.
33. **Severability.** Should any provision of this Agreement be determined to be invalid, illegal or unenforceable in any respect, such provision shall be severed and the remaining provisions shall continue as valid, legal and enforceable.
34. **Incorporation of Recitals and Exhibits.** The Recitals and each Exhibit attached hereto are hereby incorporated herein by reference.
35. **Approval of Governing Board.** This Agreement shall be subject to approval by the governing boards of each Party.
36. **Counterparts and Electronic Signature.** This Agreement, and all amendments, addenda, and supplements to this Agreement, may be executed in one or more counterparts, all of which shall constitute one and the same amendment. Any counterpart may be executed and delivered by facsimile or other electronic signature (including portable document format) by either Party and, notwithstanding any statute or regulations to the contrary (including, but not limited to, Government Code section 16.5 and the regulations promulgated therefrom), the counterpart shall legally bind the signing Party and the receiving Party may rely on the receipt of such document so executed and delivered electronically or by facsimile as if the original had been received. Through its execution of this Agreement, each Party waives the requirements and constraints on electronic signatures found in statute and regulations including, but not limited to, Government Code section 16.5 and the regulations promulgated therefrom.
37. **Authorization to Sign Agreement.** Each individual executing this Agreement on behalf of a Party represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of the Party that the individual is executing this Agreement and that this Agreement is binding upon that Party in accordance with its terms.

REST OF PAGE IS INTENTIONALLY LEFT BLANK



IN WITNESS WHEREOF, the PARTIES hereto agree and execute this AGREEMENT and to be bound by its terms and conditions:

**EBIA**

Name: Rochelle Benning Signature: Rochelle Benning

Position: \_\_\_\_\_ Date: Aug 4, 2023

**OUSD**

Name: \_\_\_\_\_ Signature: \_\_\_\_\_

Position: \_\_\_\_\_ Date: \_\_\_\_\_

- Board President (for approvals)
- Chief/Deputy Chief/Executive Director (for ratifications)

Name: Kyla Johnson-Trammell Signature: \_\_\_\_\_

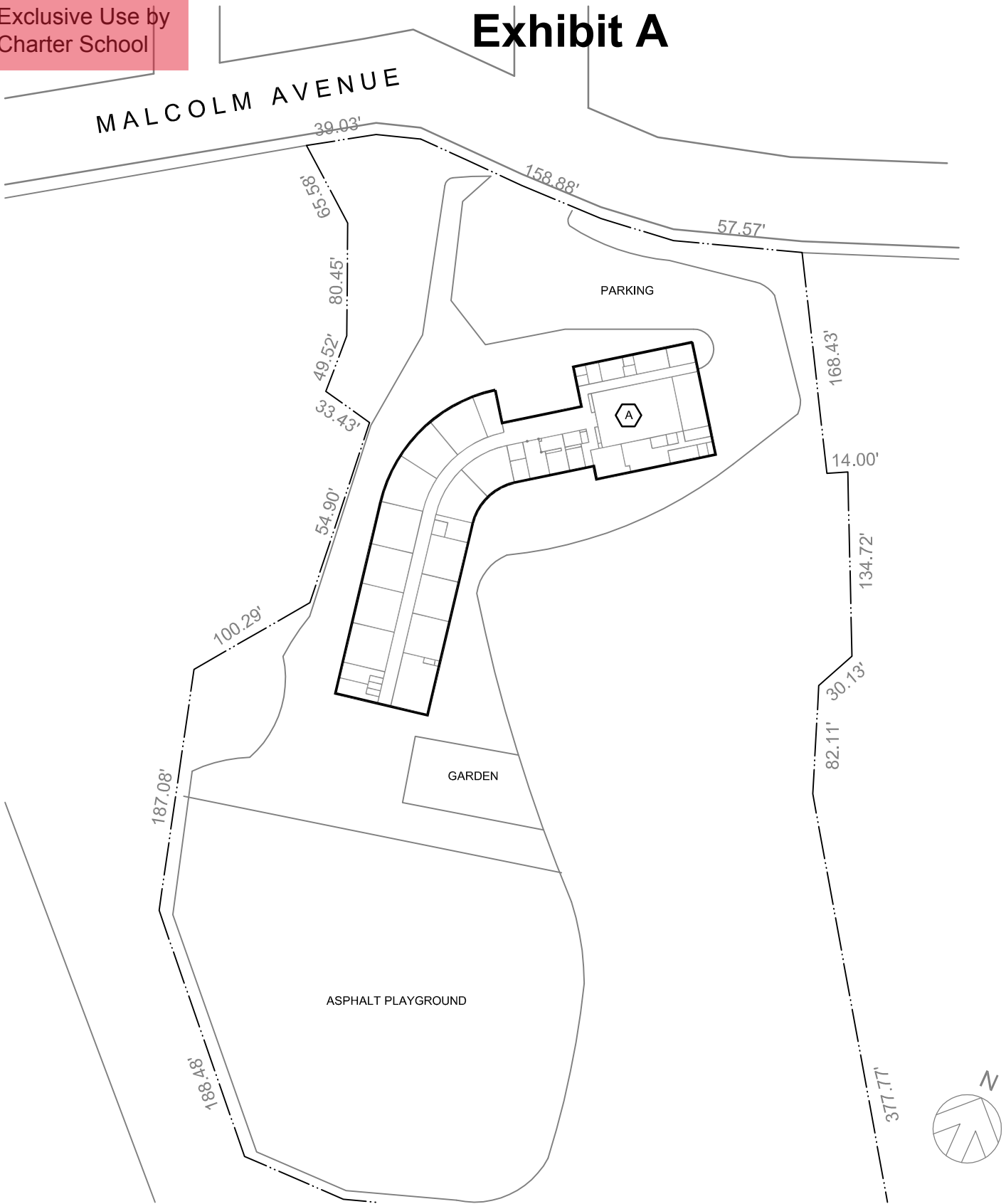
Position: Superintendent Date: \_\_\_\_\_

Approved as to form by OUSD Legal Counsel: *Josh Daniels* Date: 8/2/2023

**Exhibit "A"**  
**DESCRIPTION OF PREMISES**

The Premises that are being allocated to EBIA shall consist of space located in the room(s) and area(s) as depicted on the attached maps.

# Exhibit A



## SITE PLAN



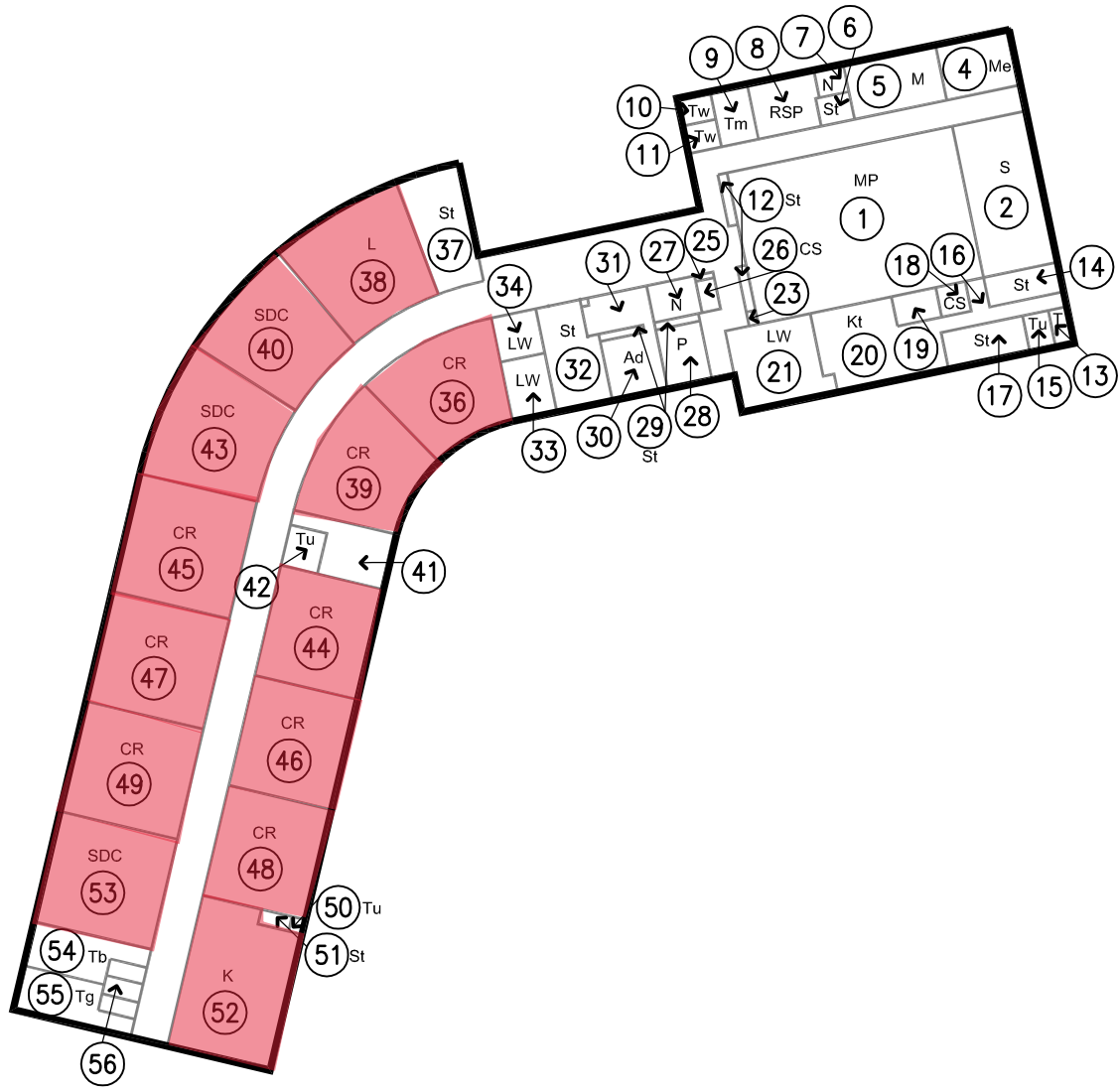
174 - THURGOOD MARSHALL ELEMENTARY SCHOOL  
3400 MALCOLM AVENUE, OAKLAND, CA 94605-5353



Date: 1/18/2013

Scale: 1"=100'-0"

Signature:   
Rochelle Gentryng (Aug 4, 2023 1:35 PDT)  
Email: shelley@eastbayia.org



BLDG A - 1ST FLOOR PLAN



BLDG A - 1ST FLOOR PLAN



174 - THURGOOD MARSHALL ELEMENTARY SCHOOL  
3400 MALCOLM AVENUE, OAKLAND, CA 94605-5353



Date: 1/18/2013

Scale: 1"=50'-0"







# 23-1716C Marshall (EBIA) FUA\_8.9.23

Final Audit Report

2023-08-04

Created:	2023-08-04
By:	Sarah Kollman (skollman@mycharterlaw.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAA3-SNABn903p_0QU582mB7AEtwlhleZjH

## "23-1716C Marshall (EBIA) FUA\_8.9.23" History

-  Document created by Sarah Kollman (skollman@mycharterlaw.com)  
2023-08-04 - 11:32:47 PM GMT
-  Document emailed to shelley@eastbayia.org for signature  
2023-08-04 - 11:34:05 PM GMT
-  Email viewed by shelley@eastbayia.org  
2023-08-04 - 11:34:26 PM GMT
-  Signer shelley@eastbayia.org entered name at signing as Rochelle Benning  
2023-08-04 - 11:35:49 PM GMT
-  Document e-signed by Rochelle Benning (shelley@eastbayia.org)  
Signature Date: 2023-08-04 - 11:35:51 PM GMT - Time Source: server
-  Agreement completed.  
2023-08-04 - 11:35:51 PM GMT