

# Memo

**To**

**From**

**Board Meeting**

**Date**

**Subject**

**Action Requested**

**Background and Discussion**

**Recommendation**

**Fiscal Impact**

**Attachments**

**SCHOOL DISTRICT**

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Board of Education

Silke Bradford, Director - Quality Diverse Providers

David Montes de Oca - Deputy Chief

Marion McWilliams - General Counsel

April 12, 2017

**Amendment to Facilities Use Agreement with District and Community School for Creative Education ("CSCE") Charter School for use of the property located at 2111 International Boulevard, Oakland**

Approval by the Board of Education of the Amendment to the Facilities Use Agreement between District and CSCE for use of the District property located at 2111 International Boulevard, Oakland, CA 94606 for the term beginning July 1, 2017 through June 30, 2022.

CSCE is a charter school operating within the jurisdictional boundaries of the District. On June 24, 2015, the Board of Education approved a Facilities Use Agreement between the District and CSCE for the term of July 1, 2015 to June 30, 2017, with an option to extend the Facilities Use Agreement for one five (5) year term. The District is amending the existing Facilities Use Agreement for the use of the property located at 2111 International Boulevard for a five (5) year term at a rate that will be adjusted annually to conform the current Proposition 39 rate.

Approval by the Board of Education of the Amendment to Facilities Use Agreement between District and CSCE for use of 2111 International Boulevard, Oakland, CA.

Approximately \$83,304.76 per school year.

- Amendment
- Facilities Use Agreement between District and CSCE.

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OAKLAND UNIFIED  
SCHOOL DISTRICT

## CONTRACT JUSTIFICATION FORM

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

Legislative File ID No. \_1\_?-\_os\_1\_0 \_\_\_\_\_ \_

Department: Office of the General Counsel

Vendor Name: Community School for Creative Education (CSE)

Contract Term: Start Date : \_J\_u1\_y\_1,\_2\_01\_7 \_\_\_\_\_ \_ End Date: \_J\_un\_e\_3\_o\_, 2\_0\_22 \_ \_ \_\_\_\_\_ \_ Annual Cost: \$ Revenue \$83,304.76

Approved by: \_G\_e\_n\_e\_r\_a\_l\_c\_o\_u\_n\_s\_e1 \_\_\_\_\_ \_ Is Vendor a local Oakland business? Yes **IV** No **D**

### Why was this Vendor selected?

We are extending the Facility Use Agreement with Community School for Creative Education (CSCE) that is in place for five more years.

### Summarize the services this Vendor will be providing.

Charter school will use the property located at 2111 International Boulevard for a five year term at a rate that will be adjusted annually to conform to the current Proposition 39 rate.

Was this contract competitively bid? Yes **D** No **[ZJ]**

If No, answer the following :

1) How did you determine the price is competitive?

Legal 1/12/16 1

2) Please check the competitive bid exception relied upon:

- Educational Materials**
- Special Services** contracts for financial, economic, accounting, legal or administrative services
- CUPCCAA exception** (Uniform Public Construction Cost Accounting Act)  **Professional Service Agreements** of less than \$87,800 (increases a small amount on January 1 of each year)
- Construction related Professional Services** such as Architects, DSA Inspectors, Environmental Consultants and Construction Managers (require a "fair, competitive selection process)
- Energy** conservation and alternative energy supply ( e.g., solar, energy conservation, co-generation and alternate energy supply sources)
- Emergency** contracts [requires Board resolution declaring an emergency]  **Technology** contracts
- electronic data-processing systems, supporting software and/or services (including copiers/printers) over the \$87,800 bid limit, must be

competitively advertised, but any one of the three lowest responsible bidders may be **Direct Award** selected

contracts for computers, software, telecommunications equipment, microwave equipment, and other related electronic equipment and apparatus, including E-Rate solicitations, may be procured through an RFP process instead of a competitive, lowest price bid process

Western States Contracting Alliance Contracts (WSCA)

California Multiple Award Schedule Contracts (CMAS) [contracts are often

**Direct Award**

used for the purchase of information technology and software] **Piggyback" Contracts** with other governmental entities **Perishable Food**

**Sole Source**

**Change Order for Material and Supplies** if the cost agreed upon in writing does not exceed ten percent of the original contract price

**Other, please provide specific exception** Not applicable

**AMENDMENT TO THE FACILITIES USE AGREEMENT BETWEEN OAKLAND UNIFIED SCHOOL DISTRICT AND COMMUNITY SCHOOL FOR CREATIVE EDUCATION CHARTER SCHOOL**

1. By Enactment# 15-1334 on June 24, 2015, the Board of Education approved the Facilities Use Agreement between Oakland Unified School District ("District") and Community School for Creative Education Charter School ("CSCE") for use of the property located at 2111 International Boulevard, Oakland, CA for educational purposes, for the term from July 1, 2015 to June 30, 2017, with an option to extend for one additional five (5) year term.

2. By this Amendment, the Parties hereby agree to exercise the option to extend the term for one additional five (5) year term, with the extension ending effective June 30, 2022. During the extension, the facility use rate will be adjusted annually to conform, to the then Proposition 39 or comparable rate then in effect. For the 2017-18 school year, the Proposition 39 rate is \$4.73 per square foot at 17,612 square feet or a 2017-18 annual rate of \$83,304.76.

3. Except as expressly provided in this Amendment, the original Facility Use Agreement is unchanged.

4. This Amendment, together with prior the Agreement constitute the entire understanding and agreement between the Parties. All understandings, agreements, covenants, representations and warranties, express or implied, oral or written between are contained and merged herein. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made by or between the Parties concerning the subject matter hereof. This is an integrated agreement. It may not be altered, modified or otherwise changed in any respect except in a writing signed by each party.

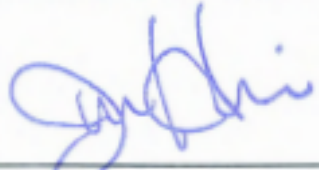
5. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: The District certifies to the best of its knowledge and belief, that it and its officials: Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency according to Federal Acquisition Regulation Subpart 9.4, and by signing this contract, certifies that this vendor does not appear on the Excluded Parties List. <https://www.sam.gov/portal/public/SAM>

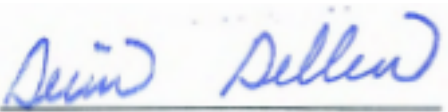
IN WITNESS WHEREOF, the Parties hereto agreed to be bound and have executed this Amendment to the Agreement originally approved by the Oakland Unified School District Board of Education on June 24, 2015.

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**COMMUNITY SCHOOL FOR CREATIVE EDUCATION**

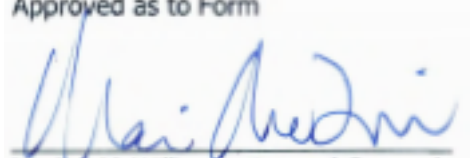
  
**OAKLAND UNIFIED SCHOOL DISTRICT**

**OAKLAND UNIFIED SCHOOL DISTRICT**

  
\_\_\_\_\_  
President, Board of Education

  
Secretary, Board of Education  
Oakland Unified School District

Secretary, Board of Education  
Oakland Unified School District

Approved as to Form  
  
Marion McWilliams, General Counsel

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Board Office Use: Legislative File Info.  
File ID Number 1., ~ Introduction Date  
6/24/2015

Enactment Date

~ OAKLAND UNIFIED •  
SCHOOL DISTRICT

OFFICE OF THE GENERAL COUNSEL *Community Schools, Thriving Students*

# Memo

To

From

Background and Discussion

Board Meeting Date Subject

Action Requested

Proposition 39 Joint Use Agreement with  
Community School for Creative Education

Recommendation

Community School for Creative Education charter school will continue to be located at 2111 International Boulevard, Oakland, California 94606. The term of the Facilities Use Agreement is for the period from July 1, 2015 to June 30, 2017, with an option to renew for one additional five (5) year term, subject to earlier termination if CSCE's program ceases to operate after a revocation, nonrenewal or surrender of the charter to the granting agency, and all appeals have been exhausted. The Facility Use Fee for 2015-16 and 2016-17 is \$66,925 per year, and if the option is exercised the rate in 2017-18 will be based on the Prop 39 rate then in effect.

Fiscal Impact

Attachment

Board of Education

David Montes, Deputy Chief  
Jacqueline P. Minor, General Counsel

Approval by the Board of Education of the In Lieu of  
Proposition 39 Joint Use Agreement with Community  
School for Creative Education

June 24, 2015

Facilities Use Agreement with Community School for  
Creative Education (CSCE)

Annual Revenue of \$66,925 for 15-16 and 16-17 Fiscal  
Years Agreement

Approval by the Board of Education of the In Lieu of

**FACILITIES USE AGREEMENT  
BETWEEN OAKLAND UNIFIED DISTRICT AND  
COMMUNITY SCHOOL FOR CREATIVE EDUCATION CHARTER SCHOOL**

THIS AGREEMENT ("Agreement") is made and entered into this 1<sup>st</sup> day of July, 2015, between OAKLAND UNIFIED SCHOOL DISTRICT, a California public entity, and Community School for Creative Education a California Charter School ("CSCE"). The District and Community School for Creative Education are referred to herein as a "Party" or collectively as the "Parties."

**RECITALS**

WHEREAS, the Parties entered into this Agreement as an "in-lieu" facilities use agreement in fulfillment of the requirements of California Education Code section 47614, which requires CHARTER SCHOOL to collaborate on the terms for use of the Premises, including Proposition 39 and its implementing regulations ("Prop 39"), for a term beyond the one (1) year Prop 39 term;

WHEREAS, certain real property located at 2111 International Boulevard ("Premises"), as further depicted on the attached **Exhibit "A"**; and

WHEREAS, CHARTER SCHOOL requires classrooms and facilities for its in-district students for its educational program in accordance with the Charter School's policies ("Policies") which includes the provision of recreational Activities on the Premises in the District as further defined herein; and

WHEREAS, CHARTER SCHOOL and under this Agreement, CHARTER SCHOOL shall have the right to use the Premises for its own educational purposes;

WHEREAS, under the provisions of Education Code section 17534 (b), the requirement that the term of joint use must not exceed five (5) years, shall not apply when the use is made on school property for park and recreation purposes by public entities or corporations such as CHARTER SCHOOL; and

WHEREAS, CHARTER SCHOOL may in the future elect to construct significant capital outlay on the Premises for recreation purposes, and thereby be entitled, subject to the terms of this Agreement, to exercise options to extend the term of this Agreement beyond the one (1) year term.

WHEREAS, the Parties agree to the ratification of the covenants and agreements hereinafter set forth, and hereby agree as follows:

Witness my hand and seal this 1<sup>st</sup> day of July, 2015.

**FACILITIES USE AGREEMENT  
BETWEEN OAKLAND UNIFIED DISTRICT AND  
COMMUNITY SCHOOL FOR CREATIVE EDUCATION CHARTER SCHOOL**

This FACILITIES USE AGREEMENT ("Agreement") is made and entered into this 1<sup>st</sup> day of July, 2015 ("Effective Date"), by and between OAKLAND UNIFIED SCHOOL DISTRICT, a

California public school district ("District") and Community School for Creative Education a California Charter School ("CHARTER SCHOOL"). The District and Community School for Creative Education SCHOOL may be referred to herein as a "Party" or collectively as the "Parties."

## RECITALS

**WHEREAS**, this Agreement is entered into by the Parties as an "in-lieu" facilities use agreement pursuant to the requirements of California Education Code section 47614, which allows the District and CHARTER SCHOOL to collaborate on the terms for use of the Premises, outside of the provisions of Proposition 39 and its implementing regulations ("Prop 39"), including the duration of the Agreement beyond the one (1) year Prop 39 term;

**WHEREAS**, District is the owner of certain real property located at 2111 International Boulevard, Oakland, CA ("Premises"), as further depicted on the attached **Exhibit "A"**; and

**WHEREAS**, CHARTER SCHOOL requires classrooms and facilities for its in-district students for the purposes of operating its educational program in accordance with the Charter School's charter ("Program" or "Activities") which includes the provision of recreational Activities on the Premises for students residing in the District as further defined herein; and

**WHEREAS**, as part of its Program and under this Agreement, CHARTER SCHOOL shall have exclusive use of the Premises for its own educational purposes;

**WHEREAS**, under the provisions of Education Code section 17534 (b), the requirement that the term of any agreement for joint use must not exceed five (5) years, shall not apply when capital outlay improvements are made on school property for park and recreation purposes by public entities and nonprofit corporations such as CHARTER SCHOOL; and

**WHEREAS**, CHARTER SCHOOL may in the future elect to construct significant capital outlay improvements on the Premises for recreation purposes, and thereby be entitled, subject to Board of Education approval, to exercise options to extend the term of this Agreement beyond the current not to exceed two (2) year term.

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

Community School For Creative Education  
2111 International Blvd.

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## AGREEMENT

**1. Use of Premises.** District hereby leases to CHARTER SCHOOL, and CHARTER SCHOOL hereby leases from District, the Premises for the Term and upon the covenants and conditions set forth in this Lease. District agrees to allow use of the Premises by CHARTER SCHOOL for purposes of operating a public school providing educational instruction to public school students consistent with the terms of CHARTER SCHOOL's Charter Petition, and incidental related uses ("Activities").

1.1. District agrees to allow use of the Premises for the sole purpose of operating CHARTER SCHOOL's educational program in accordance with all applicable federal, state and local regulations relating to the Premises, and to the operation of CHARTER SCHOOL's educational program, including summer



school and programs procured by CHARTER SCHOOL through third party entities, e.g. after school program providers. CHARTER SCHOOL shall not use the Premises for any use other than that specified in this Agreement without the prior written consent of District.

1.2. CHARTER SCHOOL shall provide appropriate site supervision, including, but not limited to, campus supervisors, administrators and police, at a level no less than what the District provides.

1.3. CHARTER SCHOOL shall not commit, or suffer to be committed, any waste upon the Premises, or allow any sale by auction upon the Premises, or allow the Premises to be used for any unlawful purpose, or place any loads upon the floor, walls or ceiling which endanger the structure, or place any harmful liquids in the plumbing, sewer or storm water drainage system of the Premises. No waste materials or refuse shall be dumped upon or permitted to remain upon any part of the Premises except in trash containers designated for that purpose.

1.4. Any uses which involve the serving and/or sale of alcoholic beverages and the conducting of games of chance are prohibited on the Premises. CHARTER SCHOOL shall comply with District-wide policy prohibiting the use of tobacco products on the Premises at all times.

1.5. CHARTER SCHOOL shall not use or permit the use of the Premises or any part thereof for any purpose inconsistent with a public educational facility.

1.6. CHARTER SCHOOL shall require all invitees and guests to use the Premises only in conformance with the permitted use and with applicable governmental laws, regulations, rules and ordinances. During the Term, CHARTER SCHOOL shall comply with the all District policies and procedures regarding the use and occupation of District facilities, including but not limited to Campus Security and Disruptions. The District's most recent policies and procedures can be accessed at <http://www.ousd.k12.ca.us/domain/68>.

1.7. CHARTER SCHOOL shall not do or permit anything to be done in or about the

Community School For Creative Education  
2111 International Blvd.

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Premises nor bring or keep anything therein which will in any way increase the District's existing insurance rate or affect any fire or other insurance upon the Premises, or cause a cancellation of any insurance policy covering the Premises or any part thereof or any of the contents of the Premises, nor shall the CHARTER SCHOOL sell or permit to be kept, used or sold in or about the Premises any articles which may be prohibited by a standard form policy of fire insurance.

1.8. CHARTER SCHOOL agrees to comply with the provisions of the Civic Center Act (Education Code §§ 38130, et seq.) to make the Premises accessible to members of the community. The Parties understand that the Premises is to be used primarily for educational programs and activities and as such, any use of the Premises by the Community shall not interfere with CHARTER SCHOOL'S educational program.

## **2. Condition of Premises.**

2.1. District shall not be required to make or construct any alterations including structural changes, additions or improvements to the Premises, except as provided for in Section 7.2, below.

2.2. CHARTER SCHOOL acknowledges that neither District nor District's agents have made any representation or warranty as to the suitability of the Premises for CHARTER SCHOOL's Activities. Any agreements, warranties or representations not expressly contained herein shall in no way bind either District or CHARTER SCHOOL, and District and CHARTER SCHOOL expressly waive all claims for damages by reason of any statement, representation, warranty, promise or agreement, if any, not contained in this Agreement.

**3. Title to School Site(s) | Classroom Buildings.** The Parties acknowledge that title to the Premises is held by District.

**4. Term.** The Term shall be two (2) years, for the period from July 1, 2015 to June 30, 2017, with an option to renew for one additional five (5) year term, subject to earlier termination if CSCE's program ceases to operate after a revocation, nonrenewal or surrender of the charter to the granting agency, and all appeals have been exhausted. If the Parties wish to renew this Agreement after expiration of the option term, this can only be done by a separate writing executed by the Parties that complies with Education Code section 17534(b) (which requires capital outlay improvements by CSCE to exceed the term beyond five (5) years)

**5. Surrender.** On the last day of the Term hereof, or on sooner termination of this Agreement, CHARTER SCHOOL shall surrender to District the Premises and any then existing improvements in good order, condition and repair, reasonable wear and tear excepted, free and clear of all liens, claims and encumbrances, subject to sections 10 and 11 below. The condition of the Premises shall be similar to that existing as of the Commencement Date excepting normal ordinary wear and tear and any structural improvements made by CHARTER SCHOOL or District subsequent to the Commencement Date. This Agreement shall operate as a

Community School For Creative Education  
2111 International Blvd .

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conveyance and assignment to District of any improvements identified by District to remain on the Premises. To the extent required by sections 10 and 11 below, CHARTER SCHOOL shall remove from the Premises all of CHARTER SCHOOL's personal property, trade fixtures, and any improvements made by CHARTER SCHOOL which CHARTER SCHOOL and District agreed would be removed by CHARTER SCHOOL. All property not so removed shall be deemed abandoned by CHARTER SCHOOL. If the Premises are not so surrendered at the termination of this Agreement in accordance with sections 10 and 11 below, CHARTER SCHOOL shall indemnify District against loss or liability resulting from delay by CHARTER SCHOOL in so surrendering the Premises including, without limitation, any claims made by any succeeding tenant or losses to District due to lost opportunities to obtain succeeding tenants.

## **6. Facility Use Fee.**

6.1. For 2015-16 and 2016-17, the fee shall be \$3.80 per square foot, based upon 17,612 square feet or a total \$66,925. If CSCE exercises the option to extend the term an additional five years, during the five year option period the rate shall be the 2018-19 Prop 39 or equivalent rate.

6.2. In the event CHARTER SCHOOL constructs or installs recreational improvements or other school facilities, the Parties may agree to negotiate a reduction in the Rent. The District shall only consider a reduction in the Rent for sums equal to the actual costs directly attributable to purchase, installation, and construction of the additional recreational improvements or facilities. The actual costs shall not include any of the costs of permits, inspections, environmental clearance, and/or maintenance of the additional recreational improvements or facilities, and shall not include any costs for overhead, or CHARTER SCHOOL staffing, as applicable, or other indirect expenses incurred by CHARTER SCHOOL, as applicable, pursuant to this Agreement.

6.3. Rent shall be paid quarterly and shall be due as follows:

- July 1 - 25%
- October 1 -25%
- January 1 -25%
- April 1 - 25%

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

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

6.6. CHARTER SCHOOL acknowledges that late payment by CHARTER SCHOOL to District of the Rent and other sums due hereunder will cause District to incur costs not contemplated by this Agreement, the exact amount of which will be

Community School For Creative Education  
2111 International Blvd .

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extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, if District does not receive any installment of Rent or any other sum due from CHARTER SCHOOL by 4:00 p.m. within ten (10) days after such amount is due, CHARTER SCHOOL shall pay to District, as additional rent, a late charge equal to five percent (5%) of such overdue amount or the maximum amount allowed by law, whichever is less. The Parties hereby agree that such late charges represent a fair and reasonable estimate of the costs District will incur by reason of late payment by CHARTER SCHOOL. Acceptance of any late charge by District shall in no event constitute a waiver of CHARTER SCHOOL's default with respect to the overdue amount, nor prevent District from exercising any of its other rights and remedies granted hereunder.

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

## 7. Maintenance and Repairs

7.1. **Routine Repair, Cleaning and General Maintenance.** other than custodial services, which the Charter School may elect to self-procure, District shall be responsible for the routine repair, cleaning and general maintenance of the Premises and any furnishing or equipment provided to Charter School. For purposes of the Agreement, "routine repair, cleaning and general maintenance" shall mean the school facility component work performed on an annual basis each year to keep facilities in proper operating condition. District shall also be responsible for ongoing operations and maintenance of the facilities on the Premises as defined in California Code of Regulations, Title 5, section

11969.4(b). The District shall only be obligated to perform routine repair, cleaning and general maintenance on the Premises on an equivalent basis as that performed at other comparable District school sites.

**7.2. Deferred Maintenance.** District shall be responsible for the major maintenance of the Premises. For purposes of the Agreement, "major maintenance" includes, for example, the major repair or replacement of plumbing, heating, ventilation, air conditioning, electrical, roofing, and floor systems, exterior and interior painting, and any other items considered deferred maintenance under Education Code section 17582. All other kinds of maintenance shall be considered routine maintenance and shall also be the responsibility of District. The District shall only

Community School For Creative Education  
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be obligated to perform deferred maintenance on the Premises on an equivalent basis as that performed at other comparable District school sites.

**7.3. Structural Repairs.** District shall be responsible for repairs major structural elements of the buildings on the Premises. As used in the Agreement, the term "structural elements of the building" are defined as and shall be limited to the foundation, footings, floor slab but not flooring, structural walls excluding glass and doors, HVAC systems and the roof excluding skylights. The Parties agree that if the structural elements of the Premises become damaged to a lesser condition than currently exists, and if the structural damage is due to no fault or negligence of Charter School, then District will repair the damage in order to bring it back to a condition which is similar to the condition which exists at the time Charter School takes possession of the Premises. District may, however, terminate this Agreement if the cost to repair the Premises exceeds Seven Hundred Fifty Thousand dollars (\$750,000) per incident. District may, in its sole discretion, pro-rate the Pro Rata Share during the "repair" period, if the resulting structural damage prohibits Charter School from carrying out its normal daily activities. If District elects not to perform a repair estimated to cost in excess of Seven Hundred Fifty Thousand dollars (\$750,000), Charter School may elect to remain in possession of the Premises and pay the Pro Rata Share for the portion of the Premises still available for its use, unless revised through mutual

agreement of the Parties, or Charter School may elect to terminate this Agreement. If either District or Charter School terminates this Agreement for just cause as set forth herein, the District shall immediately use its best efforts to provide the Charter School with reasonably equivalent alternative facilities to accommodate its entire projected in-District ADA for the remaining Term of this Agreement.

## **8. Improvements.**

8.1. CHARTER SCHOOL may at its sole cost and expense, make or perform improvements, alterations, or additions to the Premises ("Improvements"), provided that any Improvements requiring approval of the Division of the State Architect shall require prior written notice and approval of District, which approval shall not be unreasonably withheld, conditioned or delayed. If District fails to respond within thirty (30) days after CHARTER SCHOOL's written request for approval of any Improvements, District shall be deemed to have given its approval to such Improvements. Improvements shall comply with all legal requirements relating to construction of the Improvements, including, without limitation, Title 24 of the California Code of Regulations, the Education Code (including the Field Act, Education Code §17280, et seq.), the Americans with Disabilities Act, the California Environmental Quality Act and regulations promulgated thereunder.

8.2. All contractors and subcontractors of CHARTER SCHOOL, if any, shall be duly licensed in the State of California. Under all circumstances, CHARTER SCHOOL must seek and receive approval from the Division of the State Architect for all of

CHARTER SCHOOL's Improvements to the extent such approval is required by law.

8.3. CHARTER SCHOOL shall at its own expense obtain all necessary environmental and governmental approvals and permits, including, without limitation, the California Environmental Quality Act ("CEQA"), any necessary approvals from any local authority including any site, 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.

8.4. CHARTER SCHOOL shall be responsible for ensuring that all Improvements work is performed in strict compliance with the approved SWPPP, REAP, ATS, and the Construction Storm Water Permit issued, as required by applicable law.

8.5. All maintenance and construction activities performed by CHARTER SCHOOL shall comply with the Environmental Protection Agency's National Pollution Discharge Elimination System program and the Clean Water Act to prevent storm water pollution and a Storm Water Pollution Prevention Plan (SWPPP) approved by the appropriate governing authority, if applicable.

8.6. CHARTER SCHOOL shall be solely responsible for maintaining the Premises and CHARTER SCHOOL'S Improvements installed thereon during the Term, including any extensions, and for compliance with all applicable laws or ordinances, rules and regulations.

8.7. CHARTER SCHOOL shall be solely responsible to make payment for any service or work performed in connection with the design and construction of the Improvements. CHARTER SCHOOL shall administer and resolve any claims or disputes that may arise in connection with the design and construction of the Improvements.

8.8. CHARTER SCHOOL and any person performing work for construction of the Improvements, shall exercise reasonable precautions to avoid damage and protect persons or property while on the Premises and any adjacent staging area. District assumes no liability for loss or damage to property or injuries to or deaths of agents, contractors, or employees of CHARTER SCHOOL by reason of the exercise of privileges given in this section. CHARTER SCHOOL shall indemnify and hold District harmless from any damage caused by the CHARTER SCHOOL's activities authorized in this section, except to the extent such damage was caused by District's gross negligence or willful misconduct. CHARTER SCHOOL shall either reimburse the District for any damage or destruction to the Premises, or other property, occurring by reason of the exercise of rights granted, or to replace or restore said property to its preexisting condition.

8.9. The Improvements shall be made by CHARTER SCHOOL at its sole expense.

8.10. CHARTER SCHOOL shall coordinate the work of the Improvements with the District. CHARTER SCHOOL shall provide notice to District in writing of the status of the Improvement projects and notify the District when the Improvements are completed. District shall have the right to inspect and reject the Improvements.

**9. Signage.** CHARTER SCHOOL may install signage at the School Site including one sign at the CHARTER SCHOOL'S main entrance stating the CHARTER SCHOOL name and other pertinent information, a sign indicating the main office of the CHARTER SCHOOL, and other directional signs as appropriate. The signage shall not require any Improvement to the School Site in order to erect such signage. Any signage shall be in compliance with any District standards previously made available to CHARTER SCHOOL and CHARTER SCHOOL's receipt of any applicable permits and approvals required under any municipal or other governmental laws, ordinances, rules or regulations; provided, that in the event of any conflict between the District's standards and any applicable municipal or governmental permit and/or approval, the terms and conditions of the municipal or governmental permit and/or approval shall prevail. At the termination of this Agreement, CHARTER SCHOOL shall remove any signs which it has placed on the School Site and shall repair any damage caused by the installation or removal of those signs.

**10. Removal of CHARTER SCHOOL'S Personal Property.**

On or before the expiration of this Agreement, or within seventy-five (75) days after any earlier termination of this Agreement, CHARTER SCHOOL shall remove all personal property and removable fixtures ("Property"), at its sole expense. CHARTER SCHOOL shall repair any damage to the Premises, caused by removal of CHARTER SCHOOL's Property and restore the Premises to good condition, less ordinary wear and tear. In the event that CHARTER SCHOOL fails to timely remove its Property, District, upon fifteen (15) days written notice, may either (1) accept ownership of CHARTER SCHOOL's Property with no cost to District, or (2) remove CHARTER SCHOOL's Property at CHARTER SCHOOL's sole cost. In the event that District chooses to accept ownership of CHARTER SCHOOL's Property, CHARTER SCHOOL shall execute any necessary documents to effectuate the change in ownership of CHARTER SCHOOL's Property. In the event that District removes CHARTER SCHOOL's Property, CHARTER SCHOOL shall pay all invoices for the removal of CHARTER SCHOOL's Property within thirty (30) days of receipt of such invoices.

**11. Surrender.** Title to improvements at the Premises constructed by CHARTER SCHOOL shall be owned by CHARTER SCHOOL until expiration or the earlier termination of the term of this Agreement. All improvements on the Premises at the expiration of the term of this Agreement, or any options or mutually agreed to extensions shall, with compensation to CHARTER SCHOOL in an amount equal to their fair market value, become District's property; provided, that the improvements are DSA approved or can be utilized for adaptive re-use under the standards set-forth in the Division of State Architect's "FEASIBILITY GUIDELINES FOR SELECTION OF EXISTING NON-CONFORMING FACILITIES FOR REHABILITATION TO PUBLIC SCHOOLS AND CALIFORNIA COMMUNITY COLLEGES".<sup>1</sup> The regulations of Title 24, C.C.R. apply to any existing non-conforming building for purchase or lease by a district for use as a public school. If the improvements are not suitable for adaptive re-use, CHARTER SCHOOL

<sup>1</sup>[http://www.documents.dqs.ca.gov/dsa/pubs/feasibility\\_guidelines\\_public\\_reh\\_01.pdf](http://www.documents.dqs.ca.gov/dsa/pubs/feasibility_guidelines_public_reh_01.pdf)

shall remove improvements and return the property to the District in its pre-Agreement condition.

**12. Fingerprinting and Criminal Background Verification.** CHARTER SCHOOL shall be responsible for ensuring compliance with all applicable fingerprinting and criminal background investigation requirements described in Education Code section 45125.1.

**13. Drug-Free Workplace.** CHARTER SCHOOL's employees shall comply with the District's policy of maintaining a drug free workplace. Neither CHARTER SCHOOL nor CHARTER SCHOOL'S employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code § 812, including, but not limited to,

marijuana, heroin, cocaine, and amphetamines, at the Site. If CHARTER SCHOOL or any employee of CHARTER SCHOOL is convicted or pleads nolo contendere to a criminal drug statute violation occurring at the Site, CHARTER SCHOOL within five (5) days thereafter shall notify the District.

**14. Inspection of Premises.** District shall have the right to enter the Premises to conduct its own compatible operations, or to conduct inspections of the Premises during usual business hours in order to insure that proper pest management control and maintenance is being conducted on the Premises. District will endeavor during the course of any access of the Premises to not disrupt Charter School's classroom and instructional activities.

**15. Termination.**

**15.1. Termination for Convenience.**

15.1.1. CHARTER SCHOOL may terminate this Agreement by written notification one hundred and eighty (180) days prior to the effective date of the termination. CHARTER SCHOOL acknowledges that this one hundred and eighty (180) day notice period is acceptable so that District can attempt to find another tenant.

**15.2. Termination for Cause.** Either Party may terminate this Agreement immediately for cause upon the occurrence of an event of default that is not cured within any applicable cure period. Cause shall include, without limitation:

15.2.1. Material violation of this Agreement by CHARTER SCHOOL or District that is not cured within ten (10) days after notice to the defaulting party of such violation if such violation constitutes a monetary breach of this Agreement or within thirty (30) days after notice to the defaulting party of such violation if such violation constitutes a non-monetary breach of this Agreement; provided, however, that if the nature of such default is such that more than thirty (30) days are reasonably required for its cure, then CHARTER SCHOOL or District, as applicable, shall not be deemed to be in default if such party shall commence such cure within said 30-day period and thereafter diligently prosecute such cure to completion; or

15.2.2. CHARTER SCHOOL is adjudged a bankrupt, CHARTER SCHOOL makes a general assignment for the benefit of creditors or a receiver is appointed on account of CHARTER SCHOOL'S insolvency.

15.2.3. The cessation of CHARTER SCHOOL's program after a revocation, nonrenewal or surrender of the charter to the granting agency. However, CHARTER SCHOOL shall not be in default of this Agreement until after it has exhausted all appeals subsequent to the revocation or nonrenewal of its charter;

15.2.4. If District terminates this Agreement for cause, CHARTER SCHOOL's rights in the Premises shall terminate upon CHARTER SCHOOL's receipt of notice of termination from District. Upon receipt of District's notice of termination, CHARTER SCHOOL shall surrender and vacate the Premises in the condition required under this Agreement, and District may re-enter and take possession of the Premises and all the remaining improvements or property and eject CHARTER SCHOOL or any of CHARTER SCHOOL's subtenants, assignees or other person

or persons claiming any right under or through CHARTER SCHOOL or eject some and not others or eject none. This Agreement may also be terminated by a judgment specifically providing for termination. Any termination under this Section shall not release CHARTER SCHOOL from the payment of any sum then due District or from any claim for damages or Rent previously accrued or then accruing against CHARTER SCHOOL.

15.3. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District and/or CHARTER SCHOOL.

15.4. Upon termination of this Agreement, CHARTER SCHOOL shall be responsible to restore the Premises to the extent required under Sections 4.2 and 10.

15.5. **Option to Terminate for Destruction.** CHARTER SCHOOL shall have the right to terminate this Agreement if, during the term, the improvements are damaged or destroyed by a casualty for which CHARTER SCHOOL is not required to carry insurance and the cost to repair or restore the damaged or destroyed Improvements exceeds fifty percent (50%) of the fair market value of the improvements immediately before the damage or destruction.

15.6. **Application of Insurance Proceeds;** Any and all fire and other insurance proceeds that become payable at any time during the term of this Agreement because of damage to or destruction of any Improvements on the Premises shall be paid to CHARTER SCHOOL and applied by CHARTER SCHOOL toward the costs of repairing and restoring the damaged or destroyed Improvements in the manner required herein, or if this Agreement is terminated under Section 14.5, applied by CHARTER SCHOOL towards the payment of any leasehold

ons hereunder,

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time, but in no event less than thirty (30) days, after written notice by Charter School to District specifying that District has failed to perform its obligations; provided, however, that if the nature of District's default requires more than thirty (30) days to cure,





District shall not be in default if District commences a cure within thirty (30) days and thereafter diligently prosecutes the same to completion.

15.7.1. Charter School shall have no rights as a result of any default by District until Charter School gives thirty (30) days' notice to District specifying the nature of the default. District shall then have the right to cure the default, and District shall not be deemed in default if it cures the default within thirty (30) days after receipt of the notice of the default, or within a longer period of time as may reasonably be necessary to cure the default. If the District defaults hereunder, then Charter School may exercise any right or remedy at law or equity which Charter School may have by reason of such default, including, the remedy of self-help and deduction of reasonable self-repair costs from the pro rata share payments owed.

## 16. Reciprocal Indemnification.

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

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

(a) Any default by Charter School in the observance or performance of any of the terms, covenants or conditions of the Agreement on Charter School's part to be observed or performed;

(b) The use or occupancy of the Premises by Charter School or any person claiming by, through or under Charter School or Charter School's employees, agents, contractors, licensees, directors, officers, partners, trustees, visitors or invitees, or

any such person in, on or about the Premises either prior to, during, or after the expiration of the Term of the Agreement (singularly, "Liability"; collectively, "Liabilities"); and

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

Except where the losses, costs, damages, expenses and liabilities (including without limitation court costs and reasonable attorneys' fees) are caused by Charter School's negligence or misconduct, to the fullest extent permitted by law, District ("Indemnifying Party") shall indemnify, defend, release and protect Charter

School, its affiliates, successors and assigns, and its officers, directors, shareholders, board members, other members, partners, agents and employees ("Indemnified Party" or "Indemnified Parties") and hold the Indemnified Parties harmless from any and all losses, costs, damages, expenses and liabilities (including without limitation court costs and reasonable attorneys' fees) incurred in connection with or arising from any cause (i) in the use or occupancy by DISTRICT of the Premises (including without limitation, the operation by DISTRICT of operations on the Premises), or (ii) in connection with the operations by DISTRICT at the Premises, including without limiting the generality of the foregoing:

(a) Any default by District in the observance or performance of any of the terms, covenants or conditions of the Agreement on District's part to be observed or performed;

(b) The use or occupancy of the Premises by District or any person claiming by, through or under District or District's employees, agents, contractors, licensees, directors, officers, partners, trustees, visitors or invitees, or any such person in, on or about the Premises either prior to, during, or after the expiration of the Term of the Agreement (singularly, "Liability"; collectively, "Liabilities"); and

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

The provisions of this Section 21 shall survive the expiration or sooner termination of this Use Agreement.

An Indemnifying Party shall, upon request by an Indemnified Parties, undertake the defense of any Liabilities threatened or asserted against such Indemnified Party on the following terms and conditions:

(a) Notice of the assumption of such defense ("Notice") shall be delivered to such Indemnified Party within fifteen (15) days after transmittal by the Indemnified Party of a request that Indemnifying Party defend such Liability;

(b) Such defense shall be conducted by reputable attorneys retained by Indemnifying Party and approved by the other Party, and with the prior written approval of all the Indemnified Parties against whom such Liability has been asserted or threatened, which approval shall not be unreasonably withheld, delayed or conditioned, all at Indemnifying Party's sole cost and expense. In the event the interests of Indemnifying Party and any such Indemnified Parties in the action conflict in such manner and to such an extent as to require, consistent with applicable standards of professional responsibility, the retention of separate counsel for any of the Indemnified Parties involved in the action, Indemnifying Party shall pay all fees and costs charged or incurred by separate counsel chosen by such Indemnified Parties.

(c) Indemnifying Party agrees to promptly notify the other Party of the commencement of any litigation or proceedings pending, threatened or commenced (whether or not served) against Indemnifying Party, or any of the directors, officers, agents or employees of Indemnifying Party, in connection with the matters set forth in this Agreement.

## **17. Insurance.**

17.1. Insurance is to be placed with insurers with a current A.M. Best Insurance rating of no less than A-minus: VII and subject to the approval of District; insurance acquired by

the CHARTER SCHOOL through a Joint Powers Authority shall meet this requirement. CHARTER SCHOOL shall furnish District with the original certificates and amendatory endorsements effecting coverage required .

17.2. CHARTER SCHOOL acknowledges that the insurance to be maintained by District on the Premises will not insure any of CHARTER SCHOOL's property or improvements made by CHARTER SCHOOL.

17.3. CHARTER SCHOOL shall, at CHARTER SCHOOL'S expense, obtain and keep in force during the term of this Agreement a policy of commercial general liability insurance and a comprehensive auto liability policy insuring District and CHARTER SCHOOL against claims and liabilities arising out of the operation, condition, use, or occupancy of the Premises and all areas appurtenant thereto, including parking areas. CHARTER SCHOOL'S comprehensive auto liability policy shall insure all vehicle(s), whether hired, owned or non-owned. CHARTER SCHOOL's commercial general insurance shall be at least as broad as the Insurance Service Office (ISO) CG 00-01 form and in an amount of not less than Three Million dollars (\$3,000,000) for bodily injury or death and property damage as a result of any one occurrence and a Three Million dollar (\$3,000,000) general aggregate policy limit. In addition, CHARTER SCHOOL shall obtain a products/completed operations aggregate policy in the amount of One Million dollars (\$1,000,000). The insurance carrier, deductibles and/or self insured retentions shall be approved by District, which approval shall not be unreasonably withheld. Prior to the Commencement Date, CHARTER SCHOOL shall deliver to District a certificate of insurance evidencing the existence of the

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policies required hereunder and copies of endorsements stating that such policies shall :

- 17.3.1. Not be canceled or altered without thirty (30) days prior written notice to District;
- 17.3.2. State the coverage is primary and any coverage by District is in excess thereto;
- 17.3.2.1. Contain a cross liability endorsement; and
- 17.3.3. 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, CHARTER SCHOOL shall deliver to District a new certificate of insurance consistent with all of the terms and conditions required in connection with the original certificate of insurance as described above.

17.4. In the event of loss or damage to the Premises, the buildings, Improvements or any contents, each Party, and all persons claiming under each Party, shall look first to any insurance in its favor before making any claim against the other Party, and to the extent possible without adding additional costs, each Party shall obtain for each policy of insurance provisions permitting waiver of any claim against the other Party for loss or damage within the scope of the insurance and each Party, to the extent permitted, for itself and its insurers, waives all such insurance claims against the other Party.

17.5. Oakland Unified School 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.

17.6. During the term of this Agreement, CHARTER SCHOOL shall comply with all provisions of law applicable to CHARTER SCHOOL with respect to obtaining and maintaining workers' compensation insurance. Prior to the commencement and any

renewal of this Agreement and CHARTER SCHOOL's occupancy of the Premises, CHARTER SCHOOL shall provide District, as evidence of this required coverage, a certificate in a form satisfactory to District on or before the Commencement Date, providing that insurance coverage shall not be canceled or reduced without thirty (30) days prior written notice to District.

**17.7. Subrogation.** Except as provided in the Certificate of Insurance obtained per Section 13.3 above, neither CHARTER SCHOOL nor District shall be liable to the other or to any insurance company (by way of subrogation) insuring the other party for any loss or damage to the Premises, if any such loss or damage is covered by insurance benefiting the party suffering the loss or damage.

**18. Eminent Domain.** If the whole or any portion of Premises is taken by any paramount public authority under the power of eminent domain, then the rights and obligations of the parties shall be determined as follows: If Premises are totally taken by condemnation; this Agreement shall terminate on the date of taking. If any portion of Premises is taken by

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condemnation, CHARTER SCHOOL shall have the right to either terminate this Agreement or to continue in possession of the remainder of Premises 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 Premises taken as compared to the portion of the Premises 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 made for loss of installations or improvements made by CHARTER SCHOOL in accordance with this Lease and for any award for any taking of CHARTER SCHOOL's personal property and fixtures belonging to CHARTER SCHOOL and removable by CHARTER SCHOOL upon expiration of the Term pursuant to the terms of this Lease, and for relocation expenses.

**19. Surrender of Agreement Not Merger.** The voluntary or other surrender of this Agreement by CHARTER SCHOOL, or a mutual cancellation thereof, shall not work a merger and shall, at the option of District, terminate all or any existing subleases or subtenancies, or operate as an assignment to District of any or all subleases or subtenancies.

**20. Notice.** Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served and received if given in writing and personally delivered or either deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, email or facsimile transmission, addressed as follows:

**District:**

Office of Charter Schools  
Oakland Unified School District  
[Silke.bradford@ousd.k12.ca.us](mailto:Silke.bradford@ousd.k12.ca.us)  
1000 Broadway, Suite 600  
Oakland, CA 94607

With copy to:

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

## CHARTER SCHOOL:

Dr. Ida Oberman  
Executive Director  
Community School for Creative Education, Oakland  
2111 International Blvd.  
Oakland, CA  
[www.communityschoolforcreativeeducation.org](http://www.communityschoolforcreativeeducation.org)

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2111 International Blvd.

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

**21. No Assignment or Subletting.** CHARTER SCHOOL shall not have the right, voluntarily or involuntarily, to assign, license, transfer or encumber this Agreement or sublet all or part of the Premises without District's consent, which consent shall not be unreasonably withheld, conditioned or delayed. 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.

**22. Proposition 39.** In consideration for the District entering into this multi-year agreement in full satisfaction of the provisions of Proposition 39, CHARTER SCHOOL hereby agrees to waive any further right to petition the District for additional space under Proposition 39, so long as CHARTER SCHOOL occupies the Premises.

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

**24. 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.

**25. 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.

**26. 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 county in which the District's administrative offices are located.

## **27. Compliance with All Laws.**

27.1. CHARTER SCHOOL shall at CHARTER SCHOOL's expense comply with all requirements of all governmental authorities, in force either now or in the future, affecting the Premises, and shall faithfully observe in CHARTER SCHOOL's use of the Premises all laws, regulations and ordinances of these authorities, in force either now or in the future including, without limitation, all applicable federal, state and local laws, regulations, and ordinances pertaining to air and water quality, hazardous material, waste disposal, air emission and other environmental matters (including the California

rules and regulations. Specifically, CHARTER SCHOOL shall comply with the restriction on chemical usage indicated in Integrated Pest Management Policy **Exhibit "B,"**

27.2. The judgment of a court of competent jurisdiction, or CHARTER SCHOOL's admission in an action or a proceeding against CHARTER SCHOOL, whether District be a party to it or not, that CHARTER SCHOOL has violated any law or regulation or ordinance in CHARTER SCHOOL's use of the Premises shall be considered conclusive evidence of that fact as between District and CHARTER SCHOOL. If CHARTER SCHOOL fails to comply with any such law, regulation or ordinance, District reserves the right to take necessary remedial measures at CHARTER SCHOOL's expense, for which CHARTER SCHOOL agrees to reimburse District on demand.

## **28. Hazardous Substances.**

28.1. CHARTER SCHOOL shall comply with all applicable Environmental Laws relating to industrial hygiene and environmental conditions on, under or about the Premises, including but not limited to, air, soil and ground water conditions. CHARTER SCHOOL shall not use Hazardous Substances on, under or about the Premises; provided, however, that CHARTER SCHOOL may use normal and customary cleaning solutions and office supplies so long as the use of those solutions and supplies are in quantities and in a manner wholly consistent with all applicable Environmental Laws; and further provided that CHARTER SCHOOL may use normal and customary chemicals for classroom use so long as the use of those chemicals are in quantities and in a manner wholly consistent with all applicable school standards. 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 Premises 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 Premises, during the Term of the Agreement. CHARTER SCHOOL shall not be responsible for the remediation of any Hazardous Substances that were present at the Premises prior to CHARTER SCHOOL's occupancy thereof.

28.2. **Notice.** CHARTER SCHOOL will promptly notify District in writing if CHARTER SCHOOL has or acquires notice or knowledge that any Hazardous Substance has been or is threatened to be, released, discharged, disposed of, transported, or stored on, in, or under or from the Premises in violation of Environmental Laws. CHARTER SCHOOL shall promptly provide copies to District of all written assessments, complaints, claims, citations, demands, fines, inquiries, reports, violations or notices relating to the conditions of the Premises or compliance with Environmental Laws. CHARTER SCHOOL shall promptly supply District with copies of all notices, reports, correspondence, and submissions made by CHARTER SCHOOL to the United States Environmental Protection Agency, the United States Occupational Safety and Health Administration, and any other local, state, or federal authority that requires submission of any information



concerning environmental matters or Hazardous Substances pursuant to Environmental Laws. CHARTER SCHOOL shall promptly notify District of any liens threatened or attached against the Premises pursuant to any Environmental Laws.

28.3.

**Inspection.**

District and District's agents, servants, and employees including, without limitation, legal counsel and environmental consultants and engineers retained by District, may {but without the obligation or duty to do so}, at any time and from time to time, on not less than ten (10) business days' notice to CHARTER

SCHOOL (except in the event of an emergency, in which case, no notice will be required), inspect the Premises to determine whether CHARTER SCHOOL is complying with CHARTER SCHOOL'S obligations set forth in this Section, and to perform environmental inspections and samplings, during regular business hours (except in the event of an emergency} or during such other hours as District and CHARTER SCHOOL may agree.

**28.4. Indemnification.** CHARTER SCHOOL shall indemnify, defend (by counsel reasonably approved in writing by District}, protect, release, save and hold harmless District from and against any and all Claims arising from any breach of CHARTER SCHOOL's covenants under this Section, except to the extent caused by the gross negligence or willful misconduct of District.

**29. 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.

**30. 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.

**31. Counterparts.** This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document. **32. Captions.** The captions contained in this Agreement are for convenience only and shall not in any way affect the meaning or interpretation hereof nor serve as evidence of the interpretation hereof, or of the intention of the Parties hereto.

**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.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement as of the day and year first above written.

**ACCEPTED AND AGREED** on the date indicated below:

Community School For Creative Education  
2111 International Blvd.

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**SCHOOL DISTRICT**

•

of Education

Date: v(P5/J(

Antwan Wilson, Superintendent



Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: The District certifies to the best of its knowledge and belief, that it and its officials: Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency according to Federal Acquisition Regulation Subpart 9.4, and by signing this contract, certifies that this vendor does not appear on the Excluded Parties List.

<https://www.sam.gov/portal/public/SAM>

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**EXHIBIT** [REDACTED] **IT "A"**

**PREMISE** [REDACTED] **S**

**EXHIBIT "B"**

**Integrated Pest Management Program (Administrative Regulation 3514.2)**

**OAKLAND UNIFIED SCHOOL DISTRICT  
Administrative Regulation**

## **Business and Noninstructional Operations**

### Integrated Pest Management

The Superintendent or Deputy Superintendent of Business Services shall develop and implement an integrated pest management program that incorporates effective least toxic pest management practices.

Integrated pest management is a strategy that focuses on long-term prevention or suppression of pest problems through a combination of techniques such as monitoring for pest presence and establishing treatment threshold levels, using nonchemical practices to make the habitat less conducive to pest development, improving sanitation, and employing mechanical and physical controls. (Food and Agricultural Code 13181)

### Procedures

In the control and/or management of pests at district facilities, the Superintendent or Deputy Superintendent of Business Services shall:

1. Carefully monitor and identify the pest and the site of infestation. Strategies for managing the pest shall be influenced by the pest species and whether that species poses a threat to people, property or the environment.
2. Consider a full range of possible alternatives. Such alternatives include not taking any action or controlling the pest by physical, mechanical, chemical, cultural or biological means.
3. Select nonchemical pest management methods over chemical methods, whenever they are effective to provide the desired control. Cost or staffing considerations alone will not be adequate justification for use of chemical control agents.
4. Use the least toxic material when it is determined that a chemical method of pest management must be used. The least toxic material shall be chosen and applied in accordance with law.
5. Limit pesticide purchases to amounts needed for the year. Pesticides shall be stored at a secure location that is not accessible to students and unauthorized staff, and they shall be stored and disposed of in accordance with state regulations and label directions registered with the Environmental Protection Agency.

EXHIBIT " B"

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(cf. 3514.1 - Hazardous Substances)

6. Ensure that persons applying pesticides follow label precautions and are trained in the principles and practices of integrated pest management.

(cf. 4231 - Staff Development)

### Notification

The Superintendent or Deputy Superintendent of Business Services shall annually notify staff and parents/guardians of students enrolled at a school site, in writing, regarding pesticide products expected to be applied at the school facility. The notification shall include at least the following: (Education Code 17612)

1. The Internet address used to access information on pesticides and pesticide use reduction developed by the Department of Pesticide Regulation pursuant to Food and Agricultural Code

2. The name of each pesticide product expected to be applied in the year and the active ingredient(s) in it.

3. An opportunity for interested persons to register to receive notification of individual pesticide application at the school site. The Superintendent or Deputy Superintendent of Business Services shall notify such registered persons of individual pesticide applications at least 72 hours prior to the application.

4. Other information deemed necessary by the Superintendent or Deputy Superintendent of Business Services.

(cf. 4112.9/4212.9/4312.9 - Employee Notifications)

( cf. 5145.6 - Parental Notifications)

If a pesticide product not included in the annual notification is subsequently intended for use at the school site, the Superintendent or Deputy Superintendent of Business Services shall provide written notification of its intended use to staff and parents/guardians of students enrolled at the school, at least 72 hours prior to the application. (Education Code 17612)

#### Posting of Warning Signs

The Superintendent or Deputy Superintendent of Business Services shall post a warning sign at each area of the school site where pesticides will be applied, at least 24 hours prior to the application and until 72 hours after the application. The warning sign shall display the following : (Education Code 17612)

1. The term "Warning/Pesticide Treated Area"

#### EXHIBIT "B"

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2. The product name, manufacturer's name, and the Environmental Protection Agency's product registration number

3. Intended areas and dates of application

4. Reason for the pesticide application

#### Notification During Emergency Conditions

Whenever the Superintendent or Deputy Superintendent of Business Services deems that the immediate use of a pesticide is necessary to protect the health and safety of students, staff, or other persons, or the school site, he/she shall make every effort to provide the required notifications prior to the application of a pesticide. In such a case, the warning sign shall be posted immediately upon application and shall remain posted until 72 hours after the application. (Education Code 17609, 17612)

(d. 3514 -Environmental Safety)

#### Records

Each school site shall maintain records of all pesticide use at the school for four years, and shall make the information available to the public, upon request, in accordance with the California Public Records Act. Such records may be maintained by retaining a copy of the warning sign posted for each pesticide application with a recording of the amount of the pesticide used. (Education Code 17611)

(d. 3580 - District Records)

Legal Reference:

EDUCATION CODE

17608-17613 Healthy Schools Act of 2000

17366 Legislative intent (fitness of buildings for occupancy)

48980.3 Notification of pesticides

FOOD AND AGRICULTURAL CODE

11401-12408 Pest control operations and agricultural chemicals

13180-13188 Healthy Schools Act of 2000

GOVERNMENT CODE

3543.2 Scope of representation; right to negotiate safety conditions

6250-6277 California Public Records Act

CODE OF REGULATIONS, TITLE 8

340-340.3 Employer's obligation to provide safety information

5142 Heating, ventilating and air conditioning systems; minimum ventilation 5143 Mechanical ventilating systems; inspection and maintenance

UNITED STATES CODE, TITLE 7

136-136y Insecticide, 1-ungicide and Rodenticide Act

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CODE OF FEDERAL REGULATIONS, TITLE 40

763.93 Management plans

763.94 Record keeping

Management Resources:

CDE PUBLICATIONS

Indoor Air Quality, A Guide for Educators, 1995

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Pest Control in the School Environment: Adopting Integrated Pest Management, 1993 WEB SITES

CDE: <http://www.cde.ca.gov>

California Department of Pesticide Regulation: <http://www.cdpr.ca.gov>

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OFFICE OF THE SUPERINTENDENT

EXHIBIT B

# Guide for Charter Schools in Oakland Unified School District Facilities 2015-16

4551 Steele St./Room 9, Oakland, CA 94619 510.336.7572 ph www.ousdcharters.net

OFFICE OF CHARTER SCHOOLS  
OAKLAND UNIFIED  
SCHOOL DISTRICT

Community Schools, Allowing Students

### Buildings & Grounds Work Order Protocol

Please note: work orders are to be placed by designated Site Staff only. Please designate a minimum number of staff responsible for placing work orders so as to minimize confusion and the opportunity for miscommunication.

1. Contact work control center at (510) 535-2718 with the following information:
  - a. Site Name {Site Number If applicable}
  - b. Contact Name and Phone Number
  - c. Exact nature of request (I.e. 2 light fixtures broken/missing in room 2 Main Building vs. replace light fixtures)- Please specify if EMERGENCY
  - d. Specific location (Building/Room Number/Area)
  - e. Obtain your Work Order number; this is critical for tracking your order

The Work Control Center has the responsibility of evaluating and assigning a priority level to all work requests. General Priority Levels and Time lines are as follows<sup>1</sup>:

1. Emergency Requests: same day response whenever possible or next business day, depending on nature of problem and time received.
  - Emergencies consist of repairs/replacements that need to be addressed immediately in order to protect the health and safety of a student, employee or other person at the site and/or prevent damage to the integrity of the site.

2. Non-emergency requests that require immediate attention, but do not require same day service completed within 1-7 business days.

Requests of a general nature that do not pose an immediate threat to the safety of the facility or its occupants to be completed within 10~30 business days.

If you have placed a work order and the request has not been addressed within the allotted timeframe, please follow up with the Work Control Center at (510) 535-2718. Have your work order number and date of request.

**J** For pest management and custodial requests contact Custodial Services at (510) 434-2202. **I**  
For environmental concerns contact Risk Management at (510) 535-2750.

<sup>1</sup> See Buildings & Ground Prioritization List for more detail.

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OFFICE OF CHARTER SCHOOLS

## Prioritization of Work Order; foi Chaite, Sites

Our Work Control Center has the responsibility of evaluating and assigning a priority level to all work requests received. This guide has been established by the Facilities Departments' division of Buildings and Grounds as a reference tool for determining responsibility, and is not intended to supplant specific responsibilities outlined in an individual Charter School's final Facilities Use Agreement, or otherwise required by standard Buildings and Grounds protocol. The Priority Levels and Time Lines are as follows:

Priority Level 1- Emergency Requests- Repairs that pose a health and safety concern and require immediate attention. Same day response whenever possible or next business day, depending on nature of problem and time received. • Gas & Water Leaks (non-roofing)

- Power Shortage
- Hazards
- Sewer backups
- Floods
- Gain entries
  - Elevator malfunction; trapped in shaft
  - No Heat (entire bldg)/ No Ventilation - Priority Order: 1)CDC 2)Elementary 3)Middle 4)High S)Admin •
- Missing storm drain cover
  - Playground equipment (damaged/broken posing hazard)
- Communication/Clocks/Bells
  - Fallen Trees/Branches

Priority Level 2- Non-emergency requests that require immediate attention, but do not require same day service. Requests to be completed within 1-7 business days.

- Ramp repair
- Drinking fountain
- Potholes
- Roof leaks
  - Environmental Concerns (air or water quality; hazardous wastes)
- Broken windows/doors/broken faucets/toilets
  - Fence repair
- Intrusion/fire alarm repair
  - No Heat (specific rooms)-Priority Order: 1)CDC 2)Elementary 3)Middle 4)High S)Admin

Priority Level 3- Requests of a general nature that do not pose an immediate threat to the safety of the facility or its occupants. Requests to be completed within 10-30 business days.

- Missing tiles (ceiling/floor)
- Broken windows (2nd floor)
- Security lights (3 or more)

Priority Level 4- Improvement Services. All work requests assigned a Level 4 Priority will be reviewed on a case by case basis and discussed with the appropriate parties for items such as funding, feasibility and timeline for completion. Improvement services are not maintenance needs, therefore, these requests must be funded by the site. B&G will provide a cost estimate and work will be scheduled once funding information is obtained.

- Partition walls (room division)

- cabinetry
- Landscaping
- Fencing additions
- Electrical additions (i.e. computer lab)
- Re-keying/replacement of keys

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OFFICE OF CHARTER SCHOOLS

Facility Task Responsibility Matrix

Task

1. Broken lock repair/replacement
2. Broken window replacement
3. Broken toilet/restroom partition repair/replacement
4. Clogged toilets/sink drains
5. Sink/faucet replacement
6. Painting exterior/interior of the campus (OUSD approval required)
7. Replacement/repair of broken skylights
8. Replacement/repairs of broken kitchen equipment (capital equipment such as stoves, ovens, refrigerators)

OAKLAND UNIFIED  
SCHOOL DISTRICT

Community Schools, Thriving Students

X

x

14. Repair of broken electrical outlets
15. Repair of broken white boards/chalk boards
16. Asphalt repair
17. Fence repair
18. Sidewalk repair in front of and around school exterior
19. Replacement of light fixtures (except bulbs); security lights

Charter School OUSD

X

X X

X

X

X

X

X

9. Repair of HVAC Systems/hot water heaters

X

10. Repair/replacement of window blinds (per OUSD Standards)
11. Repair/replacement of phone/bell/intercom system
12. Repair/replacement of security system
13. Replacement of broken floor/ceiling tiles

X

20. Replacement of missing/burnt out light bulbs
21. Replacement of baseboards
22. Repair of water damage
23. Repair/replacement of roofs/drains

X

24. Pest management
25. Repair/replacement of doors (interior and exterior)
26. Repair/replacement of door push bars
27. Repair of gates

*x*  
*x*

- 28. Repair/replacement of towel and soap fixtures In  
bathrooms
- 29. Replacement of broken mirrors
- 30. Repair of water fountains

- x*
- 35. Routine landscaping maintenance
- 36. Storm drain maintenance
- 37. Playground structure/matting maintenance/repairs

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*x*

*x x*  
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*x x*  
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- X**
- 31. Repair of broken wooden cabinets and shelves
- 32. Storm related damages {fallen trees; branches; power  
outage)
- 33. Sewer backup
- 34. Elevator repairs/maintenance/inspection

**X**

**X X**  
**X**

**X X**



Disclaimer:  
Sites will be financially responsible for any/all of these services performed by B&G, If damage or maintenance is found due to negligence or vandalism by site or its occupants.

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**Integrated Pest Management Program (Administrative Regulation 3514.2)**

**OAKLAND UNIFIED SCHOOL DISTRICT**

**Administrative Regulation**

AR 3514.2

**Business and Noninstructional Operations**

Integrated Pest Management

The Superintendent or Deputy Superintendent of Business Services shall develop and implement an integrated pest management program that incorporates effective least toxic pest management practices.

Integrated pest management is a strategy that focuses on long-term prevention or suppression of pest problems through a combination of techniques such as monitoring for pest presence and establishing treatment threshold levels, using nonchemical practices to make the habitat less conducive to pest development, improving sanitation, and employing mechanical and physical controls. (Food and Agricultural Code 13181)



## Procedures

In the control and/or management of pests at district facilities, the Superintendent or Deputy Superintendent of Business Services shall:

1. Carefully monitor and identify the pest and the site of infestation. Strategies for managing the pest shall be influenced by the pest species and whether that species poses a threat to people, property or the environment.
2. Consider a full range of possible alternatives. Such alternatives include not taking any action or controlling the pest by physical, mechanical, chemical, cultural or biological means.
3. Select nonchemical pest management methods over chemical methods, whenever they are effective to provide the desired control. Cost or staffing considerations alone will not be adequate justification for use of chemical control agents.
4. Use the least toxic material when it is determined that a chemical method of pest management must be used. The least toxic material shall be chosen and applied in accordance with law.
5. Limit pesticide purchases to amounts needed for the year. Pesticides shall be stored at a secure location that is not accessible to students and unauthorized staff, and they shall be stored and disposed of in accordance with state regulations and label directions registered with the Environmental Protection Agency.

(cf. 3514.1 - Hazardous Substances)

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6. Ensure that persons applying pesticides follow label precautions and are trained in the principles and practices of integrated pest management.

(cf. 4231 - Staff Development)

## Notification

The Superintendent or Deputy Superintendent of Business Services shall annually notify staff and parents/guardians of students enrolled at a school site, in writing, regarding pesticide products expected to be applied at the school facility. The notification shall include at least the following: (Education Code 17612)

1. The Internet address used to access information on pesticides and pesticide use reduction developed by the Department of Pesticide Regulation pursuant to Food and Agricultural Code 13184.
2. The name of each pesticide product expected to be applied in the year and the active ingredient(s) in it.
3. An opportunity for interested persons to register to receive notification of individual pesticide application at the school site. The Superintendent or Deputy Superintendent of Business Services shall notify such registered persons of individual pesticide applications at least 72 hours prior to the application.
4. Other information deemed necessary by the Superintendent or Deputy Superintendent of Business Services.

(cf. 4112.9/4212.9/4312.9 - Employee Notifications)

( cf. 5145.6 - Parental Notifications)

If a pesticide product not included in the annual notification is subsequently intended for use at the school site, the Superintendent or Deputy Superintendent of Business Services shall provide written notification of its intended use to staff and parents/guardians of students enrolled at the school, at least 72 hours prior to the application. (Education Code 17612)

#### Posting of Warning Signs

The Superintendent or Deputy Superintendent of Business Services shall post a warning sign at each area of the school site where pesticides will be applied, at least 24 hours prior to the application and until 72 hours after the application. The warning sign shall display the following: (Education Code 17612)

1. The term "Warning/Pesticide Treated Area"
2. The product name, manufacturer's name, and the Environmental Protection Agency's

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product registration number

3. Intended areas and dates of application

4. Reason for the pesticide application

#### Notification During Emergency Conditions

Whenever the Superintendent or Deputy Superintendent of Business Services deems that the immediate use of a pesticide is necessary to protect the health and safety of students, staff, or other persons, or the school site, he/she shall make every effort to provide the required notifications prior to the application of a pesticide. In such a case, the warning sign shall be posted immediately upon application and shall remain posted until 72 hours after the application. (Education Code 17609, 17612)

(cf. 3514 -Environmental Safety)

#### Records

Each school site shall maintain records of all pesticide use at the school for four years, and shall make the information available to the public, upon request, in accordance with the California Public Records Act. Such records may be maintained by retaining a copy of the warning sign posted for each pesticide application with a recording of the amount of the pesticide used. (Education Code 17611)

(cf. 3580 - District Records)

#### Legal Reference:

EDUCATION CODE

17608-17613 Healthy Schools Act of 2000

17366 Legislative intent (fitness of buildings for occupancy)

48980.3 Notification of pesticides

FOOD AND AGRICULTURAL CODE

11401-12408 Pest control operations and agricultural chemicals

13180-13188 Healthy Schools Act of 2000  
GOVERNMENT CODE  
3543.2 Scope of representation; right to negotiate safety conditions  
6250-6277 California Public Records Act  
CODE OF REGULATIONS, IDLE 8  
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5142 Heating, ventilating and air conditioning systems; minimum  
ventilation 5143 Mechanical ventilating systems; inspection and  
maintenance  
UNITED STATES CODE, IDLE 7  
136-136y Insecticide, Fungicide and Rodenticide Act  
CODE OF FEDERAL REGULATIONS, TITLE 40

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