

**CALIBER BETA ACADEMY AND  
WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT  
FACILITIES USE AGREEMENT AND GROUND LEASE**

THIS FACILITIES USE AGREEMENT AND GROUND LEASE is made and entered into as of the \_\_\_ day of May, 2017 ("Agreement") by and between the West Contra Costa Unified School District ("Lessor" or "District") and Caliber Schools, a California non-profit public benefit corporation, doing business as Caliber Beta Academy ("Lessee" or "Charter School"), collectively the "Parties."

**RECITALS:**

WHEREAS, Charter School has been established and operates pursuant to the California Charter Schools Act of 1992 (California Education Code Section 47600, *et seq.*), and the Charter School was approved by the Board of Education of the Contra Costa County Office of Education; and

WHEREAS, pursuant to Education Code Section 47604(a), Charter School has elected to be formed as a non-profit public benefit corporation pursuant to the Non-profit Public Benefit Corporation Law of California (Part 2, commencing with Section 5110 *et seq.* of the California Corporations Code); and

WHEREAS, District is a California public school district duly organized and existing under the laws of the State of California; and

WHEREAS, District owns that certain real property comprising approximately 25 acres, commonly identified by Assessor Parcel Number 513-196-001 and known as 4301 Berk Avenue, Richmond, California, and all improvements located thereon ("Kennedy Annex"); and

WHEREAS, District owns that certain real property comprising approximately 9 acres, commonly identified by Assessor Parcel Number 403-220-005-9 and known as 2465 Dolan Way, San Pablo, California, and all improvements located thereon (the "North Campus" or the "Premises"); and

WHEREAS, Charter School is entitled to facilities from District to house its in-district, in-classroom ADA pursuant to the provisions of Education Code Section 47614 and Title 5 of the California Code of Regulations Section 11969, *et seq.*, as amended from time to time and adopted by the State Board of Education ("Proposition 39"), and District and Charter School desire to enter into this Agreement to satisfy all of District's obligations to Charter School under Proposition 39 for the term of this Agreement in-lieu of Charter School making annual requests for facilities under Proposition 39; and

WHEREAS, Charter School presently operates in a temporary campus comprised of portable classrooms at Kennedy Annex; and

WHEREAS, District desires to allow Charter School to continue to use Kennedy Annex upon the terms and conditions set forth herein; and

WHEREAS, Charter School desires to remain at Kennedy Annex only until such time as facilities at North Campus are ready for Charter School; and

WHEREAS, the Parties intend to cooperate to make North Campus suitable for long-term use by Charter School, and the Parties further acknowledge and agree that Lessor's participation in the Project shall be limited to providing District staff and legal assistance with planning and processing of Lessee's application for Proposition 51 (2016) funding for the Project, and Lessor shall not be required to incur any third party cost or expense related thereto; and

WHEREAS, the Parties intend that Lessee shall use its best, good faith and reasonable efforts to obtain Proposition 51 funding for the Project, including any loan needed for Lessee's "local match" funds; and, that Lessee and the District may agree in the future to use alternative financing for Improvements to the Premises only if Proposition 51 funding is not available for the project as determined in accordance with this Agreement; and

WHEREAS, District intends to allow Charter School to make improvements to North Campus including repairs, renovations, replacements and other alterations, as generally set forth and to be set forth in the future on Exhibit "B" hereto (hereinafter "Project" or "Improvements"), which Improvements would be separately owned by the Charter School during the Term but would become the property of the District at the end of the Term; and

WHEREAS, Lessee agrees to comply with all requirements of any Proposition 51 funding it receives, including but not limited to ensuring that all Improvements to the Premises, and any future removal of Improvements and restoration of the Premises as directed by the District, shall be performed by contractors appropriately licensed by the California Contractors State License Board, and registered with the Department of Industrial Relations to perform public works in California, pursuant to plans and specifications approved by the Division of State Architect ("DSA"), in compliance with all applicable provisions of California law, including but not limited to Title 24 California Code of Regulations and the Field Act, and including the payment of prevailing wages; and

WHEREAS, this Agreement contemplates Lessee will remain at Kennedy Annex for between three and five years until the Project is completed and then vacate Kennedy Annex entirely and move the Charter School, students, and all property to North Campus, unless Lessee makes an earlier determination that the Project is infeasible as provided herein; and, in case of

{7390008}

determining the Project is infeasible, the Parties agree Charter School will vacate Kennedy Annex by June 30, 2022; and

WHEREAS, the Parties agree that Charter School shall be relieved of its obligation to pursue funding under Proposition 51 in the event that Charter School does not receive approval for a Preliminary Apportionment in the first round of funding, or Charter School does not receive approval for adequate funding to renovate the North Campus to accommodate 864 K-8 students within twenty-four (24) months after Charter School receives a Preliminary Apportionment; and

WHEREAS, it is mutually understood and accepted by the Parties that the terms and conditions of this Agreement further their shared goals over an extended period;

NOW, THEREFORE, for and in consideration of the foregoing recitals, of mutual promises of Lessor and Lessee, and of other good and valuable consideration, Lessor and Lessee agree as follows:

## ARTICLE I

### INCORPORATION OF RECITALS; DEFINITIONS AND CONSTRUCTION

1. The Parties acknowledge and agree that each and all of the foregoing Recitals reflect the Parties' mutual intentions, objectives and understandings for this Agreement, and are material terms and conditions of the Agreement, which are incorporated herein to set forth obligations and commitments of the Parties. The Articles shall control in the event of any conflict between the Recitals and the Articles of this Agreement.

2. Definitions. Unless the context otherwise specifically requires or indicates to the contrary, the following terms as used in this Agreement shall have the respective meanings set forth below. Each of the defined terms set forth below is deemed to be a defined term unless otherwise expressly indicated.

a) "Access Rights" shall mean the right of Lessee, its officers, agents, contractors, subcontractors and consultants to enter upon the Premises, following reasonable notice to Lessor, for purposes of evaluating the suitability of the Premises for Lessee's intended use.

b) "Authorized Representative" shall mean, (1) with respect to the Lessor: the Governing Board or Superintendent or any other person properly designated as an Authorized Representative of the Lessor; and (2) with respect to the Lessee: the Board of Directors, Chief Executive Officer, corporate officer, or any other person properly designated as an Authorized Representative of the Lessee.

{7390008}

c) "Available Revenues" shall mean, with respect to the Project, all sums appropriated by the Charter School in its annual budget as it may be approved by lawful means and as may otherwise become legally available by resolution of the Lessee for the purpose of paying Rent.

d) "Business Day" shall mean any day except Saturday, Sunday, any day on which banks located in the municipality in which the principal office of the Lessee is located, are required or are authorized by law to remain closed.

e) "Contractor" or "Contractors" shall mean a contractor or contractors and/or vendor or vendors selected by the Lessee to construct any Project or a portion thereof.

f) "Costs" shall mean all costs that under generally accepted accounting principles constitute capital costs of constructing, furnishing, equipping and installing the Project, including architectural, engineering and design costs, Project Contract costs, financing costs, including capitalized interest and Costs of Issuance, and all fees and costs incidental or related thereto.

g) "Event of Default" shall mean an Event of Default as described in Article XIII of this Agreement.

h) "Fiscal Year" shall mean the fiscal year of the Lessee for financial and budgeting purposes. The Lessee's Fiscal Year begins on July 1 of each calendar year.

i) "Improvements" and "North Campus Improvements" shall mean the addition, alteration, construction, demolition, modification, renovation, and reconstruction of facilities, including infrastructure and off-site improvements, at or adjoining North Campus for Lessee's use to operate a charter school on the Premises until expiration of the Term of this Agreement, including but not limited to those items set forth in Exhibit "B" which is attached hereto and incorporated herein by reference.

j) "Kennedy Annex Improvements" means items set forth in Exhibit "C" attached to this Agreement and incorporated by reference herein.

k) "Lessee" shall mean Caliber Schools, California non-profit public benefit corporation, doing business as Caliber Beta Academy, a California public charter school.

l) "Lessor" shall mean the West Contra Costa Unified School District.

{7390008}

o) "Premises" shall mean the land together with existing facilities thereon described in Exhibit "A" to this Agreement, specifically, that certain real property comprising approximately 9 acres, commonly identified by Assessor Parcel Number 403-220-005-9 and known as 2465 Dolan Way, San Pablo, California, and all buildings, structures and improvements located thereon.

p) "Project" shall mean the planning, design, evaluation, assessment, investigation, demolition, renovation, reconstruction, construction and other work encompassed by the Improvements - North Campus Improvements including, but not limited to those set forth on Exhibit B, all to be designed and approved, and constructed under the jurisdiction and inspection of DSA.

q) "Rent" shall mean the payment due and owing under Article IV of this Agreement.

r) "Rent Payment" shall mean the periodic payment of Rent due and owing from time to time.

s) "Rent Payment Dates" shall mean with respect to any portion of Rent owing pursuant to and represented by this Agreement, the first (1st) day of each calendar year commencing July 1, 2017, or if any such date is not a Business Day, the first Business Day preceding any such date until maturity or the Lease is paid in full.

t) "Resolutions" shall mean the resolutions adopted by the Lessor or the Lessee authorizing this Agreement.

u) "State" shall mean the State of California.

v) "State and Federal Law or Laws" shall mean the Constitution and the laws of the State of California, any ordinance, rule or regulation of any agency or political subdivision of the State, and the Constitution and laws of the United States and any rule or regulation of any federal agency.

m) "Term" shall mean the period specified in Article III of this Agreement.

**3. Construction.** Unless the context indicates otherwise, the following rules of interpretation shall govern this Agreement:

{7390008}

a) Captions. The captions of articles, paragraphs, subparagraphs, and sections and any table of contents of this Agreement are for convenience only and have no effect on the interpretation of the provisions of this Agreement.

b) Word Usage. Unless the context indicates otherwise:

- i. The plural and singular numbers shall each be considered to include the other;
- ii. The masculine, feminine, and neuter genders shall each be considered to include the others;
- iii. "Shall," "will," "must," "agrees," and "covenants" are each mandatory;
- iv. "May" is permissive.
- v. "Or" is not exclusive; and
- vi. "Includes" and "including" are not limiting.

c) Computation of Days. Days shall be counted by excluding the first day and including the last day. If the last day is a Saturday, Sunday, or legal holiday as described in the California Government Code Section 6700-6701, it shall be excluded. Any act required by this Agreement to be performed by a certain day shall be timely performed if completed before 5:00 p.m. local time on that date. If the day for performance of any obligation under this Agreement is a Saturday or a Sunday, or a legal Holiday, the time for performance of that obligation shall be extended to 5:00 p.m. local time on the first following date that is not a Saturday, Sunday, or legal holiday.

**4. Exhibits.** The following Exhibits are attached to this Agreement and incorporated by reference herein as a part of this Agreement:

- a) Exhibit A: Legal Description. A legal description of the Premises, including any appurtenances, is attached to this Agreement as Exhibit "A" and incorporated by reference herein.
- b) Exhibit B: North Campus Improvements.
- c) Exhibit C: Kennedy Annex Improvements.
- d) Exhibit D: Facilities Use Fee

{7390008}

5. North Campus Improvements. The Parties anticipate that the scope of the North Campus Improvements will be refined and may change as a result of Lessee's pursuit of Proposition 51 funding for the Project. The Parties agree to amend this Agreement for the sole purpose of revising Exhibit B to reflect additions and/or modifications to Lessee's anticipated and desired list of Improvements for the Premises as currently reflected on Exhibit B. District's Board hereby authorizes District Staff to approve plans and designs, review construction contracts, and authorize one or more amendments of this Agreement to revise Exhibit B (collectively "Project Approvals"). District Staff shall not unreasonably deny any of the foregoing Project Approvals which does not require an amendment of this Agreement, other than an amendment to revise Exhibit B. District Staff shall not unreasonably delay or condition any of the foregoing Project Approvals. District Board desires and intends that the foregoing delegation of authority be construed as broadly as possible and reserves only such authority as may be legally required in order to avoid a violation of an applicable law. The Parties acknowledge and agree that Lessee shall not be required to remove Improvements at the end of the Lease Term. Lessor may not require removal of any Improvement to the Premises unless the Improvement was constructed without the prior written approval of District. The Parties also agree to amend this Agreement, as necessary, to determine ownership and financing of the North Campus Improvements in the event that Prop 51 funding is not available to construct the Project.

## ARTICLE II

### REPRESENTATIONS AND DISCLAIMERS

1. Representations of Lessor. The Lessor represents, covenants, and warrants to Lessee as of the date of the execution of this Agreement:

a) That Lessor has good and marketable title to the Premises, has the full power and authority to enter into, to execute, and to deliver this Agreement and has duly authorized the execution and delivery of this Agreement;

b) That, if a problem with the title to the Premises should develop, the Lessor shall undertake reasonable actions necessary to defend title to the extent permitted by law, to obtain the necessary rights in the Premises that will permit the Parties hereto to perform the transaction(s) contemplated by this Agreement;

{7390008}

c) That the Lessor's past and current use of the Premises, and to the best of Lessor's knowledge, all past and current uses of the Premises, have complied and currently comply with all federal, state, and local environmental laws, rules, regulations, and ordinances.

d) That this Agreement, upon execution and delivery by Lessor, will constitute a valid and binding agreement of the Lessor, enforceable against the Lessor in accordance with its terms.

e) That to the best of Lessor's knowledge, no suit, action, or arbitration, or legal, administrative, or other proceeding or governmental investigation is pending or threatened against or affecting the Premises.

**2. Representations of Lessee.** The Lessee represents, covenants, and warrants to Lessor as of the date of the execution of this Agreement:

a) That the Lessee is a nonprofit public benefit corporation operating a duly established charter school organized pursuant to the California Charter Schools Act of 1992 (Education Code Section 47600 et seq.) and enjoys good standing as a California nonprofit public benefit corporation and as such has full legal right, power, and authority to enter into this Agreement and consummate all transactions contemplated by this Agreement, and by appropriate Resolution, has duly authorized the execution and delivery of this Agreement;

b) That the Authorized Representatives of the Lessee executing this Agreement on behalf of Lessee are duly and properly in office and duly authorized to execute this Agreement;

c) That this Agreement, upon execution and delivery by Lessee, will constitute a valid and binding agreement of the Lessee, enforceable against the Lessee in accordance with its terms.

d) That the execution and delivery of this Agreement, the fulfillment of and compliance with the terms and conditions hereof, will not conflict with or constitute a violation or breach of or default under any indenture, mortgage, deed of trust, agreement, lease, contract, or other agreement or instrument to which the Lessee is a party.

e) That Lessee's intended use of the Premises is set forth in Article VI of this Agreement.

f) That prior to the execution of this Agreement, Lessee has made such investigations it deems appropriate with respect to the suitability of the Premises for its intended use and has determined that the Premises are suitable for such intended use.

{7390008}

## ARTICLE III

### TERM

1. Term. The term of this Agreement ("Term") is forty (40) fiscal years, commencing on July 1, 2017 and ending at midnight on June 30, 2057, unless extended by the mutual, written agreement of the Parties, or terminated in accordance with the terms hereof.

2. Allowance of Access; Delivery of Possession. Upon execution of this Agreement and after Lessee's delivery of the documents listed below to Lessor, Lessor will grant Access Rights to allow the Charter School to conduct inspections, perform testing and to begin evaluation of the Premises for the Project. Lessee shall provide reasonable notice to Lessor before entering the Premises. Other than the foregoing grant of Access Rights, Lessor shall not be obligated to deliver possession of the Premises until after Lessee has secured final DSA approval of all plans and specifications for the Project, and Lessee has entered into a contract for construction of the Project, after which time Lessor shall deliver possession of the Premises within thirty (30) calendar days of notice of satisfaction of these conditions. As a condition of receiving Access Rights, Lessee shall first deliver to Lessor the following:

a) A copy of this Agreement fully executed by Lessee; and  
b) Copies of all policies of insurance and certificates of insurance thereof as required from Lessee under Article VIII of this Agreement.

3. Option to Terminate. At any time within the first five (5) years of this Agreement, Charter School at its option, and without any penalties, damages or other compensation to the District, may abandon or elect not to proceed with the Project, in which case the Term of this Agreement shall automatically terminate on June 30 of the following school year. If the Charter School elects to abandon or not to proceed with the Project, the Charter School may submit a request for Prop. 39 facilities during the school year that begins in the fall as per the Prop. 39 implementing regulations for an allocation of facilities from the District for the following school year. For example, if Charter School elects not to proceed on March 1, 2018, the agreement will terminate on June 30, 2019 and Charter School may submit a request for Prop. 39 facilities during the 2018/2019 school year for facilities in the 2019/2020 school year; and, if Charter School elects not to proceed on December 1, 2018, the agreement will terminate on June 30, 2020 and Charter School may submit a request for Prop. 39 facilities during the 2019/2020 school year for facilities in the 2020/2021 school year. The District agrees that Charter School may submit a Prop. 39 request in 2056 for the 2057-58 academic year or during the final year of this Agreement as determined in accordance with any early termination in order to ensure a smooth transition for Caliber Beta students.

{7390008}

4. Lease Expiration; Holding Over. This Agreement shall terminate without further notice, and without any action required by either Lessor or Lessee, at the expiration of the Term. Any holding over by Lessee after expiration of the Term shall not constitute a renewal or extension of this Agreement. In case of holdover after expiration of the Term, the Parties acknowledge and agree that Lessor shall be entitled to receive, and Lessee shall be liable for and submit timely payment of rent based on the then current pro-rata share calculation of per square foot cost, in accordance with California law.

## ARTICLE IV

### FACILITIES USE FEES

1. Kennedy Annex. Lessee shall pay District a Facilities Use Fee in accordance with the schedule set forth on Exhibit D until Charter School moves its program to the Premises. Charter School agrees to pay the Facility Use Fee while its program remains at Kennedy Annex. The annual amount of the Facility Use Fee shall be based on a pro rata cost estimate per square foot for the facilities provided to the Charter School at the Kennedy Annex as calculated by the District pursuant to Title 5, California Code of Regulations, Section 11969.7. Charter School shall pay the Facilities Use Fee in monthly payments commencing on July 1, 2017, and continuing on or in advance of the first day of each month thereafter (“Due Date”), without deduction, offset, prior notice or demand, in lawful money of the United States. If any payment is made more than fifteen (15) days after the Due Date, a late fee of one percent (1%) shall apply and interest shall accrue thereafter on such late payment commencing thirty (30) days after the Due Date, provided however that no interest shall accrue on said late fee. The interest charged shall be computed at the then-current discount rate established by the Federal Reserve Bank of San Francisco plus five percent (5%), or the maximum rate permitted by law. The payment by Charter School of any late fees or interest shall in no event excuse or cure any default by Charter School nor waive District’s legal rights and remedies with respect to such default. The Parties agree that the Facilities Use Fee is in lieu of Charter School paying a pro rata share for in-district students and any actual costs for out-of-district students.

2. North Campus. Charter School intends to make significant Improvements to the Premises at its sole cost and expense. At the end of the Term, as provided in Article III, the North Campus Improvements shall become the property of the District. The Parties therefore agree that as consideration for the construction of the North Campus Improvements on District's property that shall become the property of the District after completion of said Improvements, the District will credit to Charter School as credit against the facility use fees for the Premises - North Campus the amount of the actual construction costs of such Improvements, which is estimated to be in excess of \$5 million. Lessor, in consideration of the rents and the terms and conditions of this Agreement, hereby demises and leases to Lessee, and Lessee hereby takes and leases from Lessor for the sum of ten dollars (\$10.00) and other good and valuable consideration, the receipt and the

{7390008}

sufficiency of which are hereby acknowledged, the Premises described in Exhibit "A" attached hereto and incorporated by reference herein, including without limitation, all rights, powers, licenses, easements, rights-of-way, privileges, hereditaments, and franchises now or hereafter situated thereon or pertaining thereto.

**3. Initial Minimum Rent.** Lessee shall pay without abatement, deduction, or offset the following sums:

a) Rent. The Lessee agrees to pay solely from available revenues as annual rent \$10.00 per calendar year, payable in advance in one installment of ten dollars (\$10.00) on the first day of each July beginning July 1, 2017. The payments of rent shall not constitute a debt or a general obligation of the Lessee as contemplated within any constitutional or statutory debt limitation provision, provided, however, that Lessee's obligation to pay rent shall constitute a liability of the Lessee, payable solely from available revenues. Neither the full faith and credit nor the taxing power of the Lessee or Lessor as contemplated within any constitutional debt limitation provision is pledged to the payment of rent.

b) Definition of Lease Year. A lease year is a calendar year considered to begin on the first day of July and on each subsequent anniversary date thereafter.

## **ARTICLE V**

### **TERMINATION**

**1. Termination.** Subject to the other provisions of this Agreement, this Agreement shall terminate June 30, 2057, or sooner upon the occurrence of any one of the instances listed below. Other than provided in paragraph (b) or (c), such early termination shall not take effect until the end of the school year. :

a) Default. The occurrence of an event of default by the Lessor or Lessee under Article XIII of this Agreement which is not cured by the defaulting party within 60 days, except in the event that a cure takes longer than 60 days to complete, in which case the defaulting party must commence the cure within 30 days and pursue such cure diligently to completion.

b) Cessation of Program. If Lessee ceases to operate its program after a revocation, nonrenewal or surrender of the charter, following the exhaustion of all appeals.

c) Repeal of Charter Schools Act of 1992. In the event that the California Legislature repeals the Charter Schools Act of 1992 thereby repealing the authority of the Charter School to operate, this Agreement will terminate upon the date such legislation becomes effective.

{7390008}

d) Unilateral Termination. Charter School's unilateral right to terminate within the first five (5) years of this Agreement, pursuant to Article III, section 3.

2. Proposition 39. Upon execution of this Agreement, and for the duration of the Term except as provided for herein, Caliber Beta Academy shall waive all right to make any request of District for facilities, whether under Education Code Section 47614 and Title 5 of the California Code of Regulations Section 11969, et seq., as amended from time to time and adopted by the State Board of Education ("Proposition 39"), or any other state or Federal law. Such waiver shall remain in effect until Lessee elects to abandon or not to proceed with the Project at North Campus or this Agreement terminates, in accordance with Article III. Such waiver shall apply only to Beta Academy and shall not apply to any other charter school operated by Caliber Public Schools or any affiliate of Caliber Schools now or in the future.

3. Waiver and Release. To the extent provided in Article V, para. 2 of this Agreement, Caliber, its affiliated entities and supporting organizations, and its respective present and former officers, directors, employees, agents, representatives, successors and assigns, and each of them does hereby fully and finally settle, release, relieve, acquit and forever discharge the District and the directors, employees, administrators, assigns, agents, representatives, attorneys, and insurers, from any and all claims, claims for indemnification or contribution, complaints, causes of action, demands, liabilities, losses, or damages, including attorneys' fees and costs, experts' and consultants' fees and costs, known or unknown, which Caliber may now or hereafter have against the District and the directors, employees, administrators, assigns, agents, representatives, trustees, attorneys, insurers, experts and consultants, arising out of the District's obligations to provide Caliber Beta Academy with reasonably equivalent facilities for grades kindergarten through eighth grade, singularly or collectively, except as set forth herein. Caliber acknowledges that they are familiar with Section 1542 of the California Civil Code which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her, must have materially affected his or her settlement with the debtor.

Except as provided for specifically in this Agreement, Caliber waives and relinquishes any and all rights and benefits which they may have under, or which may be conferred upon them by the provisions of Section 1542 of the California Civil Code, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the subject matter of this Agreement. In connection with such waiver and relinquishment, Caliber hereby acknowledges that it is aware that it or its attorneys may hereafter discover claims or facts in addition to or different from those which they now know or believe to exist with respect to the subject matter of this Agreement, but that it is the intention of the Parties to this Agreement to hereby fully, finally and forever waive said claims,

{7390008}

whether known or unknown, suspected or unsuspected, which concern or arise out of the District's obligations, to provide facilities to Caliber.

## ARTICLE VI

### USE

1. Primary Use. The Premises shall be used by the Lessee for the operation of a charter school in accordance with Charter School's charter and the California Education Code, together with all other uses reasonably related thereto, provided that Lessee may at any time use the existing or subsequent Improvements, or permit them to be used, for any lawful purpose of a charter school only, and Lessee may alter, modify, remove, or demolish the Improvements, subject to Lessor's prior written approval and authorization, and only as provided for under this Agreement. Notwithstanding any other provision of this Agreement, the Parties agree that Caliber Beta Academy shall be permitted to offer before and after school programs and to allow portions of the facility to be used by a licensed child care provider.

2. Land Use Restrictions. Lessee may not enter into agreements allowing or restricting easements over the Premises without the express written consent of Lessor, which consent may be withheld for any reason or no reason in Lessor's absolute discretion. Lessor agrees to grant Project Approvals in accordance with Paragraph 5 of Article I. Lessee shall not be required to obtain the approval of the District for any zoning action, permit, license, or other local government approval necessary to complete the Project. Lessor agrees to cooperate with Lessee to complete the Project to the reasonable satisfaction of Lessee, which shall include the execution of all reasonably necessary documents.

3. Civic Center Use. The Premises shall be made available to the public pursuant to the Civic Center Act (Ed. Code section 38131 *et seq.*) after school hours established by Charter School. Charter School, at its sole cost and expense, shall adopt and operate a fair, transparent and neutral policy and procedures to make the Premises available for use by the public for use in accordance with the Civic Center Act. Otherwise, Charter School shall be allowed to utilize the Premises as needed to effectuate its educational program. Charter School shall provide to District a copy of its Civic Center Act policy, forms and rate schedule, and thereafter provide to District any amendments or modifications to said policy, forms and rate schedule.

4. Hazardous Materials.

a) Definition of Hazardous Materials. As used in this Agreement, the term "Hazardous Materials" shall mean any hazardous or toxic material, substances, or wastes, as now or subsequently designated under any law, statute, ordinance, rule, regulation, order, or ruling of any agency of the State or the United States including, but not limited to, asbestos, petroleum,

{7390008}

petroleum hydrocarbons, and petroleum based products, urea formaldehyde foam insulation, polychlorinated biphenyls, freon, chlorofluorocarbons or any other substance that exhibits hazardous characteristics such as ignitability, corrosivity, reactivity, or toxicity as defined as follows:

- i. "Ignitability" shall mean having a flashpoint of less than 140 degrees Fahrenheit;
- ii. "Corrosivity" shall mean a pH less than 2 or greater than 12.5;
- iii. "Reactivity" shall mean explosive or reacts violently with air or water and some chemicals such as cyanides and sulfides that may produce toxic gases;
- iv. "Toxic" shall mean toxic as determined by an Environmental Protection Agency ("EPA") Leach Test Method (TeLP toxic).

b) Use of Hazardous Materials. Lessee will be permitted the use of ordinary and general office supplies and household cleaning materials (some of which may constitute a hazardous material as defined above). For purposes of this Agreement "ordinary and general office supplies and household cleaning materials" are materials that may be purchased by members of the public and which do not require a license or certification to possess or handle. Lessee shall also be permitted to store, handle, treat, release, and dispose of chemicals and materials of ignitable, corrosive, reactive, or toxic nature for purposes of conducting its educational program. Lessee agrees to release or dispose of such materials only in accordance with directions provided by the manufacturer of the material. Such use shall conform with applicable State and Federal safety measures, if any, to address chemical identification, fire and life safety, accidental release, proper disposal, and handling and storage. Lessee otherwise agrees not to cause or permit any Hazardous Materials to be brought upon, stored, used, handled, generated, treated, released or disposed of on, in, or under or about the Premises by Lessee, its employees, agents, contractors, subcontractors, sub lessees, or invitees without prior written consent of Lessor, which consent Lessor may not unreasonably withhold. Upon the expiration or earlier termination of this Agreement, Lessee agrees to remove promptly from the Premises and Improvements at its sole cost and expense, any and all Hazardous Materials, including any equipment or systems containing Hazardous Materials which are installed, brought upon, stored, used, generated or released upon, in, under, or about the Premises, the Project and/or the Improvements or any portion thereof by Lessee or Lessee's employees, agents, contractors, subcontractors, and invitees during the term of the Agreement.

c) Indemnification. Lessee agrees to promptly indemnify, protect, defend, and hold harmless Lessor and Lessor's officers, administrators, Board members, employees, agents, successors, and assigns from and against any and all claims, damages, judgments, suits, causes of action, losses, liabilities, penalties, fines, expenses, and costs (including, but not limited to, clean-

{7390008}

up, removal, remediation and restoration costs, sums paid in settlement of claims, attorney's fees, consultant fees, and expert fees and court costs) which arise or result from the presence of Hazardous Materials on, in, under, or about the Premises, the Project, the Improvements, or any other portion of the Premises which are caused by Lessee or any of Lessee's employees, agents, contractors, subcontractors, or invitees during the term of this Agreement. During the term of this Agreement, Lessor shall have the right, but not the obligation, to enter upon the Premises upon reasonable notice to Lessee, and at such times and under such circumstances so as not to interfere with the conduct of Lessee's intended use, to inspect, investigate, sample and/or monitor the Premises to determine if Lessee is in compliance with the terms of this Agreement regarding Hazardous Materials.

## ARTICLE VII

### INDEMNIFICATION

1. Indemnification of Lessor. Lessee shall (a) indemnify and save harmless the Lessor and its administrators, Board of Trustees, individual Board members, agents, employees, officers and directors (“Lessor Indemnities”) from and against claims, demands, liabilities, damages, losses, costs, charges and any and all expenses (including but not limited to reasonable attorneys' fees) that the Lessor Indemnities may incur or be subject to as a consequence, directly or indirectly, of Lessee's presence on the Premises and its use of the Premises, and (b) reimburse the Lessor Indemnities for all losses, costs, charges, and expenses (including reasonable attorneys' fees) that the Lessor Indemnities may incur or be subject to as a consequence, directly or indirectly, of involvement in any legal proceeding or action relating to the foregoing. All amounts which become due from the Lessee under this Section shall be credited with any amounts received by the Lessor from insurance provided by the Lessee and shall be payable by the Lessee within thirty (30) days following demand thereof by the Lessor and shall survive the termination or expiration of this Agreement. Lessee reserves the right to select counsel hired to defend Lessor,

2. Indemnification of Lessee. To the extent and subject to limits permitted by applicable laws of the State as in effect from time to time during the term of this Agreement, the Lessor shall (a) indemnify and save harmless the Lessee and its agents, employees, officers and directors (“Lessee Indemnities”) from and against claims, demands, liabilities, damages, losses, costs, charges and any and all expenses (including but not limited to reasonable attorneys' fees) that the Lessee Indemnities may incur or be subject to as a consequence, directly or indirectly, of any breach or non-performance by the Lessor of its obligations under this Agreement, or a willful or grossly negligent act of the Lessor in connection with such performance or non-performance, and (b) reimburse the Lessee Indemnities for all losses, costs, charges, and expenses (including reasonable attorneys' fees) that the Lessee Indemnities may incur or be subject to as a consequence, directly or indirectly, of involvement in any legal proceeding or action relating to the foregoing. All amounts which become due from the Lessor under this Section shall be credited

{7390008}

with any amounts received by the Lessee from any insurance provided by the Lessor and shall be payable by the Lessor within thirty (30) days following demand thereof by the Lessee and shall survive the termination or expiration of this Agreement. Lessor reserves the right to select counsel hired to defend Lessee.

**3. Procedures.** The indemnification obligations set forth in this Article are contingent upon (a) the indemnified party giving prompt written notice to the indemnifying party of a claim for which the indemnified party is seeking indemnification, (b) the indemnified party allowing the indemnifying party to control the defense and related settlement negotiations for any such claim, and (c) the indemnified party fully assisting and cooperating in the defense so long as the indemnifying party pays the indemnified party's out-of-pocket expenses. The indemnifying party shall not settle a claim without the written consent of the indemnified party, such consent not to be unreasonably withheld.

## **ARTICLE VIII**

### **INSURANCE**

**1. Lessee's Duty to Keep Improvements Insured.** Throughout the term, at Lessee's sole cost and expense, Lessee shall keep or cause to be kept insured, for Lessee's benefit, all improvements located on or appurtenant to the Premises, including the Improvements added by or for Lessee, against loss or damage by fire and such other risks as are now or hereafter included in an extended coverage endorsement in common use for commercial structures including vandalism and malicious mischief. The amount of the insurance shall be sufficient to prevent either the Lessor or Lessee from becoming a co-insurer under the provisions of the policy, but in no event shall the amount be less than 100 percent of the then actual replacement cost of all improvements. Lessor shall not carry any insurance the effect of which would be to reduce the production or payment to Lessee under any insurance that this Agreement obligates Lessee to carry. Lessee may include the holder of any mortgage on the leasehold as a loss payee; on Lessor's notice of demand, Lessee shall include the holder of any mortgage on the leasehold as a loss payee to the extent of that mortgage interest. At Lessee's sole cost and expense, Lessor shall be named as an additional insured on all policies of insurance required under this Agreement.

**2. Proceeds of Fire and Extended Coverage Insurance.** Lessor shall, at Lessee's cost and expense, cooperate fully with Lessee to obtain the largest possible recovery, and all policies of fire and extended coverage insurance required by Section 1 of this Article VIII shall provide that the proceeds shall be paid to Lessee as follows:

a) Any insurance proceeds remaining after complying with the provisions of this Agreement relating to maintenance, repair, and reconstruction of improvements shall be Lessee's sole property.

{7390008}

b) If the proceeds do not exceed the amount defined in this Agreement as the measure of repairs, alterations or additions, all the proceeds shall be adjusted by and paid to Lessee and shall be applied by Lessee for the repair, restoration, or reconstruction of any improvements damaged or destroyed by the casualty giving rise to the insurance claim. If the proceeds exceed that measure, all the proceeds shall be adjusted by Lessor and Lessee and shall be deposited with the bank or institutional fiduciary designated by Lessor as escrow holder to be disbursed in the same manner as if the proceeds were a construction loan from an institutional lender to Lessee made under provisions of this Agreement. Lessee shall pay all escrow fees and charges.

**3. Liability Insurance.** Throughout the term of this Agreement, at Lessee's sole cost and expense, Lessee shall keep or cause to be kept in force, for the mutual benefit of Lessor and Lessee, comprehensive broad form general liability insurance against claims and liability for personal injury, death, or property damage arising from the use, occupancy, disuse, or condition of premises, improvements, or in joining areas or ways; providing protection of at least \$1,000,000 for bodily injury or death to anyone person, at least \$1,000,000 for any one accident or occurrence, and at least \$1,000,000 for property damage.

**4. Boiler, Unusual Hazards, Other Insurance.** Lessee shall procure and keep in force the following insurance coverage:

a) Boiler and machinery insurance. If at any time or from time to time such equipment is located on the premises;

b) If Lessee commits, permits, or causes the conduct of any activity or the bringing or operation of any equipment on or about the premises, creating any unusual hazards, Lessee shall, promptly on written notice of demand from Lessor, procure and maintain in force during such activity or operation, insurance sufficient to cover the risks represented thereby.

**5. Policy Form, Content, Insurer.** All insurance required by express provisions of this Agreement shall be carried only by responsible insurance companies licensed to do business in the State of California. All such policies shall be non-assessable and shall contain language, to the extent obtainable, to the effect that (a) any loss shall be payable notwithstanding any act or negligence of Lessor or Lessee that might otherwise result in a forfeiture of the insurance, (b) the insurer waives the right of subrogation against Lessor, (c) the policies are primary and non-contributing with any insurance that may be carried by Lessor, and (d) they cannot be cancelled or materially changed except after thirty (30) days written notice by the insurance company to Lessor or Lessee. Lessee shall furnish Lessor with copies of all such policies promptly upon Lessor's written demand, or with certificates evidencing the insurance. Before commencement of this Agreement, Lessee shall furnish Lessor with binders representing all insurance required by this Agreement upon Lessor's written demand. Lessee may effect for its own account any insurance

{7390008}

not required under this Agreement. Lessee may provide by blanket insurance covering the Premises and any other location or locations any insurance required or permitted under this Agreement provided it is acceptable to all mortgage ease.

**6. Failure to Maintain Insurance; Proof of Compliance.** Lessee shall deliver to Lessor, in the manner required for notices, copies or certificates of all insurance policies required by this Agreement upon Lessor's written demand, together with evidence of payment required for procurement and maintenance of the policy. If Lessee fails or refuses to procure or maintain insurance as required by this Agreement or fails or refuses to furnish Lessor upon written demand with required proof that the insurance has been procured and is in force and paid for, Lessor shall have the right, at Lessor's election and on thirty (30) days written notice, to procure and maintain such insurance. The premiums paid by Lessor shall be treated as added rent due from Lessee with interest, to be paid on the first day of the month following the date on which the premiums were paid. Lessor shall give prompt notice of the payment of such premiums, stating the amounts paid and the names of the insurer or insurers. Interest shall accrue on amounts paid by Lessor at the annual rate of 10%, until paid in full.

**7.** Nothing in this Article VIII is intended to or shall lessen any insurance requirement of the District related to the Charter School's use of Kennedy Annex for such time as Charter School remains at Kennedy Annex. The insurance requirements of District that previously applied to Charter School's use of Kennedy Annex shall remain in effect until the Charter School moves its program from Kennedy Annex.

## **ARTICLE IX**

### **CONDEMNATION**

**1.** If the Premises or any portion thereof is taken under the power of eminent domain, or sold under the threat of the exercise of said power (all of which are herein called "condemnation"), this Agreement shall terminate as to the part so taken as of the date the condemning authority takes title or possession, whichever first occurs; provided that if so much of the Premises is taken by such condemnation to substantially and adversely affect the Lessee's operation of the Charter School on the Premises, Lessee shall have the option, to be exercised only in writing within thirty (30) days after Lessee first receives notice of such condemnation or Lessor has given Lessee written notice of such taking or, in the absence of such notice, within thirty (30) days after the condemning authority shall have taken possession, whichever first occurs, to terminate this Agreement as of the date the condemning authority takes such possession. If Lessee does not terminate this Agreement in accordance with the foregoing, this Agreement shall remain in full force and effect as to the portion of the Premises remaining, except that Rent and Facilities Use Fees to be paid after such taking shall be reduced in the proportion that the floor area of the Premises taken bears to the total floor area of the Premises. Lessor shall have the option in its sole

{7390008}

discretion to terminate this Agreement as of the taking of possession by the condemning authority, by giving written notice to Lessee of such election within thirty (30) days after receipt of notice of a taking by condemnation of any part of the Premises. Any award for the taking of all or any part of the Premises under the power of eminent domain or any payment made under threat of the exercise of such power shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold or for the taking of the fee, or as severance damages; provided, however, that Lessee shall be entitled to any separate award for loss of or damage to Lessee's fixtures, removable personal property and unamortized tenant improvements that have been paid for by Lessee. For that purpose the cost of such improvements shall be amortized over the original term of this Agreement excluding any options. In the event that this Agreement is not terminated by reason of such condemnation, Lessor shall to the extent of severance damages received by Lessor in connection with such condemnation, repair any damage to the Premises caused by such condemnation except to the extent that Lessee has been reimbursed therefor by the condemning authority. Lessee shall pay any amount in excess of such severance damages required to complete such repair.

2. This Article does not authorize Lessor to exercise any powers of eminent domain related to the Premises. Lessor agrees that it will not disturb Lessee's rights under this Agreement, through the exercise of eminent domain, condemnation, or any related power or process.

## ARTICLE X

### IMPROVEMENTS

1. Kennedy Annex Improvements. Charter School shall operate at the Kennedy Annex location until Charter School completes the Project and occupies the Premises, but in no event shall Charter School occupy Kennedy Annex after June 30, 2022. Lessor agrees to complete the Kennedy Annex Improvements at Lessor's sole expense as set forth on Exhibit C hereto. District's obligation to install the Kennedy Annex Improvements shall survive any termination of this Agreement until such time as Charter School ceases to operate at the Kennedy Annex.

2. Cooperation to Finance North Campus Improvements. The Parties shall cooperate in the submission of an application to the Office of Public School Construction in the California School Finance Authority for funding for the Project pursuant to Proposition 51, and shall coordinate efforts to complete the Project in the manner and according to the terms and conditions specified in this Article X. The Parties shall make an initial application for such funding no later than June 5, 2017, and shall use best efforts to cooperate thereafter to maximize the potential for recovery of such funding. The Parties agree that time shall be of the essence in all matters related to the recovery of public funding for the Project. The Parties agree to file subsequent or amended

{7390008}

applications for funding to all applicable state agencies throughout 2017, 2018, and beyond as necessary.

3. Alternative Financing. The Charter School's obligation to use Proposition 51 funds shall terminate in the event that Charter School does not receive approval for a Preliminary Apportionment in the first round of Proposition 51 funding, or Charter School does not receive approval for adequate funding to renovate the North Campus to accommodate 864 K-8 students within twenty-four (24) months after Charter School receives a Preliminary Apportionment during round 1 of funding under Proposition 51. In such case, Lessee and Lessor shall work in good faith to identify alternative funding sources to continue with the Project, which alternative funding sources shall be subject to mutual agreement of the parties. .

4. Project Approval. The Parties agree to use best efforts to ensure the timely completion of the Project. All plans, designs, investigations and environmental assessments needed to complete the Project shall be prepared by Lessee, subject to approval by DSA, as applicable, and Lessor.

a) District agrees to make commercially reasonable efforts to ensure that the Charter School's use of the Premises is regulated exclusively by the District and is exempt from zoning regulation by any other local government agency, city, county, or political subdivision (other than a fire protection district or agency). Such efforts are limited to compliance with Subdivision (b) of Section 53094 of the Government Code, if necessary. Lessee's indemnity under this Lease shall include the defense of any action by a local government agency against Lessor under Subdivision (c) of Section 53094, and all applicable zoning regulations.

b) Lessee agrees that the Project and the North Campus Improvements shall be subject to final design approval by DSA prior to entering into a construction contract, and construction inspection and Project close-out and certification by DSA. Project inspections shall be by an inspector certified by DSA selected from a Lessor approved list of DSA Certified Inspectors

c) District agrees to act as "lead agency" for any required CEQA compliance, including any determination that the Project qualifies for an exemption from CEQA. Charter School agrees to enter into a reimbursement agreement with the District, if necessary, to fund the costs of third party professionals and consultants necessary to comply with CEQA. In the event of any legal challenge to the Project under CEQA, District agrees to tender its defense of such challenge to Charter School and to cooperate promptly thereafter as requested by Charter School. Charter School agrees to indemnify and defend the District from any challenge to any determination made by the District under CEQA related to the Project. Charter School agrees to indemnify, defend by counsel approved by the District in writing, such approval not being unreasonably withheld or delayed, and hold harmless the District, its employees, officers,

{7390008}

governing board and members thereof, agents, and representatives, from and against any claims, liabilities, losses, costs, or damages arising out of or resulting from any claim or contention arising out of this Agreement, or Charter School's use of the Site or construction of any Improvements thereon, including but not limited to, any third party challenge or contention based on the California Environmental Quality Act (Pub. Resources Code, §§ 21000, et seq., Cal. Code Regs., tit. 14, §§ 15000, et seq. ("CEQA")).

**5. Conditions of Construction.** Before any work of construction, alteration, or repair is commenced on the Premises, and before any building materials have been delivered to the Premises by Lessee or under Lessee's authority, Lessee shall comply with all of the following :

a) **Delivery to Lessor.** Lessee shall deliver to Lessor for Lessor's review and input prior to submittal to DSA for approval, two (2) sets of preliminary construction plans and specifications. All Improvements shall be constructed within the legal boundaries of the Premises; provided that required work beyond the Premises on utilities, access, and conditional use requirements do not violate this provision.

b) **Requirement of DSA's and Lessor's Written Approval.** No structure or other improvement of any kind shall be constructed on the Premises, and no building or structure shall be improved, modified, or altered in any way, or partially or completely demolished, unless and until Lessor has approved in writing the plans and specifications for the proposed modification, replacement or alteration of that building, structure or improvement, or has waived its right to do so in writing, and Lessee has obtained final approval of the plans and specifications for the Project from DSA. Furthermore, no structure or other improvement shall be constructed on the Premises that does not comply with the plans and specifications, and survey requirements – specific improvement locations approved in writing by the Lessor, and all applicable provisions of California law, including but not limited to Title 24 of the California Code of Regulations. Lessor shall endeavor to review all plans and specifications within a reasonable time, and not unreasonably delay its response to Lessee's preliminary plans and specifications. Lessee shall not deliver proposed working drawings, preliminary, revised, or proposed final construction documents to DSA until Lessor has approved such documents. Following Lessor's first or any subsequent disapproval, Lessee may elect (i) to submit revised plans and specifications to Lessor, or (ii) to give notice contesting the reasonableness of Lessor's disapproval.

c) **Changes in Plans.** After approval by Lessor of the documents pertaining to the Improvements, any substantial change in the plans or specifications for the Improvements shall be subject to approval by the Lessor, in writing prior to submittal to DSA.

**6. Construction.**

{7390008}

(a) Notwithstanding any provision contained herein, Charter School agrees that the Improvements shall be designed, approved and constructed in complete compliance with California law, including but not limited to Education Code section 17078.54, Title 24 California Code of Regulations, and the Field Act, and all applicable requirements of DSA through and including Project close-out and certification, and the Project and Premises shall not be used or put into operations prior to inspection and final clearance by DSA or, for those Improvements not inspected by DSA, the building enforcement agency with jurisdiction over the area in which the Premises is located. Charter School, at its sole cost and expense, shall pay for the DSA inspector to inspect the Improvements during construction and after completion. The DSA inspector shall be permitted access to the Premises at all times during construction, which access shall be coordinated between the DSA inspector and Charter School.

(b) Within 30 business days after completion of construction of the Improvements, Charter School, at its sole cost and expense, shall, if applicable, cause a Notice of Completion to be recorded in the office of the Recorder of Contra Costa County in accordance with section 3093 of the Civil Code, or any successor statute, and shall furnish a copy thereof to District upon such recordation. At the conclusion of construction of Improvements, Charter School, at its sole cost and expense, shall: cause the contractor that built the Improvements to (A) update all construction documents related to the Improvements as necessary to reflect all changes made to the construction documents during the course of construction, (B) forward the “record-set” to Charter School’s architect of record who will prepare a final set of “as-built” drawings, and (C) deliver to District one (1) set of record-set of drawings (which shall be the DSA approved transparencies which the architect of record has recorded all of the as-built conditions and each sheet shall have the DSA application number and stamped “As-Built”) and one (1) CD containing said record-set of drawings within 90 days following substantial completion of the Improvements. Charter School shall maintain a copy of all warranties, guaranties, and operating manuals and information relating to the Improvements and deliver a copy of the same to District.

**7. Mechanics' Lien.** At all times during the term of this Agreement, Lessee and Lessor shall keep the Premises and all Improvements now or hereafter located on the Premises free and clear of all liens and claims of liens for labor, services, materials, supplies, or equipment performed on or furnished to the Premises.

**8. Title of Improvements.** Subject to the provisions of Article XII, title to all Improvements to be constructed on the Premises by Lessee shall be owned by Lessee until expiration of the Agreement term or earlier termination of this Agreement. At the expiration of the Agreement Term, provided that Lessee is not in default, Lessee shall have the right to remove any or all fixtures and other removable property installed by Lessee, provided all resulting injuries to the Premises are completely remedied and Lessee complies with Lessor's reasonable requirements respecting repair of all affected areas, replacement of fixtures and other improvements for complete functionality for Lessor’s intended uses, and the resulting appearance. Other than such

{7390008}

fixtures and removable property, the North Campus Improvements shall remain on the Premises at the end of the Term or earlier termination of this Agreement.

9. Grant of Easements. Lessor shall, if necessary, grant public entities or public service corporations rights of way or easements on or over the Premises for poles or conduits or both for telephone, electricity, water, sanitary or storm sewers or both, and for other utilities and municipal or special district services. The granting of any such easements shall be in accordance with Education Code section 17556 *et seq.*

10. Utilities. Except as specified in this Section, Lessee shall pay for the cost of connecting utilities, including without limitation, water, sewer, gas, electricity, telephones, and other utilities, including the charges, if any, for installing meters for them. Lessee shall have the right to access and hookup to any existing utilities on the Premises (assuming adequate capacity exists) and shall also pay promptly as the same becomes due and payable, all bills for water, gas, electricity, heat, refuse pick up, sewer service charges, and any other utilities, materials and services furnished to or used by Lessee on or about the Premises, in addition to the rents and other payments herein. As to any utility, material or service which is not separately charged for meter to the premises, Lessee shall pay to the Lessor within ten (10) days after written demand Lessee's pro rata share of all utilities charges, which pro rata share shall be based on the percentage attributable to Lessee's use.

## ARTICLE XI

### REPAIRS AND MAINTENANCE

1. Lessee's Duties to Maintain Premises. Throughout the Term of this Agreement, Lessee shall, at Lessee's expense, maintain the Premises and Improvements in good condition and repair, ordinary wear and tear excepted, and in accordance with all applicable enforced policies of Lessor, laws, rules, regulations, and ordinances of federal, state, county, and municipal agencies and bodies claiming jurisdiction, and any requirement of any insurance company insuring all or part of the Premises or Improvements or both. Except as provided below, Lessee shall promptly repair, restore, and replace as required to maintain or comply as above, or to remedy all damage or destruction of all or any part of the Improvements resulting wholly or in part from causes required by this Agreement to be covered by fire or extended coverage insurance,. Within ninety (90) days after notice, Lessor may elect to repair, restore, and replace as above, and Lessee shall not demolish, remove or destroy any such condition until the expiration of Lessor's notice of election. Lessor agrees to accept the Premises at the end of the Term in broom clean condition with reasonable allowance for ordinary wear and tear.

{7390008}

2. Reconstruction. Alterations. "Construction Costs" include the costs of labor, materials, and reasonable profit to general contractor for any demolition and any removal of existing Improvements, if any, as well as preparation, construction, and completion of all new Improvements or parts of Improvements.

3. Routine Repair and General Maintenance of Kennedy Annex. Until its program has moved to North Campus, Charter School shall be responsible for the routine repair and general maintenance of the Kennedy Annex, including any furnishing or equipment provided to the Charter School; and, District will be responsible for repair and maintenance of the athletic fields, the intrusion alarm, and the fire alarm. For purposes of the Parties obligations for repair and maintenance of Kennedy Annex, "routine repair" shall mean repair of deficiencies and defects that may arise in the facilities, and in any furnishing or equipment, other than the repairs mentioned in Education Code section 17582, and "general maintenance" shall include, but not be limited to, the school facility component work performed on an annual basis each year to keep facilities in proper operating condition, other than the maintenance mentioned in Education Code section 17582. Charter School shall notify the District's appointed contact person whenever the Charter School performs repair or maintenance services. District shall be responsible for the major repair and maintenance of the Kennedy Annex as provided by section 17582. For purposes of this Section, "major repair and 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 repair or maintenance under Education Code section 17582. The District shall only be obligated to perform deferred repair and maintenance on the Kennedy Annex on an equivalent basis as that performed at the comparable District school sites identified in the District's Preliminary Offer of Facilities dated February 1, 2017.

## ARTICLE XII

### ENCUMBRANCE, ASSIGNMENT, SUBLETTING

1. Definitions. As used in this Article, the following terms shall have the following definitions:

a. The term "Leasehold Mortgagee" shall mean the holder of the beneficial interest of a Leasehold Deed of Trust, who has given written notice to District of its name and address for notices, as further defined in Exhibit "E" hereof.

b. The term "Leasehold Deed of Trust" shall mean any encumbrance of this Agreement, by a deed of trust, mortgage or other security instrument including, without limitation, assignments of rents, issues and profits from the Property, to secure repayment of loans made to, or obligations of, Charter School.

{7390008}

c. The term "Property" shall mean the improvements constructed on the Premises by or for the benefit of Lessee, including but not limited to those identified in Exhibit B, and leased to Charter School pursuant to this Agreement.

d. The term "Leasehold Estate" shall mean all Charter School's interest in the assets conveyed by this Agreement, including but not limited to the Property.

### **ARTICLE XIII**

#### **DEFAULTS AND REMEDIES**

1. Event of Default. An Event of Default hereunder means the occurrence of any one or more of the following events:

a) Notwithstanding any provision in this Agreement, any failure by Lessee to pay any fee, premium, if applicable, charge, reimbursement, or other amounts due and owing under this Agreement, or any part thereof, when due unless such failure is cured within 30 calendar days after Lessee's receipt of written notice of default from the District; or;

b) Any failure by Charter School to observe or perform any provision, covenant or condition of this Agreement to be observed or performed by Charter School where such failure continues for 30 days after written notice of default from District to Charter School; provided, that if the nature of such default is that the same cannot reasonably be cured within a 30 day period, Charter School shall not be deemed to be in default if within said 30 day period it submits to District its plan and a timeline reasonably acceptable to District to cure said default and diligently commences and prosecutes to completion such cure; or

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

{7390008}

d) Abandonment of all or any portion of the Premises by Charter School; or

e) The failure by Charter School to maintain a current and active charter petition following written notice of default and the time provided in paragraph (b) to cure (after exhaustion of all appeals and remedies under the Education Code).

**2. Remedies in the Event of Default.** Upon the occurrence of any event of default by Charter School and after the expiration of all notice and cure periods as provided in this Agreement, District shall have, in addition to any other remedies available to District at law or in equity (all of which remedies shall be distinct, separate and cumulative) and subject to compliance with Article XVI (Dispute Resolution), the option to pursue any one or more of the following remedies, each and all of which shall be cumulative and nonexclusive, without any notice or demand whatsoever:

a. Terminate this Agreement, in which event Charter School shall surrender the Premises to District within a reasonable time considering hardship to Charter School or students, and if Charter School fails to do so, District may, without prejudice to any other remedy which it may have for possession or arrearages, enter upon and take possession of the Premises and expel or remove Charter School and any other person who may be occupying the Premises or any part thereof, without being liable for prosecution or any claim or damages therefor; and District may recover from Charter School the full amount of any fees, charges or other amounts due under this Agreement. If the District elects to terminate the Agreement and force the Charter School to surrender the Premises, the Charter School shall be allowed to pursue facilities from the District under Prop. 39 pursuant to regulatory timelines and shall be permitted to remain on the Premises until such time as those Prop. 39 facilities are allocated by the District to the Charter School.

b. Subject to the rights of the Leasehold Mortgagee set forth herein and in Exhibit E, District shall have the remedy described in California Civil Code Section 1951.4 (lessor may continue Agreement in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has the right to sublet or assign, subject only to reasonable limitations). Accordingly, if District does not elect to terminate this Agreement on account of any default by Charter School, District may, from time to time, without terminating this Agreement, enforce all of its rights and remedies under this Agreement, including the right to recover all rent as it becomes due.

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

{7390008}

## ARTICLE XIV

### TAXES; ASSESSMENTS

1. Taxes. The term "Real Property Taxes" shall include any form of assessment, license, fee, license tax, business license fee, commercial rental tax, levy, charge, penalty, tax or similar imposition, imposed by any authority having the direct power to tax, including any city, county, state, or federal government, or any school, agricultural, lighting, drainage, or other improvement or special assessment district thereof, as against any legal or equitable interest of Lessor in the Premises.

a) Property Taxes. Lessor and Lessee recognize that as long as the use of Premises is for educational purposes, Lessor may claim an exemption from property taxes for any and all portions of the Premises leased by Lessee. Pursuant to Revenue and Taxation Code section 202.2, any and all reduction or refund in property taxes shall inure to the benefit of Lessee. This benefit to Lessee is reflected in the terms of this Agreement. If at any time Lessor does not claim the exemption available on the Premises, Lessee may file a claim of refund pursuant to Revenue and Taxation Code section 5096.

b) Personal Taxes. Lessee shall pay, or cause to be paid, before delinquency any and all taxes levied or assessed and which become payable during the term hereof upon all Lessee's leasehold improvements, equipment, furniture, fixtures, and any other personal property located in the Premises.

2. Lessee's Right to Contest. Lessee may contest the legal validity or amount of any taxes, assessments, or charges for which the Lessee is responsible under this Agreement, and may institute such proceedings as Lessee considers necessary. If Lessee contests any tax, assessment, or charge, Lessee may withhold or defer payment or pay under protest but shall protect Lessor and the Premises from any lien by adequate surety bond or other appropriate security.

3. Exemptions. Lessee's obligations to pay taxes or assessments levied or charged against the Premises or Improvements or against specified personal property shall not include the following, whatever they may be called: income, profits, taxes levied or assessed against Lessor by federal, state, or other governmental agency, estate, succession, inheritance, or transfer taxes of Lessor; or corporation, franchise, or profits taxes imposed on the corporate owner of the fee title of the Premises. If, however, during the term of this Agreement, taxes are imposed, assessed, or levied on the rents derived from the Premises in lieu of all or any part of real property taxes, personal property taxes, or real and personal property taxes that Lessee would have been obligated to pay under the foregoing provisions, and the purpose of the new taxes is more clearly akin to that

{7390008}

of an ad valorem or use tax than to an income or franchise tax on Lessor's income, Lessee shall then pay the taxes as provided above for property taxes and assessments.

## ARTICLE XV

### NOTICES

**1. Definition of Notice; Application of Provision.** As used in this Agreement, "notice" includes, but is not limited to, the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver, and appointment. No notice of the exercise of any option or election is required unless the provision of this Agreement which provides for the election or option expressly requires notice. Unless the provisions of this Agreement on rent direct otherwise, rent shall be sent in the manner provided for giving notice. All notices must be in writing; provided that no writing other than the check or the instrument representing rent payment itself need accompany the payment of rent. Notice is considered given either (a) when delivered in person to the recipient named below, or (b) on the date shown on the return receipt after deposit in the United States mail in a sealed envelope or container, either Registered or Certified Mail, Return Receipt Requested, postage and postal charges prepaid, addressed by name and addressed to the party or person intended as follows:

Notice to Lessor:

West Contra Costa Unified School District  
Attn: Superintendent

Notice to Lessee:

Caliber Schools  
Attn: Chief Executive Officer

**2. Change of Recipient or Address.** Either party may, by notice given at any time or from time to time, require subsequent notices to be given to another individual, whether a party or an officer or representative, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

{7390008}

## ARTICLE XVI

### DISPUTE RESOLUTION

1. Dispute Resolution. Should any grievance or dispute arise between Lessor and Lessee concerning the terms of this Agreement, the parties shall each designate one Authorized Representative to meet in person to attempt to resolve the dispute. Should such a meeting fail to resolve the dispute, the parties shall designate two representatives, which shall be comprised of one Authorized Representative and one Board Member for each party, to meet in person to attempt to resolve the dispute. In the event that such informal negotiations do not resolve the dispute, Lessor and Lessee shall select a neutral third-party mediator to resolve the dispute through a formal mediation process prior to filing suit. Such mediator shall have no less than ten (10) years of experience as a licensed California attorney. The parties shall share the cost of the mediator, and shall participate in all required mediation sessions in good faith until the mediator, acting reasonably, determines that the mediation process has been completed. Lessor agrees to comply with this Section prior to exercising any of the remedies provided in Article XIII of this Agreement.

## ARTICLE XVII

### GENERAL CONDITIONS; MISCELLANEOUS PROVISIONS

1. Nonmerger of Fee and Leasehold Estates. If both Lessor's and Lessee's estates in the Premises or the Improvements or both become vested in the same owner, this Agreement nevertheless shall not be destroyed by application of the doctrine of merger, except at the express election of the owner and the consent of the mortgagee or mortgagees under all mortgages existing under provisions of this Agreement relating to the purchase or construction of Improvements.

2. Severability; Partial Invalidity. The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render the other provisions unenforceable, invalid, or illegal. If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

3. Binding Effect. This Agreement and the covenants and conditions hereof apply to, and are binding on the heirs, successors, and assigns of the parties.

4. Independent Covenants. This Agreement shall be construed as though the covenants between the Lessor and Lessee are independent and not dependent.

{7390008}

5. Governing Law and Venue. This Agreement shall be construed and interpreted in accordance with the laws of the State of California, and all references to specific statutes shall include any successor statutes thereof. The parties also agree that, in the event of litigation, venue shall be the proper state court located in Contra Costa County.

6. Entire Agreement. This Agreement and all exhibits, addenda, schedules, and agreements referred to in this Agreement constitute the final, complete, and exclusive statement of the terms of the Agreement between Lessor and Lessee pertaining to the Lessees leasing the Premises, and supersedes all prior and contemporaneous understandings or agreements of the parties. This Agreement contains all the understandings and agreements between the parties. There are no oral understandings, terms, or conditions, and neither party has relied upon representations, express or implied, not contained in this Agreement. Neither party has been induced to enter into this Agreement by the other.

7. Reasonableness and Good Faith. Except as limited elsewhere in this Agreement, whenever this Agreement requires Lessor or Lessee to give its consent or approval to any action on the part of the other, such consent or approval shall not be unreasonably withheld or delayed. If either Lessor or Lessee disagrees with any determination covered by this provision and reasonably requests the reasons for that determination, the determining party shall furnish its reason in writing and in reasonable detail within five (5) business days following the request.

8. Counterparts. This Agreement may be executed in one or more counterparts, each one of which shall be deemed an original, and all of which taken together shall constitute one in the same instrument.

9. No Agency. Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third person to create the relationship of principal and agent or of partnership or joint venture or of any association between Lessor and Lessee, and neither the method of computation of rent nor any other provision contained in this Agreement nor any acts of the parties hereto shall be deemed to create any relationship between Lessor and Lessee other than the relationship of a Lessor and Lessee.

10. Recording; Memorandum of Agreement. Lessor and Lessee shall execute a Memorandum of Agreement for recordation containing, among other customary provisions, the names of the Parties, the lease term, a description of the Project, Premises, and Property (as those terms are specifically defined herein) and the intended and permissible uses of the Premises which shall run with the land and bind Lessee, its assignees, successors-in-interest, lenders, financiers, trust deed holders, leasehold interest mortgage holders, and any and every Leasehold Mortgagee, and anyone who claims an interest by or through any of them, and cause the same to be recorded.

{7390008}

**11. Modification.** Except as otherwise provided by this Agreement, any modifications or amendments of any of the terms and conditions of this Agreement must be expressly made in writing and signed by the parties, and approved by Lessor’s Board, evidencing an intent to modify or amend this Agreement.

**12. Waiver.** The waiver by Lessor or Lessee at any given time of such term or condition of this Agreement, or the failure of Lessor or Lessee to take action with respect to any breach of any such term or condition, shall not be deemed to be a waiver of such term or condition with regard to any subsequent breach of such term or condition, or of any other term or condition of this Agreement. Lessor or Lessee may grant waivers in the terms of this Agreement, but such waivers must be in writing and signed by Lessor or Lessee before being effective.

DRAFT

{7390008}

13. Time of the Essence. Time is of the essence of this Agreement and each of its provisions.

**DISTRICT:**

**LESSEE:**

**West Contra Costa Unified School District**, a California Public School District

**Caliber Schools**, a California Public Benefit Corporation

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

[Print Name and Title]

[Print Name and Title]

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

EXHIBIT A

Legal Description of the Premises

[To Be Provided by WCCUSD]

DRAFT

## EXHIBIT B

### North Campus Improvements

Modernization, renovation, and/or rehabilitation of the current facilities on the Premises. Such changes could include, without limitation:

- Repairing, up-grading, and/or replacing core building infrastructure, such as plumbing, HVAC equipment, electrical, lighting facilities, boilers, pressure vessels, fire protection system, fixtures, walls (interior and exterior), roofs, ceilings, floors, windows, doors, plate glass, skylights, etc.
- Restoring, repairing, and/or upgrading the exterior landscaping, ball fields, driveways, parking lots, fences, retaining walls, signs, sidewalks and parkways located in, on, or adjacent to the Premises.
- Removal or relocation of existing modular/portable units and replacing them with permanent facilities.

New construction to expand the square footage and number of classrooms on the Premises in order to accommodate the Charter School's student body. Such new construction may take the form of an expansion of the existing facilities, and/or construction of additional building(s) on the Premises.

Other on- or off-site improvements, alterations, &/or new construction as required by the DSA or any other permitting authority as a condition of authorization to complete the project.

In either event, the project may require the demolition or alteration of certain portions of the existing permanent or temporary/portable facilities on the Premises.

## EXHIBIT C

### Kennedy Annex Improvements

1. The District agrees to add the following portable classrooms to the Kennedy Annex for use by the Charter School:
  - a. By January 1, 2018, five (5) standard portable classrooms. [DATE TENTATIVE; TBD]
  - b. By January 1, 2018, one (1) cafeteria-sized (triple-wide) portable. [DATE TENTATIVE; TBD]
2. By August 15, 2017, the District agrees to coordinate with the Charter School to erect sound-proof partitions in one (1) portable at the Kennedy Annex to provide adequate confidential meeting space for special education purposes.
3. By August 15, 2017, the District agrees to coordinate with the Charter School to convert one (1) classroom at the Kennedy Annex to serve as a wet science lab or maker space.
4. By August 15, 2017, the District agrees to expand the outdoor play space available at the Kennedy Annex to include additional asphalt area to the west of the current campus, to include two of the tennis courts adjacent to the current play yard, and to install two basketball courts. The specific dimensions will conform to the map attached hereto as Exhibit C-1.
5. By January 1, 2018, the District agrees to install two outdoor shade structures on the play yards at the Kennedy Annex (one in each of the main play areas) as outlined in the map attached hereto as Exhibit C-1. [DATE TENTATIVE; TBD]
6. The District agrees to conduct an assessment of the puddling / drainage problem at the Kennedy Annex and take commercially reasonable steps to remediate the problem no later than March 1, 2018. [DATE TENTATIVE; TBD]
7. The District agrees to provide the Charter School with access to the Kennedy High School gymnasium for assemblies and events, provided that the Charter School requests such use in advance and there is no conflicting Kennedy High School or District event already scheduled at the time of the request.

{7390008}

**EXHIBIT D**

Facilities Use Fee

The amount of the Facilities Use Fee for Charter School’s use of Kennedy Annex is set forth in the following table:

School Year	Facilities (Sq. Ft.)	Amount (per Sq. Ft.)	Amount (annual)	Monthly Payment
2017-2018	48,960	\$4.93	\$241,372.80	\$20,114.40
2018-2019	48,960	TBC	TBC	TBC
2019-2020	48,960+	“	“	“
2020-2021	48,960+	“	“	“
2021-2022	48,960+	“	“	“

TBC = To be calculated per applicable regulations and inserted in future.

DRAFT