AIMS K-12 College Prep Charter District

AIMS Special Facilities Committee Meeting

Date and Time

Thursday April 15, 2021 at 5:00 PM PDT

Location

Teleconference Zoom Meeting

Meeting ID: 919 9333 6791
Passcode: 810183
One tap mobile
+16699009128,,91993336791# US (San Jose)
+13462487799,,91993336791# US (Houston)

Dial by your location

- +1 669 900 9128 US (San Jose)
- +1 346 248 7799 US (Houston)
- +1 253 215 8782 US (Tacoma)
- +1 301 715 8592 US (Washington DC)
- +1 312 626 6799 US (Chicago)
- +1 646 558 8656 US (New York)

Meeting ID: 919 9333 6791
Find your local number: https://zoom.us/u/aTKCjpemC

AIMS does not discriminate on the basis of disability in the admission or access to, or treatment or employment in, its programs or activities. Marisol Magana has been designated to receive requests for disability-related modifications or accommodations in order to enable individuals with disabilities to participate in open and public meetings at AIMS. Please notify Marisol Magana at (510) 220-9985 at least 24 hours in advance of any disability

accommodations being needed in order to participate in the meeting. **Comments and questions should be entered into the chat feature of the Zoom meeting.**

Join Zoom meeting: https://zoom.us/j/91993336791?pwd=UVNSNG9ONUFqUDhidHJuYUxwM3NPUT09
Meeting I.D: 919 9333 6791
Passcode: 810183

Agenda

		Purpose	Presenter	Time
I.	**Opening Items**			**5:00 PM**
	Opening Items			
A.	Call the Meeting to Order			
B.	Record Attendance and Guests			
C.	Public comments on Non-action items	Discuss		5 m
	Public Comment on Non-Action Items is set aside for members of the Public to address the items on the Committee's agenda prior to each agenda item. The Committee will not respond or take action in response to Public Comment, except that the Committee may ask clarifying questions or direct staff. Comments are limited to two (2) minutes per person, and a total time allotted for all public comment will not exceed twenty (20) minutes (10 minutes per section)			
D.	Public comments on Action items	Discuss		5 m
	Public Comment on Non-Action Items is set aside for members of the Public to address the items on the Committee's agenda prior to each agenda item. The Committee will not respond or take action in response to Public Comment, except that the Committee may ask clarifying questions or direct staff. Comments are limited to two (2) minutes per person, and a total time allotted for all public comment will not exceed twenty (20) minutes (10 minutes per section)			
II.	**Non-action Items**			**5:10 PM**
A.	Facilities Update	FYI	Marisol Magana	5 m
III.	**Action Items**			**5:15 PM**

		Purpose	Presenter	Time
A.	Facilities Use Agreement for Lakeview Campus	Vote	Marisol Magana	5 m

The Facilities Committee will consider approving the Facilities Use Agreement for the Lakeview Campus.

IV. Closed Session 5:20 PM

A.	Public comments on Closed Session items	FYI		5 m

Public Comment on Closed Session Items is set aside for members of the Public to address the items in this section prior to closed session. The Committee will not respond or take action in response to Public Comment, except that the Committee may ask clarifying questions or direct staff. Comments are limited to two (2) minutes per person, and a total time allotted for all public comment will not exceed twenty (20) minutes (10 minutes per section).

B.	Recess to closed session	FYI		5 m

Closed Session Items:

1. Conference with Real Property Negotiators
   (Gov. Code Section 54956.9)

2. Conference with Legal Counsel - Anticipated Litigation
   (Gov. Code Section 54956.9)

C.	Reconvene from closed session	FYI		5 m

V. Report from closed session

VI. Closing Items 5:35 PM

A.	Items for next agenda	Discuss		5 m
B.	Adjourn Meeting	Vote		
C.	Notes	FYI	Corey Hollis	1 m

The next regular meeting of the Board of Directors is scheduled to be held on April 20, 2021, at 6:30 pm. AIMS does not discriminate on the basis of disability

Purpose Presenter Time

in the admission or access to, or treatment or employment in, its programs or activities. Marisol Magana has been designated to receive requests for disability-related modifications or accommodations in order to enable individuals with disabilities to participate in open and public meetings at AIMS. Please notify Marisol Magana at (510)220-9985 at least 24 hours in advance of any disability accommodations being needed in order to participate in the meeting.

I, Corey Hollis, hereby certify that I posted this agenda on the AIMS website at https://www.aimsk12.org/board-directors **on, April 14, 2021, at 4:55 PM. Certification of Posting**

Coversheet

Facilities Use Agreement for Lakeview Campus

Section:	III. Action Items
Item:	A. Facilities Use Agreement for Lakeview Campus
Purpose:	Vote
Submitted by:	
Related Material:	AIMS Board Meeting Item Cover Letter_Facilities Use Agreement.pdf AIPHS Lakeview 2021-23 FUA DRAFT v4_JRY REV (1).docx Shaded floorplan AIMS lakeview.pdf Shaded parking lot for basketball.pdf

AIMS Board Meeting Item Cover Letter

Item: Facilities Use Agreement for Lakeview Campus

Presented By: Marisol Magaña

Staff Recommendation:

This is an agreement for the Lakeview Campus for the 2021 - 2022 and possibly 2022 - 2023 academic year pending Oakland Unified School District approval.

Committee Approval: N/A Finance Committee

Total Associated Cost: $200,000.00

Included in Budget? Yes

Over or Under Budget? N/A

Amount Over/Under Budget?

Included in LCAP? Yes

Which LCAP?

2021 - 2022

FACILITIES USE AGREEMENT BETWEEN
OAKLAND UNIFIED SCHOOL DISTRICT AND
AMERICAN INDIAN PUBLIC HIGH SCHOOL
at
746 GRAND AVENUE, OAKLAND, CA 94610

THIS FACILITIES USE AGREEMENT ("Agreement") is by and between the OAKLAND UNIFIED SCHOOL DISTRICT ("OUSD" or "District"), a California public school district and American Indian Public High School ("Charter School"), a California non-profit public benefit corporation for use of classroom space for educational purposes for grade(s) 9-12. District and Charter School may be referred to herein individually as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, Charter School is a non-profit public benefit corporation that is operating a charter approved by the Oakland Unified School District under Education Code § 47600 *et seq*.;

WHEREAS, District and Charter School enter into this Agreement wherein District and Charter School mutually agree that Charter School will occupy classrooms and use facilities (the "Premises"), as particularly described in Exhibit A, located at 746 Grand Avenue, Oakland, CA 94621 (the "School Site") during the 2021~~0~~-2~~2~~1 and 2022~~1~~-2~~3~~ school years; and

Commented [KKA1]: Update for 1 year version

WHEREAS, the purpose of this Agreement is to satisfy any and all District obligations to provide facilities for Charter School, including (but not limited to) those under Proposition 39, Education Code § 47610, and implementing regulations, as may be amended from time to time (collectively, "Proposition 39").

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

1. Use of Premises. District agrees to allow use of the Premises at the School Site(s) by Charter School for the sole purpose of operating Charter School's educational program for grade(s) 9-12 in accordance with its approved Charter Petition as well as all applicable federal, state, and local laws and regulations relating to the Premises and to the operation of Charter School's educational program, and all associated uses therewith. Charter School shall not use the Premises for any use other than that specified in this Agreement and its Charter Petition without the prior written consent of District.

1.1. 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.

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

1.3. Charter School shall not use or permit the use of the Premises or any part thereof for any purpose not consistent with a public educational facility.

1.4. 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. Charter School shall comply with District policies and District administrative regulations—as updated from time to time—regarding the operations and maintenance of the school facility and furnishings and equipment, except to the extent variation is approved by District. However, Charter School need not comply with policies in cases where actual school district practice substantially differs from official policies, in which case the Charter School shall comply with actual District practice. Charter School shall comply with District policies, and District administrative regulations—as updated from time to time—regarding Campus Security and Disruptions. Charter School shall comply with District's policies and administrative regulations—as updated from time to time—regarding operations and maintenance of the Premises. Where the Premises are damaged by Charter School's invitees and/or guests and the Charter School's negligence in supervising its invitees and guests was a contributing factor, Charter School's insurance shall be primary for this damage.

1.5. Charter School shall be liable for actual damages to District if Charter School does or permits anything to be done in or about the Premises or brings or keeps anything therein which in any way increases 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, or if Charter School sells or permits 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.

1.6. Charter School agrees to comply with the provisions of the Civic Center Act (Education Code § 38131 *et seq*.) to make the Premises accessible to members of the community. The Parties understand that the Premises are to be used primarily for educational programs and activities and, as such, any use of the Premises by the Community shall not interfere with Charter School's educational program or activities. Any request received by Charter School for use of the Premises pursuant to the Civic Center Act shall be promptly forwarded to District. District shall be responsible for coordinating access to the Premises under the Civic Center Act, and any fee paid for use of the Premises under the Civic Center Act shall be paid to District, unless Charter School under this Agreement bears the responsibility of paying for day-to-day or routine maintenance, in which case the fee shall be paid to Charter School.

1.7. Charter School shall respond in a timely manner to members of the community surrounding the Premises and work to resolve any concerns or complaints about Charter School's use of the Premises and impact on the surrounding community, including but not limited to trash removal, traffic, parking, littering, and noise.

1.8. In the event of an emergency, all District facilities, including the Premises and the School Site, shall be available for use by the American Red Cross and public agencies as emergency locations, which may disrupt or prevent Charter School from conducting its educational programs.

If the property on which Premises is located is also used by District, Charter School agrees it will participate in and observe all District safety policies and District administrative regulations, (e.g., emergency chain of information and participation in safety drills) as those may be updated from time to time. Upon completion of the OUSD shared site checklist, Charter School may re-open in-person learning prior to the District in a manner that is consistent with federal state, and local regulations, and provided that the Charter School obtain any necessary approvals from the County or State required to return to in-person instruction.

2. **Term.** The term of this Agreement shall be for **2 years**. The commencement date shall be July 1, 2021, ("Commencement Date"), and, unless sooner terminated under any provision hereof, this Agreement shall end on June 30, 2023 ("Term"). However, the Parties agree that Charter School shall take possession of the Premises on a date to be mutually agreed upon between the Parties. The Premises will be made available to Charter not later than August 1, 2021.

Commented [KKA2]: Update for 1 year version

3. **Use Fee**

3.1. For and in consideration of the use of the Premises for the Term of this Agreement, Charter School agrees to pay District the following rates ("Use Fee"):

For 26,810 square feet: 2021-22 Proposition 39 per square foot rate during the 2021-22 school year; and 1.05 times the 2022-23 Proposition 39 per square foot rate during the 2022-23 school year; and

For 1,584 square feet: two (2) times the 2021-22 Proposition 39 per square foot rate during the 2021-22 school year; and two (2) times the 2022-23 Proposition per square foot rate during the 2021-22 school year.

Commented [KKA3]: Update for 1 year version

3.2. The Use Fee shall be paid quarterly during the school year, according to the following schedule: 25% by October 1; 25% by December 1; 25% by March 1; 25% by July 1.

3.3. Utilities

District shall furnish or cause to be furnished to the Premises necessary utilities. For purposes of the Agreement, utilities include electrical, natural gas, sewer, waste disposal/recycling and water services. The District's failure to furnish or cause to be

furnished utilities when the failure is caused by (i) acts beyond the reasonable control of the District; (ii) strikes, lockouts, labor disturbances or labor disputes of any kind; (iii) any laws, rules, orders, ordinances, regulations, requirements or any other action by federal, state, county or municipal authority; or (iv) any other unavoidable delay, shall not cause the District to be in default of the Agreement and shall not result in any liability of the District. Charter School shall comply with all District energy conservation policies relating to use of the Premises. ~~Charter School agrees to pay the District the following sums:~~

~~63.21% of the total utilities costs for the School Site, as calculated based on the Charter School's proportional square foot usage of the School Site. Charter School will be billed by District and payment will be due in three installments during the school year, according to the following schedule: January 10; May 1; July 15.~~

Non Co-located Charter Schools: The Use Fee shall not include the utility charges for the Premises if District is not using the property on which the Premises is located. In such a situation, Charter School shall be responsible, at its sole cost and expense, for the cost of all services and utilities to the Premises, including, but not limited to, heating, ventilation and air-conditioning, gas, electricity, water, telephone, internet, pest management, trash collection, sewage disposal, security and fire alarm monitoring, janitorial, fire abatement, gardening/landscaping, and interior and exterior Premises security services. Charter School shall pay the cost of all utilities and other services directly to the applicable utility or service provider. The District remains responsible, as set forth in Section 14, for all major maintenance necessary to bring utilities to the Premises.

3.4. Charter School acknowledges that late payment by Charter School to District of the Use Fee and other sums due hereunder will cause District to incur costs not contemplated by this Agreement, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, if District does not receive any installment of the Use Fee 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 an additional Use Fee, 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.

4. Internet. Notwithstanding Section 3.3, Charter School shall obtain its own internet service and telephone provider and shall assume sole responsibility for obtaining all hardware at its own expense, as well as upkeep and maintenance of all telephone systems, data lines, and related equipment, software and hardware. Charter School may use any pre-existing T-1 Line located in the Dedicated Space, if any. In the event Charter School uses a pre-existing T-1 Line, Charter School shall transfer billing of the line to Charter School upon approval from the District's Technology Services Department. Charter School shall be responsible for any and all improvements to the facilities made in order to allow upgrades to utilities, and shall obtain

Commented [SJK4]: This cost should be in the pro rata share, not pulled out, per the settlement agreement.

Commented [KKA5R5]: Although this is an in-lieu, I believe the settlement does say that the charter will either pay for utilities directly or through a pro-rata share. We'd prefer to maintain the direct payment (as originally written here), but is there a particular reason the school is seeking to use the prop 39 pro-rata that includes total utilities cost, rather than the proportional cost at the site?

District's prior written consent and approval for any such improvements, pursuant to Section 15 (Title to and Removal of Charter School's Improvements/Premises; Equipment Requirements) of the Agreement.

5. **Furnishings and Equipment.** The furnishings and equipment to be provided by District for Charter School are those furnishings and equipment that exist at the Premises as of the effective date. Said furnishings and equipment fulfill any and all District obligations under Ed. Code § 47614(b) and Title 5, California Code of Regulations § 11969.2. Charter School is responsible for any furnishings and equipment over and above those provided by District as of the effective date. Charter School shall return all District-owned furniture, fixtures and equipment to District in like condition at the termination of this Agreement, excepting ordinary wear and tear. Charter School shall be responsible for costs to repair or replace any damaged furniture, fixtures, and equipment to like condition, excepting ordinary wear and tear.

6. **Additional Services.** Charter School and District may negotiate additional services or equipment as requested by Charter School. District shall assess Charter School separately for the cost to provide the additional services or equipment, if any.

7. **Parking.** Charter School shall abide by District and School Site policies concerning the use of parking, including District policy relating to the drop-off and pick-up of students. Charter School shall instruct its visitors, invitees, and guests to park on available street parking consistent with applicable laws and ordinances. Charter School shall not abandon any inoperative vehicles or equipment on any portion of the School Site. District shall not be liable for any personal injury suffered by Charter School or Charter School's visitors, invitees, and guests arising out of the use of parking at or near the Site. District shall not be responsible for any damage to or destruction or loss of any of Charter School or Charter School's visitors, invitees, or guests' personal property located or stored in street parking, or the School Site except where caused by the District's negligence or misconduct. Charter School accepts parking "as is" and Charter School acknowledges that District has not made and is not making any warranties whatsoever with respect to the parking.

8. **Full Satisfaction of Proposition 39/Release of Claims**. Parties agree that this is a negotiated agreement and that upon execution of this Agreement all obligations of District to Charter School under Proposition 39 have been satisfied for the Prop. 39 cycle that applies to the 2021-22 and 2022-23 school years. Charter School agrees to waive its right to bring a legal action for the term of this Agreement based on any claims arising out of or relating to alleged compliance or noncompliance with Education Code section 47614 and the Proposition 39 regulations for the Prop. 39 cycle that applies to the 2021-22 and 2022-23 school years. This waiver does not extend to the obligations set forth in this Agreement

9. **Condition of Premises.**

9.1. District shall not be required to make or construct any alterations, including but not limited to structural changes, additions, or improvements to the Premises except as set forth herein. District shall, however, remain responsible for ensuring the Premises is in compliance with the requirements of the Americans with Disabilities Act, California Fair Employment and Housing Act, and other applicable building code standards. Charter School, and not District, shall be responsible for compliance with the Americans with Disabilities Act, California Fair Employment and Housing Act, and other applicable building code standards in connection with any modification of the Premises by Charter School after Charter School takes possession of the Premises. By entry and taking possession of the Premises pursuant to this Agreement, Charter School accepts the Premises.

9.2. 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 Program except as set forth herein, but warrants that the Premises may be used to operate a public school program. Any agreements, warranties or representations not expressly contained in this Agreement shall in no way bind 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.

9.3. If structural damage occurs to the Premises, making the structure damaged to a lesser condition than existed on the effective date, then District will, at its sole discretion, either provide reasonably equivalent alternative facilities to Charter School to accommodate its projected in-District ADA for the remaining term of this Agreement, or repair the damage in order to bring it back to a condition which is similar to the condition which existed on the effective date. District may, however, terminate this Agreement if the cost to repair the Premises exceeds Two Hundred Fifty Thousand dollars ($250,000) per incident, and will notify the Charter School of its election to either perform the repairs or terminate the Agreement within fifteen (15) days after the damage occurs. District shall pro-rate the Use Fee during the “repair” period, if the resulting structural damage prohibits Charter School from carrying out its normal daily activities. If District elects not to terminate this agreement and not to perform a repair estimated to cost in excess of Two Hundred Fifty Thousand dollars ($250,000), Charter School may elect to remain in possession of the Premises and pay the Use Fee, 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 as set forth herein, District shall promptly provide Charter School with reasonably equivalent alternative facilities to accommodate its projected in-District ADA for the remaining term of this Agreement.

9.4. Charter School shall not change the locks on the building without written approval by OUSD Buildings and Grounds. If Charter School chooses to change the locks on the building with written approval, Charter School is responsible for the cost of the District rekeying the building prior to vacating the site.

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

11. **District's Entry and Access to Premises.** District and its authorized representatives shall have the right, after two school-days' prior written notice to Charter School, to enter the Premises during normal business hours for the purpose of inspection ("Inspection"). However, District may provide less than two school-days' prior written notice with good cause; provided, however, that in an emergency situation, no prior notice shall be required. In an emergency, District shall give notice to Charter School immediately upon District's receipt of notification of any emergency. If Charter School is not present to open and permit an entry into the Premises in an emergency situation as reasonably determined by District, District may enter by means of a master key without liability to Charter School.

11.1. If Charter School is violating the use restrictions of the Agreement or is not in material compliance with any applicable law, then all reasonable costs and expenses reasonably and actually incurred by District in connection with any Inspection shall become due and payable by Charter School as additional sums due District, within ten (10) days of presentation by District of an invoice for the Inspection.

11.2. If Charter School fails to perform any covenant or condition to be performed by Charter School pursuant to the Agreement, District and its authorized representative shall have the right, after reasonable prior written notice to Charter School, to enter the Premises during normal business hours for the purpose of performing the covenant or condition at District's option after thirty (30) days' written notice to and failure to perform by Charter School (provided, no written notice is required in the case of emergencies). All costs incurred by District shall be reimbursed to District by Charter School within ten (10) days of written demand, together with interest at the Interest Rate computed from the date incurred by District until paid. Any performance by District of Charter School's obligations shall not waive or cure the default. All reasonable out-of-pocket costs and expenses actually incurred by District, including reasonable attorneys' fees (whether or not legal proceedings are instituted), in collecting the fees herein or enforcing the obligations of Charter School under the Agreement shall be paid by Charter School to District within ten (10) days of written demand.

11.3. District may, during the progress of any work authorized by this Subsection (11.3), keep and store on the Premises all necessary materials, tools, supplies and equipment, but shall do so in a manner designed to limit the inconvenience, annoyance, disturbance, loss of business, or other damage to Charter School. District shall not be liable for inconvenience, annoyance, disturbance, loss of business or other damage to Charter School by reason of making the repairs or the performance of any work.

11.4. Notwithstanding the foregoing and without further notice, District shall have the right to enter the Premises to conduct its own operations, to perform any routine or deferred maintenance, or conduct inspections of the Premises, or any other legally permissible purposes. District will use reasonable efforts during the course of any access of the Premises to not disrupt Charter School's classroom and instructional activities consistent

with District's practices at its schools. Where practicable, District shall provide relevant scheduling information to Charter School.

11.5. Charter School expressly waives any claim for damages for any inconvenience to or interference with Charter School's educational program, any loss or use of quiet enjoyment of the Premises related to District's entry into the Premises for the purposes identified in this Section (11).

12. Surrender of Premises.

12.1. On the last day of the Term, or on termination of this Agreement, Charter School shall surrender in good order, condition, and repair the Premises to District and any existing improvements made by Charter School that were approved by District, and any structural improvements made by District subsequent to the Commencement Date, excepting normal ordinary wear and tear, and free and clear of all liens, claims and encumbrances, though nothing in this provision shall be construed to authorize Charter School to allow or cause to be placed any liens, claims and/or encumbrances of any kind, unless expressly permitted in this Agreement. This Agreement shall operate as a conveyance and assignment to District of any improvements identified by District to remain on the Premises.

12.2. 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. Removal of Charter School's property shall be subject to all applicable laws, including any local permits and/or approval by the California Department of General Services, Division of the State Architect ("DSA").

12.3. All property that is not removed on or before the end of the Term shall be deemed abandoned by Charter School and associated costs to store, remove or dispose of abandoned property shall be the responsibility of Charter School. If the Premises are not surrendered at the end of the Term or upon earlier termination of this Agreement, Charter School shall indemnify District against loss or liability resulting from delay by Charter School in surrendering the Premises including, without limitation, any claims made by any succeeding Charter School or loss to District due to lost opportunities to timely obtain succeeding tenants.

12.4. If Charter School remains in possession of the Premises or any part thereof after the end of the Term or upon earlier termination of this Agreement without the express written consent of District, Charter School's occupancy shall be a tenancy on a month-to-month basis for a pro rata share equal to one hundred fifty percent (150%) of all monthly sums charged and owing the previous thirty (30) calendar day period.

12.5. No payment of money by Charter School after the end of the Term or upon earlier termination of the Agreement, or after the giving of notice of termination by District to Charter School, shall reinstate, continue or extend the Term.

12.6. **Overallocation of Space**. Charter School's projected in-District Average Daily Attendance ("ADA") for the 2021-22 school year, upon which the Premises are provided, is 401.46. The Parties agree that the overallocation provisions under the California Code of Regulations, Title 5, section 11969.8 only shall apply to this Agreement, but that, in the event that overallocation occurs as defined under that regulation, the District, in lieu of imposing the overallocation fee, shall only reclaim overallocated facilities, in accordance with the provisions of Title 5, section 11969.8.

13. **Taxes and 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 (13) shall survive the expiration or earlier termination of this Agreement. Nothing in this Section (13) shall be construed to override the requirement in Section 15 (Title to and Removal of Charter School's Improvements/Premises; Equipment Requirements) that Charter School obtain the express written consent of District to perform any improvements on the site, unless expressly permitted by this Agreement.

14. **Maintenance.**

14.1. Charter School agrees to provide, at its own cost and expense, any and all day to day upkeep and operations for the Premises, including but not limited to routine repair, cleaning and general maintenance. Maintenance to be provided by Charter School shall be consistent with the standards set forth by the agreement and shall insure safe and healthful use.

14.2. District shall have no day to day maintenance or repair obligations with respect to the Premises. Charter School hereby expressly waives the provisions of subsection 1 of section 1932 and sections 1941 and 1942 of the Civil Code of California and all rights to make day to day repairs at the expense of District as provided in section 1942 of the Civil Code.

14.3. District shall be responsible for the major maintenance of the Premises as well as any capital improvements required by statute, law, or regulation necessary to meet COVID-related hygiene requirements, not including provision of equipment or PPE. For purposes of the Agreement, "major maintenance" includes (but is not limited to) all non-routine maintenance, replacement and repair services, including the major repair or replacement of the roof, flooring, mechanical systems (plumbing, heating, ventilation, air conditioning, electrical), exterior and interior painting, and any other items considered deferred maintenance under Education Code section 17582. Pursuant to Section 5 (Furniture and

Equipment), Charter School shall be responsible for replacement and repair of furnishings and equipment.

The following subparagraph applies only in the event that the Charter School is co-located at a site with a District school or program and shares indoor space. It does not apply where Charter School has exclusive use of the site. Notwithstanding Subsections 14.1 and 14.2, if District uses the property on which Premises is located and Charter School and District share indoor space on the Premises, 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). 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. Charter School will be responsible for its fair share of routine repair, cleaning, custodial costs of District provided custodian, and general maintenance costs. Charter School would reimburse the District directly for its fair share of such costs either through direct payment or through inclusions of allowable maintenance and operations costs in the District's pro rata share calculation as used to calculate the Use Fee, as determined by Charter School.

15. Title to and Removal of Charter School's Improvements/Premises; Equipment Requirements.

15.1. Charter School shall not construct or cause to be constructed on the Premises any improvements ("Charter School's Improvements") without express prior written consent from District. ~~For District's written consent, Charter School's Improvements must be considered necessary or beneficial to the operation of Charter School's educational program.~~ District shall have sole discretion to determine whether to any improvements are necessary or beneficial and whether to consent. At the time District considers Charter School's request to construct improvements on the Premises, District will inform Charter School, in writing, whether it will require Charter School to remove Charter School Improvements at the expiration or earlier termination of the Term.

15.1.1. Charter School may install OUSD-approved basketball hoops and the associated blacktop lines in the northwest corner of the parking lot, as identified in Exhibit A. The hoop, backboard, pole, and base shall be portable and removable, and no part of the structure shall be embedded into the blacktop. Blacktop lines shall be a different color than any existing parking stripes. During the first three weeks of each school year, District shall use this area for parking and Charter School shall not use this area for recreation. Additionally, the district reserves the right to reserve this area for parking, with two weeks' notice, for up to five additional days per year.

Commented [KKA6]: Is this ok? We will have to shade the appropriate area on the exhibit

Commented [KKA7R7]: Please see updated markup of satellite image and verify accuracy

15.2. Charter School shall at its expense obtain all necessary environmental and governmental approvals and permits, including, without limitation, the California Environmental Quality Act (Government Code section 21000 et seq.) ("CEQA"), the Field Act (Education Code

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

15.3. Any modifications to the Premises, including but not limited to construction, creation of gardens, painting, and addition of play structures or shade structures, must be approved in writing in advance by District's Director of Buildings and Grounds, and such approval shall not be unreasonably withheld, conditioned or delayed. Charter School's contractor must be approved in writing in advance by District, and such approval shall not be unreasonably withheld. All contractors and subcontractors of Charter School, if any, shall be duly licensed in the State of California; bonded as required by law; and maintain levels of casualty, liability, and workers' compensation insurance; and performance and payment bonds consistent with District construction requirements. Charter School must follow all applicable procurement laws with respect to the Eligible Improvements; issue requests for proposals for all projects over $75,000 to obtain competitive pricing; adhere to prevailing wage laws; shall make best efforts to comply with the local hiring requirements in accordance with District Administrative Regulation and Board Policy 7115 ("Capital Program / Construction Related Local, Small Local and Small Local Resident Business Enterprise Program, and Board Policy"); and adhere to all applicable minimum wage requirements. Charter School is encouraged to incorporate Collaborative for High-Performance Schools standards into the design of all improvements made under this Agreement and is encouraged to incorporate all editions of the California Green Building Standards Code.

15.4. Under all circumstances, Charter School must seek and receive approval from DSA for any of Charter School's Improvements if required by DSA.

15.5. Charter School shall not install any ovens, stoves, hot plates, toasters, or similar items (not including microwave ovens) without the prior written consent of District.

15.6. Charter School shall at all times indemnify and hold District harmless from all claims for labor or materials in connection with construction, repair, alteration, or installation of structures or improvements by, or at the direction of, Charter School within the Premises, and from the cost of defending against such claims, including attorney's fees. Charter School shall provide District with at least ten (10) days written notice prior to commencement of any work which could give rise to a mechanics' lien or stop payment notice. District has the right to enter upon the Premises for the purpose of posting Notices of Non-responsibility. In the event a lien is imposed upon the Premises as a result of such construction, repair, alteration, or installation, Charter School shall either:

15.6.1. Record a valid Release of Lien; or

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

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

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

15.7. If required by District at the time it approves Charter School's Improvements, on or before the expiration of this Agreement, or within thirty (30) days after any earlier termination of this Agreement, Charter School shall remove Charter School's Improvements, at its sole expense. Charter School shall repair any damage to the School Site and/or the Premises caused by removal of Charter School's Improvements and restore the School Site and the Premises to good condition, less ordinary wear and tear. In the event that Charter School fails to timely remove Charter School's Improvements, District, upon fifteen (15) days written notice, may either (1) accept ownership of Charter School's Improvements with no cost to District, or (2) remove Charter School's Improvements at Charter School's sole expense. If District chooses to accept ownership of Charter School's Improvements, Charter School shall execute any necessary documents to effectuate the change in ownership of Charter School's Improvements. If District removes Charter School's Improvements, Charter School shall pay all invoices for the removal of Charter School's Improvements within thirty (30) days of receipt of an invoice.

16. Safety of Premises.

Non Co-located Schools: Charter School specifically acknowledges, understands, and agrees that District is neither responsible for, nor has the obligation to supply, provide, establish, maintain, or operate District's Safety Measures for either Charter School or the Premises. Charter School is responsible for safety and security systems, monitoring, and protocols in which case the District's police and security costs will not be included in the pro rata share used to calculate the Use Fee.

17. Incident/Accident/Mandated Reporting.

17.1. Charter School shall notify OUSD, via email pursuant to Section 23 (Notices), within twelve (12) hours of learning of any significant accident or incident. Examples of a significant accident or incident include, without limitation, an accident or incident that involves law enforcement, possible or alleged criminal activity, or possible or actual closure due to a communicable disease such as COVID-19. Charter School shall bear all costs of compliance with this Subsection (17.1).

17.2. Charter School agrees to comply with all federal, state and local laws, statutes, ordinances, regulations or directives applicable to the operation of public charter schools with respect to compliance with COVID-19 protocols, including but not limiting to social distancing, hygiene practices, and maintenance of required cohorts, if applicable.

17.2.1. If District uses the property on which Premises is located (regardless of whether Charter School and District share indoor space), Charter School agrees to notify District, via email pursuant to Section 23 (Notices), within twelve (12) hours if any employee, contractor, subcontractor, agent, representative, or student of Charter School tests positive for COVID-19, shows or reports symptoms consistent with COVID-19, or reports to Charter School possible COVID-19 exposure.

17.2.2. If District uses the property on which Premises is located (regardless of whether Charter School and District share indoor space), Charter School agrees to immediately adhere to and follow any OUSD directives regards health and safety protocols including, but not limited to, providing OUSD with information regarding possible exposure of OUSD employees and students to any employee, contractor, subcontractor, agent, representative, or student of Charter School and information necessary to perform contact tracing.

17.3. To the extent that an employee, subcontractor, agent, or representative of Charter School is included on the list of mandated reporters found in Penal Code section 11165.7, Charter School agrees to inform the individual, in writing that they are a mandated reporter, and describing the associated obligations to report suspected cases of abuse and neglect pursuant to Penal Code section 11166.5.

17.4. Charter School shall bear all costs of compliance with this Section (17).

18. Fingerprinting and Criminal Background Verification. Charter School shall be responsible for ensuring compliance with all applicable fingerprinting and criminal background investigation requirements described in California Education Code section 45125.1.

19. Default.

19.1. **Charter School's Default**. The occurrence of any one of the following events shall be considered a default of the Agreement by Charter School:

19.1.1. The failure of Charter School to promptly pay the Use Fee or other fees or indebtedness identified herein when due hereunder, which failure continues for fifteen (15) days after written notice thereof by District to Charter School, provided that such a notice shall not exclusive to, and shall be cumulative to, the procedure set forth under Code of Civil Procedure Section 1161;

19.1.2. The revocation or non-renewal of Charter School's charter by their authorizer (most likely OUSD or Alameda County Board/Office of Education) but the Charter School shall not be deemed in default while any administrative, non-judicial appeals are pending under Ed. Code 47605 or 47607;

19.1.3. The failure of Charter School to observe or perform any of its other covenants or obligations hereunder, which failure continues for thirty (30) days after written notice thereof by District to Charter School (unless the nature of the default is such that more than thirty (30) days are required for its cure and Charter School shall have commenced a cure within the thirty (30) day period and thereafter

diligently prosecute the same to completion; provided, however, in no event shall the default continue for more than ninety (90) days after written notice thereof by District to Charter School); provided, however, that any notice shall be in lieu of, and not in addition to, any notice required under Code of Civil Procedure section 1161, and the thirty (30) day cure period shall run concurrently with any cure period required under California law, including Code of Civil Procedure section 1161;

19.1.4. Charter School's abandonment of the Premises for a period of fifteen (15) consecutive days (with or without the payment of fees), it being agreed that the fact that any of Charter School's property remains in the Premises shall not be evidence that Charter School has not vacated or abandoned the Premises; provided, however, any normal holidays or vacation days shall not constitute abandonment of the Premises;

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

19.1.6. The making or furnishing by Charter School of any warranty, representation or statement to District in connection with the Agreement, which is false or misleading in any material respect when made or furnished; or

19.1.7. The assignment, subletting or other transfer, or any attempted assignment, subletting or other transfer, of the Agreement.

In the event of any default by Charter School, District shall have the right, in addition to all other rights available to District under the Agreement or now or later permitted by law or equity, to terminate the Agreement by providing Charter School with a notice of termination. Upon termination of the Agreement, District may recover from Charter School the worth at the time of award of the unpaid Rent and any other accrued fees which are due at the time of termination. In addition, upon termination, Charter School shall immediately vacate the Premises.

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

19.2. **District's Default**. District shall not be in default of any of its obligations hereunder, unless District fails to perform such obligations within a reasonable 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. If District defaults hereunder, then Charter School may have by reason of such default all remedies available at law or equity, which includes the remedy of self-help and deduction of reasonable self-repair costs from the pro rata share payments owed.

19.2.1. 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. If District defaults hereunder after receipt of Charter School's written notice, then Charter School may have by reason of such default remedies including the remedy of self-help and deduction of reasonable self-repair costs from the pro rata share payments owed.

20. Reciprocal Indemnification. 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 ("District Indemnified Party" or "District Indemnified Parties") and hold the District Indemnified Parties harmless from any and all losses, costs, damages, expenses and liabilities (including without limitation court costs and reasonable attorneys' fees) (collectively "Claims") incurred in connection with or arising from any cause (i) in the use or occupancy by 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 of any person claiming by, through or under Charter School or Charter School's employees, agents, contractors, licensees, directors, officers, partners, trustees, visitors or invites, or any such person in, on or about the Premises either prior to~~,~~ or during, ~~or after the expiration of~~ the Term of the Agreement, or during any time that the Charter School is in possession of the Site (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 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 ("Charter Indemnified Party" or "Charter Indemnified Parties") and hold the Charter Indemnified Parties harmless from any and all losses, costs, damages, expenses and liabilities (including without limitation court costs and reasonable attorneys' fees) (collectively "Claims") incurred in connection with or arising from any cause (i) in the use or occupancy by District of the Premises (including without limitation, the operation by District of operations on the Premises), or (ii) in connection with the operations by District at the Premises, including without limiting the generality of the foregoing:

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

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

the District or Charter Indemnifying Party shall pay all fees and costs charged or incurred by separate counsel.

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

21. Insurance.

21.1. 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, except that insurance through a Joint Powers Authority shall be deemed sufficient under this Agreement. Charter School shall furnish District with the original certificates and amendatory endorsements effecting coverage required.

21.2. Charter School acknowledges that the insurance to be maintained by District on the School Site will not insure any of Charter School's property or improvements made by Charter School.

21.3. 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 One Million dollars ($1,000,000) for bodily injury or death and property damage as a result of any one occurrence and Two Million dollars ($2,000,000) 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 policies required hereunder and copies of endorsements stating that such policies shall:

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

21.3.2. Contain a cross liability endorsement; and

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

At least thirty (30) days prior to the expiration of each certificate, and every subsequent certificate, 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 herein.

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

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

21.5. During the Term, 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 or renewal date, providing that insurance coverage shall not be canceled or reduced without thirty (30) days prior written notice to District. If the insurer does not provide such notice, Charter School shall provide District with notice of cancellation of coverage as soon as it becomes aware of such cancellation.

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

23. **Notice.** Any notice required or permitted to be given under the 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 or email, addressed as follows:

DISTRICT:
Oakland Unified School District
Attn: Office of Charter Schools
1000 Broadway, Suite 398
Oakland, CA 94607
charteroffice@ousd.org

CHARTER SCHOOL:
American Indian Public High School
171 12th Street
Oakland, CA 94607

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

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

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

26. **Independent Contractor Status**. The Agreement is by and between two independent entities and is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, or association.

27. **Entire Agreement of Parties**. The Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations and agreements, whether oral or written. The Agreement may be amended or modified only by a written instrument executed by both Parties. Nothing in this provision shall be construed so as to limit, nullify, abridge or modify Charter School's obligations under its Charter, or the its authorizer's oversight authority.

28. **California Law**. The 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 the Agreement shall be maintained in Alameda County.

29. **Compliance with All Laws**.

29.1. 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 Charter School's use of the Premises or School Site, 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 but not limited to CEQA and its implementing regulations in Charter School's use of the Premises), and all District policies, rules and regulations ("Environmental Laws").

29.2. The judgment of a court of competent jurisdiction, or 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 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.

29.3. Charter School shall not cause or permit any Hazardous Material to be generated, brought onto, used, stored, or disposed of in or about the Premises and any improvements by Charter School or its agents, employees, contractors, subtenants, or invitees, except for limited quantities of standard office, classroom and janitorial supplies (which shall be used and stored in strict compliance with Environmental Laws). Charter School shall comply with all Environmental Laws. As used herein, the term "Hazardous Materials" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California or the United States Government. The term "Hazardous Materials" includes, without limitation, petroleum products, asbestos, PCB's, and any material or substance which is (i) defined as hazardous or extremely hazardous pursuant to Title 22 of the California Code of Regulations, Division 4.5, Chapter 11, Article 4, section 66261.30 *et seq*. (ii) defined as a "hazardous waste" pursuant to section (14) of the federal Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et. seq.* (42 U.S.C. 6903), or (iii) defined as a "hazardous substance" pursuant to section 10 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et. seq.* (42 U.S.C. 9601). As used herein, the term "Hazardous Materials Law" shall mean any statute, law, ordinance, or regulation of any governmental body or agency (including the U.S. Environmental Protection Agency, the California Regional Water Quality Control Board and the California Department of Health Services) which regulates the use, storage, release or disposal of any Hazardous Material.

29.4. **Notice of Hazardous Substance**. 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 or School Site 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.

29.5. **Inspection**. District and District's agents, servants, and employees including, without limitation, legal counsel and environmental consultants and engineers retained by District, may (but without the obligation or duty to do so), at any time and from time to time, on not less than five two (2) 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 (29), and to perform environmental inspections and samplings, during regular business hours (except in the event of an emergency) or during such other hours as District and Charter School may agree.

29.6. **Indemnification**. Charter School's indemnification and defense obligations in this Agreement shall include any and all Claims arising from any breach of Charter School's covenants under this Section (29).

30. **Attorneys' Fees.** If either Party files any action or brings any proceedings against the other arising out of the Agreement, the prevailing party shall be entitled to recover, in addition to its costs of suit and damages, reasonable attorneys' fees to be fixed by the court. The "prevailing party" shall be the Party who is entitled to recover its costs of suit, whether or not suit proceeds to final judgment. No sum for attorneys' fees shall be counted in calculating the amount of a judgment for purposes of determining whether a Party is entitled to its costs or attorneys' fees.

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

32. **Successors and Assigns**. The Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors, and assigns.

33. **Counterparts and Electronic Signature**. This Agreement, and all amendments, addenda, and supplements to this Agreement, may be executed in one or more counterparts, all of which shall constitute one and the same amendment. Any counterpart may be executed and delivered by facsimile or other electronic signature (including portable document format) by either Party and, notwithstanding any statute or regulations to the contrary (including, but not limited to, Government Code section 16.5 and the regulations promulgated therefrom), the counterpart shall legally bind the signing Party and the receiving Party may rely on the receipt of such document so executed and delivered electronically or by facsimile as if the original had been received. Through its execution of this Agreement, each Party waives the requirements and constraints on electronic signatures found in statute and regulations including, but not limited to, Government Code section 16.5 and the regulations promulgated therefrom.

34. **Captions**. The captions contained in the Agreement are for convenience only and shall not in any way affect the meaning or interpretation thereof nor serve as evidence of the interpretation thereof, or of the intention of the Parties hereto.

35. **Severability**. Should any provision of the 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.

36. **Incorporation of Recitals and Exhibits**. The Recitals and each Exhibit attached hereto are hereby incorporated herein by reference.

37. **Authorization to Sign Agreement.** Each individual executing the Agreement on behalf of a Party represents and warrants that he or she is duly authorized to execute and deliver the Agreement on behalf of the Party that the individual is executing the Agreement and that the Agreement is binding upon that Party in accordance with its terms.

ACCEPTED AND AGREED on the date indicated below:

American Indian Public High School

_____ _____
By: Date

OAKLAND UNIFIED SCHOOL DISTRICT

_____ _____
Shanthi Gonzales, President, Board of Education Date

_____ _____
Kyla Johnson-Trammel, Superintendent/Secretary, Board of Education Date

APPROVED AS TO FORM

_____ **_____**
Date

Exhibit "A"
DESCRIPTION OF PREMISES AND SITE

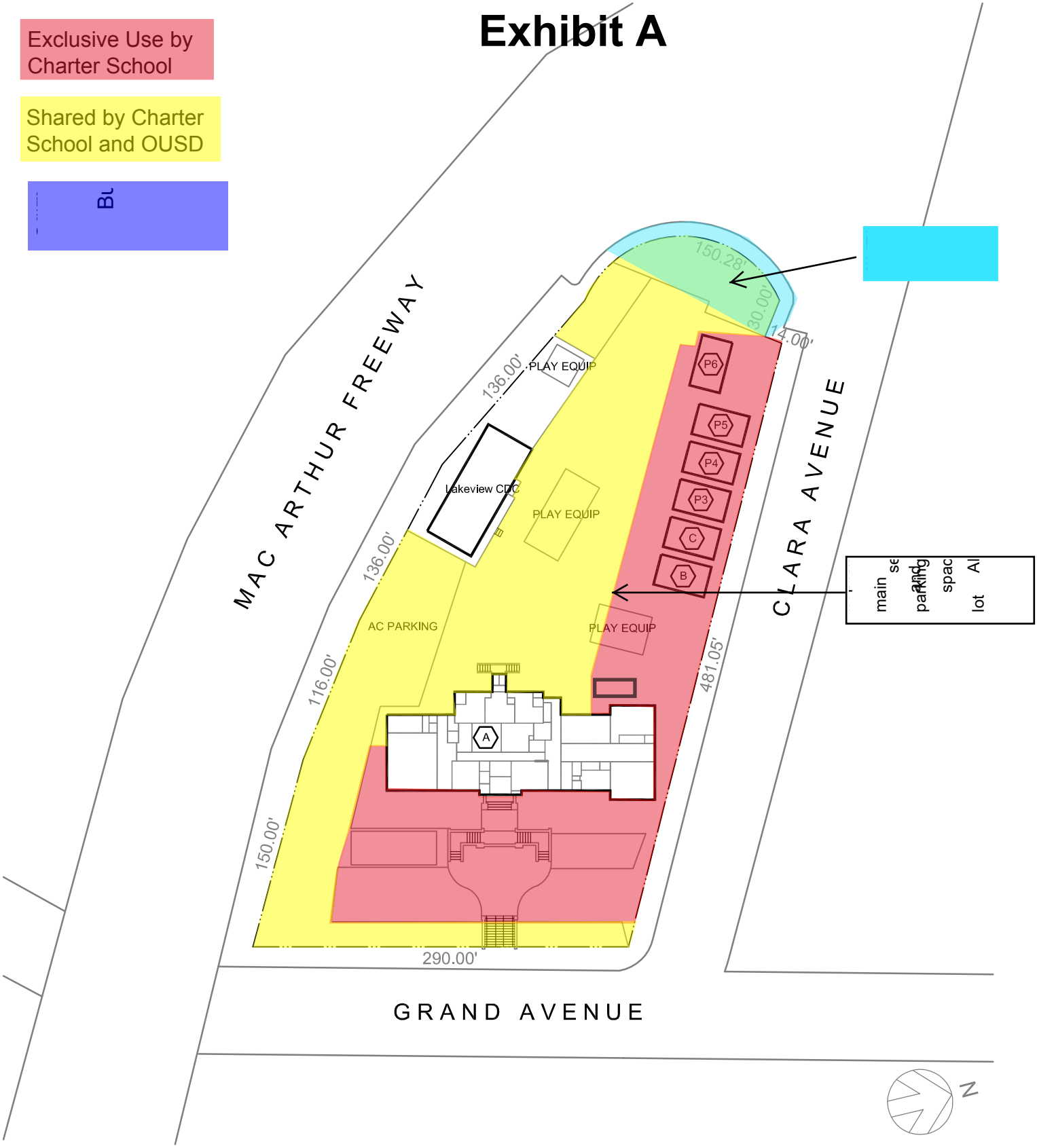
The Premises that are being allocated to Charter School shall consist of space located in the room(s) and area(s) as depicted on the attached School Site maps.

Exhibit A

Exclusive Use by Charter School

Shared by Charter School and OUSD

Bl



SITE PLAN

130 - LAKEVIEW ELEMENTARY SCHOOL

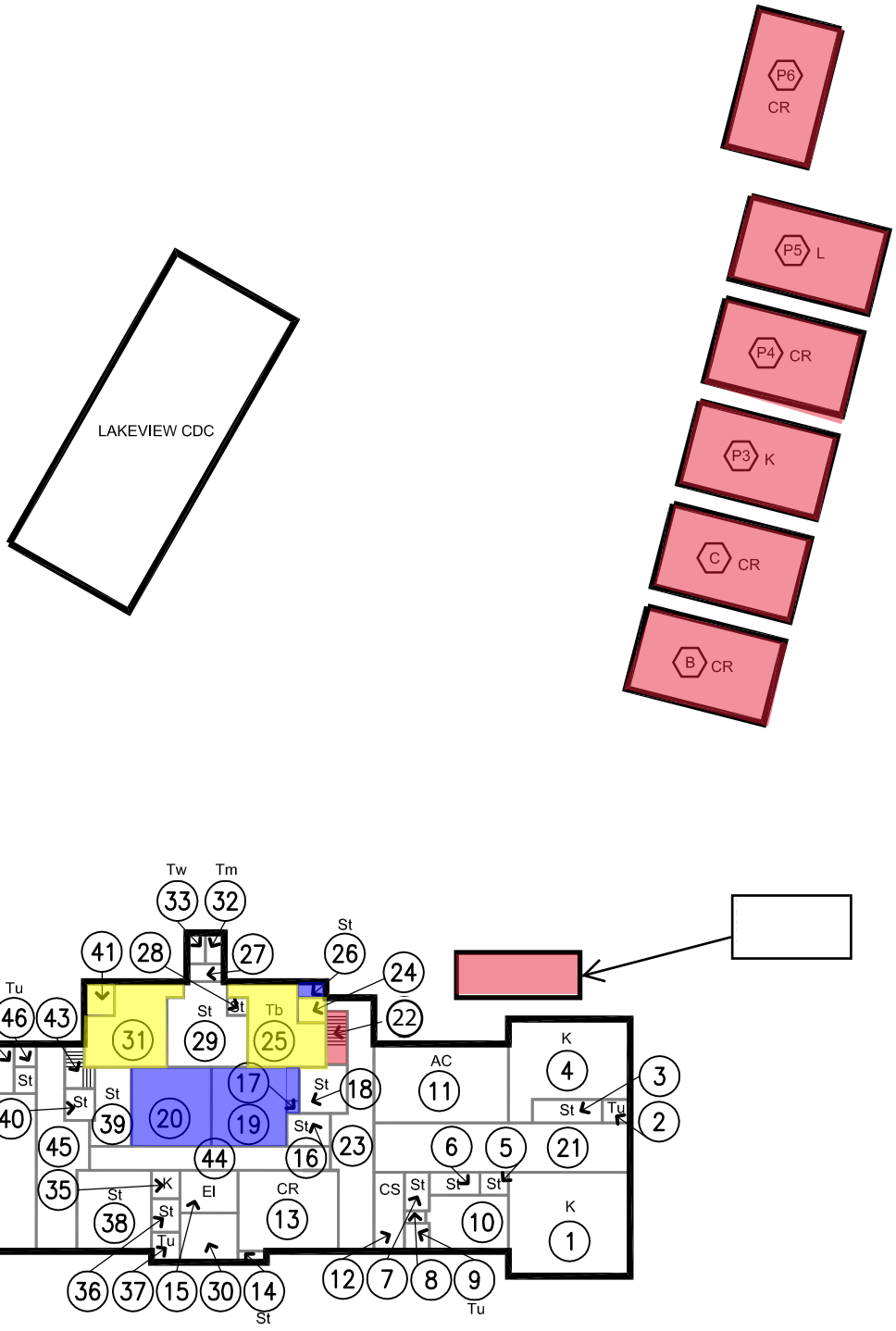
746 GRAND AVENUE, OAKLAND, CA 94610-2714

BYRENS KIM DESIGN WORKS
361 17TH STREET OAKLAND CA 94612 510-452-3324

OAKLAND UNIFIED SCHOOL DISTRICT
Community Schools, Thriving Students

Date: 1/18/2013

Scale: 1"100'-0"



BLDG A, B, C & PORT 3-6 - 1ST FLOOR PLAN

N

BYRENS KIM DESIGN WORKS
361 17TH STREET OAKLAND CA 94612 510-452-3324

BLDG A, B, C & PORT 3-6 - 1ST FLOOR PLAN

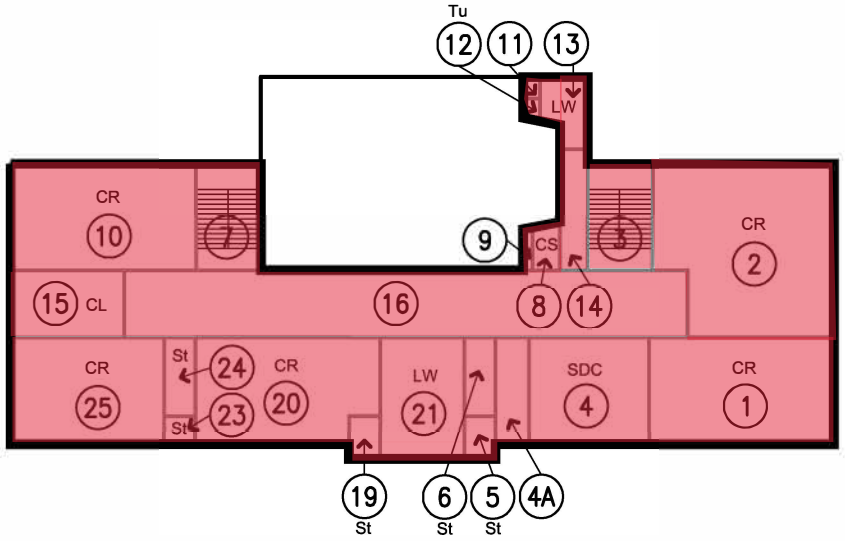
130 - LAKEVIEW ELEMENTARY SCHOOL

746 GRAND AVENUE, OAKLAND, CA 94610-2714

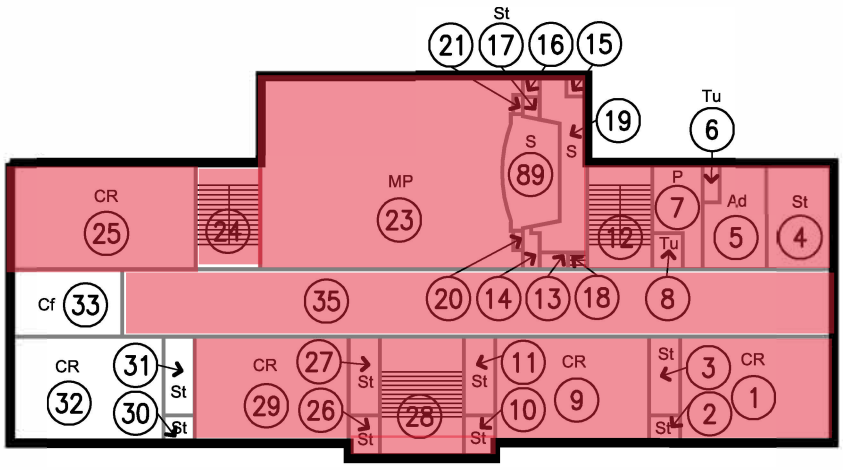
OAKLAND UNIFIED SCHOOL DISTRICT
Community Schools, Thriving Students

Date: 1/18/2013

Scale: 1"=50'-0"



BLDG A - 3RD FLOOR PLAN



BLDG A - 2ND FLOOR PLAN

BYRENS KIM DESIGN WORKS
361 17TH STREET OAKLAND CA 94612 510-452-3224

BLDG A - 2ND & 3RD FLOOR PLAN

130 - LAKEVIEW ELEMENTARY SCHOOL

746 GRAND AVENUE, OAKLAND, CA 94610-2714

OAKLAND UNIFIED SCHOOL DISTRICT
Community Schools, Thriving Students

Date: 1/18/2013

Scale: 1"=40'-0"

3 of 3


AIPHS may use this area for basketball and PE during school hours.
AIPHS may use this area for basketball only on weekdays after 5:30pm and weekends.
Lakeshore Lot
Beats Rhymes And Life
AIMS Athletics
OUSD Student Assignment Center
Google