

**EXCELLENT EDUCATION DEVELOPMENT
MANAGEMENT AND ACCOUNTING SERVICES AGREEMENT**

This agreement (the “Agreement”) is entered into as of the 30th day of June, 2013 (the “Effective Date”) by Ocean Charter School (“School”), a California nonprofit public benefit corporation which operates one or more charter schools, and Excellent Education Development (“ExED”), a California nonprofit public benefit corporation, with reference to the following facts:

BACKGROUND

ExED is in the business of providing accounting and related business services to charter schools in California (the “Services” as defined below). School represents that it has authority to operate one or more charter schools authorized by Los Angeles Unified School District. In consideration of the premises, and of the mutual covenants and conditions contained herein, School and ExED agree as follows:

1. **DEFINITIONS**

- a. “ADA” means the average daily attendance, reported as required by California Department of Education that must be filed by the School with the State of California in accordance with applicable laws and regulations.
- b. “Additional Services” means any supplemental services to be provided by ExED at request of School. If Additional Services are part of this Agreement, they are described in a Schedule entitled “Additional Services Scope of Work” and attached. Additional services supplement the Basic Services provided by ExED under this agreement.
- c. “Auditable Items” means business practices performed at the school site which are or should be documented, that may be identified as being inconsistent with the school’s policies, procedures, and/or charter or inconsistent with generally-accepted accounting practices.
- d. “Basic Services” means the services provided by ExED selected by School and described in Schedule A.
- e. “Budget” means the current and future budgets of the School prepared by ExED in coordination with the School as described in this Agreement and adopted by the governing body of the School.
- f. “Categorical Funding Applications” means State funding programs for which the school may be eligible and apply for and not included within the Block Grant per Education Code sections 47633 et seq.

- g. “CBEDS” means California Basic Educational Data System.
- h. “Confidential Information” means any and all technical and non-technical information including copyright, trade secret, and proprietary information, inventions, know-how, processes and algorithms, software programs, software source documents. Confidential Information includes, without limitation, PowerSchool, financial information, procurement requirements, purchasing information, and plans and personnel information of the parties and students as protected under FERPA, HIPAA, and other privacy protection laws, as applicable to the operations of School and ExED under this agreement.

Confidential Information does not include information that (a) is now publicly or generally known or available or that hereafter, through no act or failure on the part of the receiving party, or through any violation of law or contract becomes generally known or available; (b) is legally known to the receiving party at the time of receiving such information; (c) is furnished to others by the disclosing party without a restriction on disclosure; (d) is hereafter furnished to the receiving party by a third party without restriction on disclosure, where such third party legally obtained such information and the right to disclose it to the receiving party; or (e) is independently developed by the receiving party without violation of any legal rights which the disclosing party may have in such information.

- i. “Compliance Check” means review by ExED staff, based upon examining a sample of test transactions, that School is following financial control practices outlined in any of School’s adopted policies and procedures, including, but not limited to, employee handbook and fiscal policies.
- j. “P-1/P-2” means the attendance reports that must be submitted to the State of California for ADA apportionment purposes.
- k. “J-210” means the California Department of Education Budget Report.
- l. “Mandate” means activities performed by the school as required by the State of California as a public or charter school, e.g., employee criminal background checks, submission of periodic financial and budget reports..
- m. “Outliers” means actual expenditures or costs that differ materially from budgeted or projected School expenditures or costs reflected in the applicable Budget.

- n. “Proprietary Property of ExED” means all right, title and interest in and to the materials and systems developed and used by ExED in the performance of the Agreement including, without limitation, all trade secrets, know how, protocols, policies, specifications, software, forms, as well as additions and modifications thereto developed and/or used by ExED in the furtherance of its operations and in performance of its obligations under this Agreement. Proprietary Property also includes ExED work product, reports, templates, studies, specifications, business methods, tools, methodologies, techniques, solution construction aids, analytical frameworks, algorithms, products, documentation, abstracts and summaries thereof. Proprietary Property includes “ExED Core Business Components,” defined as those general skills, know-how, expertise, techniques, methodologies, processes, templates, and business methods that are acquired or developed during the performance of the Agreement and that are related to ExED’s primary business, such as, by way of example, but not of limitation, methodologies and processes for managing school budgets and financial reporting, that do not contain or embody School’s Confidential Information. Proprietary Property also includes “ExED Knowledge Capital,” which means ExED materials existing prior to commencement of the Agreement, or developed outside the scope of the Agreement, that are proprietary to ExED, and all associated intellectual property rights and any enhancements and modifications to such materials, whether or not such enhancements and modifications are developed as part of the Agreement.
- o. “School” means, the governing body of the School, or the person or persons designated by the Governing Body as an authorized point of contact for communications by ExED regarding the Services.
- p. “Services” means the Basic Services and any Additional Services agreed upon by the parties as further described in Schedule A and Schedule B (if applicable) attached.
- q. “Site” means a School site at which School conducts its business.
- r. “Standard Financial Reports” means the financial reports prepared by ExED for use by School management or the School’s governing body that include: Financial Dashboard, Monthly Forecast, Financial Analysis, Income Statement, Balance Sheet, Statement of Cash Flows, Check Register, General Ledger.
- s. “State Budget” means the current budget of the State of California as approved and signed by the Governor of the State of California for the current fiscal year.

- t. “State Standardized Account Codes” means the account codes mandated by the California State Department of Education per Mandate.

2. **THE SERVICES**

- a. Basic Services. ExED will provide School with the Basic Services described on Schedule A. ExED shall provide School a non-exclusive, non-assignable license to use the Propriety Property of ExED solely for School operations, at no additional cost, during the term of this Agreement.
- b. Additional Services. School may request ExED to provide additional Services.

If ExED agrees to provide Additional Services, the Additional Services will be described in detail in a separate schedule to be added to this Agreement and signed by authorized representatives of both parties. Charges, fees, responsibilities and obligations with respect to the Services will be adjusted as described in that Schedule.

3. **PAYMENT AND TERMS**

- a. Fees and Charges. School will pay ExED a flat fee of \$83,000 for the 2013-14 school year and a flat fee of \$83,000 for the 2014-15 school year for the Basic Services and reimburse ExED for its actual, reasonable out-of-pocket expenses incurred in providing the Basic Services as provided for in Schedule A. These out-of-pocket expenses will not exceed \$100 per month without written authorization from the School.
- b. Invoicing. ExED will invoice School \$6,916.67 monthly from July 1st, 2013, through June 30, 2014 and \$6,916.67 monthly from July 1, 2014, through June 30, 2015 (based on 454 students), as well as for out-of-pocket expenses incurred not to exceed \$100 per month without written authorization from the School. ExED will automatically prepare a check on a monthly basis for ExED payment for execution by the person authorized by the School to execute such checks.
- c. Payment Terms. Payment is due thirty (30) days from the date of delivery of the monthly invoice.
- d. Right to Suspend Performance. In the event of default or delay in payment greater than 45 days from the date of the invoice, ExED reserves the right to suspend part or all of its performance of duties under this contract until all amounts for Services are paid in full. In the event School disputes all or any portion of the invoice that is due, School

shall notify ExED within 20 days of receipt of the invoice; and initiate the dispute resolution process under Section 10 hereof, but shall pay the invoice in full, pending the outcome of such process.

- e. Taxes. Except as expressly stated in this Agreement, ExED and School are responsible for any and all taxes on their respective incomes, and for payment and withholding of all applicable taxes, including but not limited to income, property and sales taxes.
- f. Late Payments. Payments made after the payment terms are subject to a late payment penalty equal to an annual rate of twelve percent (12%).
- g. Price Changes. The prices and related charges for the Services are subject to increase upon renewal of this Agreement. ExED reserves the right to immediately pass through increases in costs incurred from third parties, e.g., vendors, subcontractors and licensors, to the extent such services and supplies are identified in Schedule A and the Additional Services schedule, if any. In addition, ExED will give School not less than sixty (60) days prior written notice of any price increases for monthly Services.

4. **RELATIONSHIP OF THE PARTIES**

- a. Independent Contractors. ExED and School are independent contractors. No representations or assertions shall be made nor actions taken by either party that would create any agency, joint venture, partnership, employment or trust relationship between the parties with respect to the subject matter of this Agreement. Except as may be expressly agreed upon in this Agreement or a Schedule, neither party has any authority or power to enter into any agreement, contract or commitment on behalf of the other, or to create any liability or obligation whatsoever on behalf of the other, to any third person or entity.
- b. No Benefits. No ExED employee is eligible to participate in any benefits programs offered by School to its employees, nor in any pension plans, insurance plans or other similar plans offered by School to its employees.
- c. Employees. Each party will exercise day-to-day control over and supervision of their respective employees, including, but not limited to, hiring, evaluation, promotion, demotion, compensation, employee benefits, discipline and discharge. All work assignments, instruction, scheduling, staffing and direction of School employees shall be the exclusive province of the School. Each party is responsible for obtaining

and maintaining worker's compensation coverage and unemployment insurance for its employees.

- d. Subcontractors. ExED reserves the right to subcontract with other individuals and businesses for the Services. ExED will be responsible for all payments to, as well as the direction and control of the work to be performed by, its subcontractors, if any. Subconsultants, if any, will be required by ExED to comply with the terms and conditions of this Agreement respecting confidentiality.

5. **THE SCHOOL'S OBLIGATIONS.**

- a. Authorized Personnel. The Governing Body of the School must identify to ExED, in writing, the authorized School Administrator and other staff member(s) to work with ExED with respect to: general information about the School, accounts payable, personnel and payroll, attendance records as well as funding compliance and reporting. In the absence of such designated persons, ExED shall be authorized to communicate with the chief executive officer and the presiding officer of the Governing Body of the School.
- b. Principal Contact. The Governing Body of the School must also identify, in writing to ExED, its key or principal contact, if other than the authorized School Administrator, who is authorized to receive and disclose Confidential Information, receive payroll checks and discuss personnel issues; as well as an alternate contact in the event the School Administrator cannot or should not serve as the School's contact due to conflict or suspected misconduct. In the absence of such designated persons, the chief executive officer and the presiding officer of the Governing Body of the School shall have such authority.
- c. Financial Records and Audit.
 - (i) The School will maintain customary and reasonably correct, complete and accurate books and records of account as required by the United States government, the State of California (and any other funding authority such as philanthropic organizations). The School will deliver all supporting documentation in accordance with the monthly close timeline developed by ExED and provided to School.
 - (ii) The School will obtain a timely annual audit of its books and records from an independent certified public accounting firm (reasonably acceptable to ExED) and immediately provide ExED with a copy of any annual audit and related reports,

notes or statements. School authorizes and instructs its independent accountants to speak and work directly with ExED on any matter or issue pertinent to the Services, and will confirm such authorization upon request by ExED.

(iii) School covenants that it will respond promptly and professionally to any and all questions or investigations from any governmental investigating or funding authority or School's accountants, to the extent required by law, including exceptions noted in any independent accountant's report.

d. Coordination and Cooperation. School, its authorized staff members and principal contact will work closely and cooperatively with ExED to facilitate the effective performance and delivery of the Services. School will comply with and respond promptly to all reasonable requests of ExED for information or documents from the School.

(i) School covenants to: assist ExED in reconciling outstanding invoices, and to provide ExED with copies or originals of vendor invoices and correspondence, as well as other statements and receipts in accordance with the monthly close deadline established by ExED.

e. Payroll. School will provide all necessary and proper data to ExED for payroll processing.

(i) All original documents as it relates to personnel files or payroll logs will be maintained at the School Site.

(ii) If necessary, School will use, and purchase if necessary to use, commercially reasonable time clocks for hourly personnel.

f. Attendance Records and Reports. School must take all necessary and proper steps to provide regular, accurate and timely responses to daily attendance tracking reports and CBEDS.

(i) School is responsible for taking daily attendance records compliant with the California Education Code Statutes. School must maintain phone logs, tardy logs and other pertinent information related to appropriate attendance tracking.

g. Grant and Funding Requirements. School covenants to use its best efforts to comply with all material grant and funding requirements, including record keeping, reporting, management and financial controls and policies and procedures.

- h. Chartering Authority Requirements. School covenants to use its best efforts to comply with all material requirements, including policies and procedures, of the Chartering Authority to the extent applicable to the School.
- i. School Policies and Procedures. School covenants to develop, apply and follow not less than customary and reasonable policies and procedures for a Charter School applicable to: Human Resources, Payroll Administration, Internal Financial Controls, Accounts Payable and other disbursements and competitive bid procedures for vendors.
- j. Insurance. School will obtain and maintain customary and reasonable general liability coverage for its facilities and operations, naming ExED as additional insured under all liability and property policies. ExED shall be entitled to request evidence of such coverage.
- k. Notice and Information. School covenants that it will provide ExED with prompt, complete and accurate notice of and information concerning any material errors in School data and School's books and records, as well as with respect to investigations or inquiries into the School, its activities, operations and reports by any governmental authority other than School, to the extent permitted by law. School will provide ExED promptly with copies of every report, including any schedules or exhibits, provided to any governmental agency.
- l. Designation of ExED as Agent of School. School hereby designates employees and subconsultants of ExED whose duties require access to Confidential Information, including personnel and student information, as having a legitimate educational interest under FERPA and business purpose under HIPAA.
- m. Protection of Proprietary Property of ExED. School shall maintain the confidentiality of all Proprietary Property of ExED and shall not divulge such information to any third parties both during the term of this Agreement and after its termination except (i) as may be necessary for the discharge of its obligations under this Agreement, and (ii) as required by law. School shall take reasonable precautions against disclosure of any Proprietary Property of ExED to any unauthorized person by any of its officers, directors, employees or agents. School shall not directly or indirectly, without the express prior written permission of ExED, use the Proprietary Property of ExED for any purpose except to the limited extent necessary for the conduct of its operators in accordance with this Agreement. Upon termination of this Agreement for any reason, School shall cease all use of Proprietary Property of ExED and shall return to

ExED all manifestations and copies thereof in School's possession or control.

- n. Integrity and Financial Responsibility. School will act with integrity and alert the management of ExED to any fraudulent activity which is reasonably related to the Services as soon as the School becomes aware, to the extent permitted by law. School acknowledges that ExED's ability to provide Services is premised upon the School acting in a financially prudent manner, including but not limited to timely approval of balanced budgets and maintaining a positive variance to budget throughout the year to the extent feasible.

6. **REPRESENTATIONS AND WARRANTIES OF SCHOOL**

- a. Organization of School. School is a nonprofit public benefit corporation, duly organized, validly existing, and in good standing under the laws of the State of California and eligible for determination as a tax-exempt organization which has all requisite power and authority to own, lease and operate its properties and to carry on its educational operations as they are now being conducted.
- b. Corporate Power and Authorization. School has full corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder. The execution, delivery and performance of this Agreement by School have been duly authorized by all necessary corporate action. This Agreement has been duly executed and delivered by School and constitutes the valid and legally binding obligation of School enforceable in accordance with its terms and conditions. School need not give any notice to, make any filing with, or obtain any authorization, consent, or approval of any government or governmental agency in order to consummate the transactions contemplated by this Agreement.
- c. No Breach. Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby, will (i) violate any, statute, regulation, rule, injunction, judgment, order, decree, ruling, charge, or other restriction of any government, governmental agency, or court to which School is subject or any provision of its Articles of Incorporation, Bylaws or Charter, nor (ii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require any notice under any agreement, contract, lease, license, instrument or other arrangement to which School is a party or by which it is bound or to which any of its assets is subject.

7. **REPRESENTATIONS AND WARRANTIES OF ExED**

- a. Corporate Power and Authorization. ExED has full corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder. The execution, delivery and performance of this Agreement by ExED have been duly authorized by all necessary corporate action. This Agreement has been duly executed and delivered by ExED and constitutes the valid and legally binding obligation of ExED enforceable in accordance with its terms and conditions. ExED need not give any notice to, make any filing with, or obtain any authorization, consent, or approval of any government or governmental agency in order to consummate the transactions contemplated by this Agreement.
- b. No Breach. Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby, will (i) violate any, statute, regulation, rule, injunction, judgment, order, decree, ruling, charge, or other restriction of any government, governmental agency, or court to which ExED is subject or any provision of its Articles of Incorporation or Bylaws or (ii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require any notice under any agreement, contract, lease, license, instrument or other arrangement to which ExED is a party or by which it is bound or to which any of its assets is subject.
- c. Insurance and Bonding. ExED carries customary and reasonable comprehensive general liability insurance, errors and omissions insurance appropriate to its business under this contract and its school-site employees are bonded under the terms of an employee dishonesty bond.
- d. No Duty to Monitor Compliance with Obligations. In the course of its work, and consistent with School's obligations hereunder, ExED may become aware of instances of non-compliance by School with its own policies, procedures or other obligations described in Section 5 of this Agreement. ExED may bring such failures to the attention of the point of contact or chief executive officer or the presiding officer of the Governing Body of the School, but shall have no obligation to do so, unless the failure directly and materially affects ExED's ability to carry out its obligations under this Agreement or is the basis for termination of the Agreement for cause.
- e. Confidentiality. ExED shall keep all Confidential Information made available to it under this Agreement confidential to the extent required by law; provided that nothing herein shall be construed as restricting

ExED in performing the Services, which require routine disclosure of such information to auditors, regulatory agencies, insurance carriers, and providers, and the School as its agent. With the school's consent, ExED will provide financial references upon request by certification organizations, financial institutions, and potential grantors. Confidential Information shall be handled by ExED, its employees and consultants, in accordance with the following "Standard Conditions":

- (i) ExED shall not use the Confidential Information disclosed by the School pursuant to this Agreement for any purpose other than carrying out its obligations under this Agreement. ExED shall maintain reasonable security measures to safeguard the Confidential Information.
- (ii) ExED shall not disclose information from the Confidential Information to any third party except as authorized by School.
- (iii) ExED shall destroy the Confidential Information in its possession when no longer needed to carry out the purposes of this Agreement. To the extent such Confidential Information resides only on equipment or in files owned or controlled by ExED, upon termination of this agreement, ExED shall provide copies to School at School's expense. ExED shall require its employees and subconsultants to agree to comply with these Standard Conditions for the handling of Confidential Information.

f. Limited Services Warranty. ExED represents and warrants that it has the requisite personnel, equipment, expertise, experience and skill to perform its obligations hereunder and provide the Services to School in a timely and professional manner.

- (i) Disclaimer of all Other Warranties.

THERE ARE NO WARRANTIES THAT EXTEND BEYOND THE FACE HEREOF. ExED DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE SERVICES, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

- (ii) Limited Remedy. School's exclusive remedy for defective Services – upon ExED's confirmation of the defect after

receiving notice of a claimed defect from School – is re-performance of the Services by ExED at ExED’s expense.

(iii) Limitation of Liability. EVEN IF ExED CANNOT OR DOES NOT RE-PERFORM ANY DEFECTIVE SERVICES, AND SCHOOL’S EXCLUSIVE REMEDY FAILS OF ITS ESSENTIAL PURPOSE, ExED’S ENTIRE LIABILITY SHALL IN NO EVENT EXCEED \$50,000. ExED HAS NO LIABILITY FOR GENERAL, CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES ARISING FROM A DEFECT IN ANY SERVICES.

(iv) Allocation of Risk. School acknowledges that the pricing of the Services and the other terms of this Agreement have been set based on the foregoing sections of this Agreement providing for an agreed allocation of the risk for any defective Services between the parties. School further acknowledges that the pricing and terms would have been different if there had been a different allocation of the risk.

g. Warranty Exclusion THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED, TO THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ExED MAKES NO WARRANTY, EXPRESS OR IMPLIED, REGARDING THIRD PARTY SOFTWARE OR HARDWARE. ExED DOES NOT HAVE RESPONSIBILITY FOR SCHOOL DATA.

h. Limited Liability. EXCEPT FOR FAILURE TO COMPLY WITH THE PROPRIETARY RIGHTS PROVISIONS CONTAINED IN THIS AGREEMENT:

IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY LOSS OR INJURIES TO EARNINGS, PROFITS OR GOODWILL, OR FOR ANY INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY PERSON OR ENTITY WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE, EVEN IF EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

THE LIMITATIONS SET FORTH IN THIS SECTION SHALL APPLY EVEN IF ANY REMEDIES FAIL IN THEIR ESSENTIAL PURPOSE.

8. **INDEMNITIES.**

School and ExED indemnify each other and hold each other, and each other's officers, directors, employees, agents harmless, from and against any and all direct claims, costs, losses, liabilities and expenses for personal injury and property damage, including reasonable attorneys' fees, attributable to their actions and omissions under this Agreement, but excluding claims that would not be made but for the gross negligence or willful misconduct of the party seeking indemnification.

9. **TERM AND TERMINATION EXPIRATION.**

This Agreement shall continue in full force and effect from July 1, 2013, until June 30, 2015.

- a. Termination for Uncured Breach. If either party to this Agreement materially defaults in the performance of any of the terms of this Agreement, the non-defaulting party may terminate this Agreement by providing written notice of termination to the defaulting party of the nature of the default or material breach of this Agreement and the termination shall be effective thirty days from receipt of notice unless the defaulting party cures such default within said thirty-day period.
- b. Insolvency, etc. In the event that School is unable to pay its debts when they become due, declares bankruptcy or insolvency, or makes an assignment for the benefit of its creditors, ExED may terminate this Agreement upon written notice to School.
- c. Other Rights. The rights of the parties to terminate this Agreement are not exclusive of any other rights and remedies available at law or in equity, and such rights are cumulative. The exercise of any right or remedy under this section 9 does not preclude the exercise of any other right or remedy.
- d. Termination for convenience. Either party may terminate this Agreement upon 30 days written notice to the other party, without cause. During the notice period, the parties shall cooperate to wind up and complete the pending work for the current month.
- e. Immediate termination for cause. ExED may immediately terminate this contract in the event it determines that it cannot provide the Services in a professional manner, based upon the actions or inaction of the School with respect to financial controls and management; in such event, ExED will cooperate with School to transition its duties to School personnel or another vendor.

10. **DISPUTE RESOLUTION.**

Any controversy or claim, whether based on contract, tort, strict liability, fraud, misrepresentation, or any other legal theory, arising out of either party's performance of this Agreement ("Dispute") shall be resolved solely in accordance with the terms of this Section 10.

- a. Resolution Sequence. If the Dispute cannot be settled by good faith negotiation between the Chief Executive Officers of the parties – which must take place within thirty days of receipt by one party of a claim of a Dispute – ExED and School will submit the Dispute to non-binding mediation in Los Angeles. If complete agreement cannot be reached within thirty days of submission to mediation, any remaining issues will be resolved by binding arbitration in accordance with Sections (c) and (d) below. Except as otherwise provided herein, arbitration shall be governed by the provisions of the California Code of Civil Procedure, commencing with Section 1280.
- b. Arbitrator. A single Arbitrator who is a retired judge and knowledgeable in commercial matters will conduct the arbitration. The Arbitrator's decision and award will be final, must be made in writing with findings of fact and conclusions of law, will be binding and may be entered in any court with jurisdiction. The Arbitrator will not have authority to make errors of law or legal reasoning, nor to modify or expand any of the provisions of this Agreement. The Arbitrator will not have the authority to award damages not permitted by this Agreement.
- c. Rules and Expenses. Any mediation or arbitration commenced pursuant to this Agreement will be conducted under the then current rules of the alternate dispute resolution ("ADR") firm in the site selected by the parties. If the parties are unable to agree on an ADR firm, the parties will conduct the mediation and, if necessary, the arbitration, under the then current rules and supervision of the American Arbitration Association. ExED and School will each bear its own attorneys' fees associated with the mediation and, if necessary, the arbitration. ExED and School will pay all other costs and expenses of the mediation/arbitration as the rules of the selected ADR firm provide. ExED and School shall divide the amounts charged by the ADR firm equally.
- d. Equitable Relief and Indemnification. Each of the parties acknowledges and agrees that due to the unique nature of the Confidential Information and the Proprietary Information of ExED there can be no adequate remedy of law for any breach of its obligations to maintain the confidentiality and security of such information, and that any breach may

allow the breaching party or third parties to unfairly compete with the non-breaching party resulting in irreparable harm to the non-breaching party that cannot be adequately compensated for through damages. Therefore, notwithstanding the foregoing provisions of this Section 10, upon any such breach or any threat thereof, the non-breaching party may, at its option, seek temporary, preliminary, and permanent injunctive relief and to be indemnified by the breaching party from any loss or harm, including without limitation, actual attorney fees, in connection with any breach or enforcement of the breaching party's obligations to keep the non-breaching party's information confidential and secure, or the unauthorized use or release of any such proprietary or confidential information. Each party will notify the other party in writing immediately upon the occurrence of any unauthorized release or other breach of which it is aware. The obligations of the parties under this paragraph shall survive the expiration or termination for any reason of this Agreement

- e. Limitation on Actions. Any Dispute either party may have against the other with respect to this Agreement must be brought within two years after the cause of action arises. This Section 10 shall survive any termination of the Agreement.

11. GENERAL.

- a. Entire Agreement. This Agreement sets forth the entire agreement between the parties hereto, fully supersedes any and all prior agreements or understandings pertaining to the subject matter hereof and no change in, modification of or addition, amendment or supplement to this Agreement shall be valid unless set forth in writing and signed and dated by each and all of the parties hereto subsequent to the execution of this Agreement.
- b. Waiver in Writing. During the term of this Agreement, neither party shall be deemed to have waived any right, power or privilege under this Agreement or any provision thereof unless such waiver shall have been duly executed in writing and acknowledged by the party to be charged with such waiver.
- c. No Implied Waiver. The failure of any party to act or exercise its rights hereunder upon the breach of any of the terms or conditions hereof shall not be construed as a waiver of such breach, nor shall it prevent such party from hereafter enforcing strict compliance with any and all of the terms and conditions herein set forth.

- d. Communications. Any notice or other communication required by, or permitted to be made by or given to, either party pursuant to this Agreement shall be sent to such party by registered, certified or express mail, postage prepaid or prepaid courier service, addressed to such party at its address set forth below, or to such other addresses as such party shall designate by written notice given to the other party, and shall be deemed to have been made, given or provided on the date of receipt.

School: Ocean Charter School
12606 Culver Blvd
Los Angeles, CA 90066
Facsimile: (310) 636-1409
E-mail: msedwards@oceanscs.org

ExED: 11858 La Grange Avenue 2nd Floor
Los Angeles, CA 90025
Facsimile: (310) 394-7380
E-mail: tanderson@exed.net

- e. Applicable Law. This Agreement shall be construed, and the legal relations between the parties hereto shall be determined, in accordance with the laws of the State of California, provided, however, that any provision of this Agreement which may be prohibited by or otherwise held invalid under such laws shall be ineffective only to the extent of such prohibition or invalidity and shall not invalidate or otherwise render ineffective any or all of the remaining provisions of this Agreement.
- f. Assignment; Successors. This Agreement is personal, being entered into in reliance upon and in consideration of the skill, qualifications and representations of, and trust and confidence reposed in, ExED and its employees and its selected subconsultants. Accordingly, neither this Agreement nor any of its rights or privileges shall be sold, assigned, transferred, shared, or encumbered, by operation of law or otherwise, without the prior written consent of the affected (non-assigning) party. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.
- g. Force Majeure. Neither party shall be liable for any delay or failure in its performance of any of the acts required by this Agreement when such delay or failure arises from circumstances beyond the control and without the fault or negligence of such party. Such causes may include, without limitation, acts of God, acts of public enemies, acts of civil or military authority, labor disputes, material or component shortages,

embargoes, rationing, quarantines, blockades, sabotage, utility or communication failures or delays, earthquakes, fire, flood, epidemics, riots or strikes. The time for performance of any act delayed by any such event may be postponed for a period equal to the period of such delay.

- h. Publicity. School agrees to act as a reference for ExED with respect to the Services upon ExED's reasonable request. ExED may issue press releases or identify School in marketing materials provided that all references to School are fair, accurate and not misleading.
- i. Headings. The headings of the several articles and sections are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

IN WITNESS WHEREOF, the parties hereto execute this Agreement in counterparts as of the Effective Date through duly authorized representatives.

SCHOOL:

By: _____

Dated: _____,

Name: _____

Title: _____

ExED:

By: _____

Dated: _____,

Name: _____

Title: _____

SCHEDULE A:

SUMMARY OF BASIC SERVICES TO BE PERFORMED BY EXED

1) Budgeting and Forecasting

A) Budget Development

- 1) Work with School administrators to develop annual budget for subsequent fiscal year beginning in March of each year for Board approval no later than June 30th. The budget will be aligned with State Standardized Account Code structure per mandate. The budget will be for the overall organization and will include an annual budget, monthly cash flow for five years, and multi-year projections for the next five years.

B) Final Operating Budget

- 1) Upon the approval of the Governor's State Budget, ExED will work with School administrators to perform any needed revisions to the Budget to reflect legislation adopted. Revisions will be kept to a minimum and forwarded to the School's Board for approval.

C) Additional Budget Versions

- 1) As requested by the School for its charter petition renewal with authorizer, ExED will prepare the budget to be submitted with the petition.
- 2) As needed for other purposes including State budget uncertainty, facility projects, and loan applications, ExED will prepare alternate budget scenarios for the School. Extensive budget models may require an additional fee.

D) Cash Flow Forecast

- 1) ExED will prepare a cash flow forecast monthly throughout the year as part of the monthly financial report presented to the School.

E) Budget & Deferral Monitoring

- 1) ExED will closely monitor changes to the State budget revenues and deferral schedule as they change during budget season and throughout the year. ExED will analyze these changes and the impact on charter school finance.

2) Accounting and Bookkeeping Services

A) General Ledger Maintenance

- 1) Establish and maintain the School's general ledger per the State Standardized Account Code Structure. ExED will monitor and edit revenue and expenditure account code structure, add program and location codes when needed, and perform all other regular maintenance.

B) Balance Sheet Reconciliation

- 1) Perform monthly reconciliation of all bank statements. Quarterly perform

reconciliation of remaining balance sheet accounts: Prepaid/Deposits, Accounts Receivable, Accounts Payable, Payroll Liability, Debt/Loans, and any Other Asset or Liability Item. Perform monthly depreciation and valuation analysis and update asset values for items such as property, equipment, and furniture.

C) Accounts Payable

- 1) Process vendor invoices for payments, including: verify approval of payment, determine cash flow availability, verify non-duplication of payment, log appropriate accounting entries, produce check payments, and verify check security. Any discrepancies will be reported to the School within three business days of ExED becoming aware of the discrepancy.
 - (a) Rush Checks: The School will be allowed one rush check a month. After that, the School will be charged a fee of ten dollars (\$10.00) per rushed check that is the fault of the School (e.g., invoices held up at the School site). The School will also be charged the cost of delivery, if applicable.
- 2) Complete 1099s for all independent contractors.

D) Accounts Receivable

- 1) Monitor receipt of revenue to ensure the School receives all entitlements. Perform collection activities to receive past due funding from government agencies, not including initiation of legal proceedings.

E) Audit Preparation

- 1) Collect all information required by auditors (loan documentation, grant award letters, building leases, copier leases, attendance, National School Lunch Program, public grant documentation, school board minutes, internal control questionnaires, etc.).
- 2) Prepare required schedules (accrual worksheet, fixed asset ledger, balance sheet account detail, etc.)
- 3) Serve as the point of contact for all communication with the auditors regarding financial data maintained by ExED.
- 4) Prepare and collect required information for auditor to complete the 990 tax return.
- 5) Work and meet with the School's Audit Committee as needed.

3) Financial Management and Reporting

A) Cash Position Reports

- 1) Prepare and email weekly cash position reports to the School that summarize current book balance and details checks cut by ExED in last week, outstanding checks that have not cleared the back, upcoming items such as payroll, and any unpaid bills.
- 2) As needed, cash position report will include a detailed forecast for the next 30-60 days for cash flow analysis.

B) Standard Financial Reports

- 1) Prepare and email Standard Financial Reports to School Administrator monthly by the 10th of the month following month end reconciliation. For example, financial reports for September will be emailed by November 10th.
 - 2) Standard Financial Reports include:
 - (a) Financial Dashboard
 - (b) Monthly Forecast
 - (c) Financial Analysis
 - (d) Income Statement
 - (e) Balance Sheet
 - (f) Statement of Cash Flows
 - (g) Check Register
 - (h) General Ledger
- C) Financial Dashboard
- 1) Prepare and email a dashboard monthly by the 10th of the month following reporting month, which displays key indicators of financial health – income statement summary with variances and forecast, cash flow charts with actuals and forecast for the year, ADA chart with actuals and forecast, balance sheet summary, and State budget updates.
- D) Monthly Forecasting
- 1) ExED will analyze cash flow on a monthly basis and project out timing of revenue and expenses for the rest of the year. This tool will enable stakeholders to make timely decisions of expense reductions that may need to be made or additional revenue that could be spent. This tool ensures that the Executive Director or Principal can understand at any point in the year, what the end of the year will look like financially. The tool limits the number of surprises that come up throughout the year.
- E) Financial Analysis
- 1) ExED will perform on-going analysis of actual versus budget revenue and expenses and monitor cash flow. As it relates to Standard Financial Reports, any unusual items and/or unfavorable trends identified by ExED will be reported to the School site at that time.
- F) School & Board Meetings
- 1) At a minimum once every quarter, ExED to prepare and review Standard Reports with School Administrators.
 - 2) Prepare and present the School’s financial health to School Board as appropriate, but no less than once every quarter, and including special Board meetings.
 - 3) Prepare and present school financial reports to Finance Committees as appropriate.
 - 4) Present annual audit to Audit Committee as appropriate.
- G) Charter School Authorizer Financial Reporting
- 1) Complete and submit all financial reporting required to charter school authorizer including First Interim, Second Interim, Unaudited Actuals, and

Preliminary Budget.

H) Facility Financing Reporting

- 1) As appropriate, ExED will prepare necessary facility financing reports and attend facility financing meetings.

4) Payroll Processing and Retirement Reporting

A) Payroll Processing

- 1) Maintain employee information in payroll database. ExED will process any status updates, new hires, terminations, and or informational changes in the payroll system based on information submitted by the School on Status Change Request forms.
- 2) Regular Payroll Schedules: ExED's payroll department will provide the School a payroll schedule for the calendar year which includes accrual period and deadlines for ExED to receive from the School the following information: new hire documentation, personnel change forms and payroll time data for each respective pay period. The School is responsible to submit all information no later than 5 p.m. on the deadline days per the School's payroll schedule. Payroll information received late will be deferred to the next regular payroll cycle.
- 3) Supplemental Payroll Schedules: All supplemental payroll schedules requested by the School will be charged at the following rates:
 - (a) Late Submission/Unexpected Payroll Schedules: The School will be charged a fee of twenty dollars (\$20.00) per check. Such supplemental checks include, but are not limited to:
 - (i) Late Submission of Payroll Data: If the School submits late payroll information and specifically requests checks be processed as a supplemental run;
 - (ii) Supplemental Checks Regarding Terminating Employees:
 - (i) Involuntary Termination by the School: California law generally requires an employee who is being terminated to receive a check upon exit from the School. If the School anticipates an employee termination, the School is expected to communicate with ExED's payroll department as soon as it becomes aware of the termination and work together to get the check to the School as expeditiously as possible.
 - (ii) Voluntary Termination by Employee: California law generally requires an employee to be paid within 72 hours of terminating. The School is expected to provide payroll information to ExED's payroll department immediately upon notification of a terminating employee.
 - (iii) Supplemental Checks Regarding Employees Going on Family/Maternity Leave or Family Medical Leave: The School is expected to communicate with ExED's payroll department as soon

as it becomes aware that an employee is going on family/maternity leave or leave that falls under the Family Medical Leave Act.

- (b) Scheduled Bonus/Stipend Supplemental Runs: When a bonus/stipend payroll is agreed upon in advance and ExED is given sufficient lead time to prepare, the School will not be charged. If the School requires a quick turnaround (less than 72 hours), ExED will charge the School twenty dollars (\$20) per check.
 - (c) Unscheduled/Emergency Supplemental Runs: When a special check is requested without advance notice and preparation time, the School will be charged twenty dollars (\$20) per check.
 - 4) As required by law, and directed by School, federal and state payroll tax payments are calculated and submitted to the proper state and federal authorities according to Internal Revenue Service guidelines (monthly, semiweekly and/or next-day depositor status) that pertain to the respective School by ExED.
 - 5) Prepare payroll tax filing reports quarterly for federal and state agencies. Prepare the annual state payroll tax filing report.
- B) Retirement Reporting
- 1) STRS/PERS - ExED will timely submit the monthly spreadsheet to the 3rd party administrator designated by the local county office of education who in turn will then process data and forward it to the retirement division at the county office of education. The retirement division at the county office of education will then forward the information to CalSTRS and coordinate with the county office of education accounting department to debit the money from the School's apportionment account.
 - 2) 403B – ExED will process appropriate deductions for employees upon receipt of appropriate paperwork from the School. ExED will submit payment to the applicable retirement company semi-monthly.
- C) Personnel
- 1) Prepare, review, and distribute W-2s as required by law and directed by School.
 - 2) Assist School in developing sound procedures for management of employee records.
 - 3) Process status change forms when hiring or firing employee.
 - 4) Process employee garnishments as needed.
 - 5) Assist School in completing unemployment insurance claims.
 - 6) Process and report on summer savings accounts.

5) Funding/Reporting

- A) Attendance Reporting
- 1) Prepare 20-Day, P-1, P-2, and Annual attendance reports from School-provided records, and submit to the chartering agency.

- 2) Prepare and submit monthly statistical and classification attendance reports, if required by chartering agency.
 - 3) Attendance Reporting Revisions: All attendance reporting revisions identified by ExED and/or the School will be charged at the following rates:
 - (a) Attendance Reports (20-Day, Monthly Statistical and Classification, P-1, P-2 and/or Annual): The School will be charged a fee of twenty dollars (\$20.00) per revised report. Such revisions include, but are not limited to:
 - (i) The school submits attendance documentation that indicates changes made to a prior month or specifically requests that prior months be amended as a result of errors located in the source documentation and/or Student Information System maintained by the School.
- B) Categorical Funding Applications
- 1) Prepare funding applications for funding sources identified in the School's Budget. This includes the Consolidated Application, Title III consortia, the Annual Funding Survey, the PENSEC Report for new/expanding schools, Class Size Reduction, CAHSEE Funding, and SB 740 Facility Grant Program and the Facilities Incentive Grant, if the School is eligible and requests that ExED complete the application.
 - 2) Assist with budget/financial sections of Public Charter Schools Grant Program (PCSGP) and other grant applications.
 - 3) In the event that new funding programs become available, funding program elements and pricing will be revised if the School wishes ExED to pursue such funding. These applications will be subject to the timelines and conditions of the funding programs and will be the primary responsibility of the School.
 - 4) While ExED may suggest funding sources and opportunities, School shall be responsible for identifying those it wishes to pursue.
- C) Compliance and Fiscal Reporting
- 1) Prepare Budget report required by chartering agency in required format.
 - 2) Twice a year, prepare Interim Financial Reports and submit to chartering agency in required format.
 - 3) Annually, prepare the Unaudited Actuals Report and Program Cost Report and submit to the chartering agency in required format.
 - 4) Prepare and disseminate fiscal reports to lenders and creditors as appropriate.
 - 5) Prepare and submit federal reporting as appropriate.
 - 6) Prepare and submit Title I, II, III and V reporting as appropriate.
 - 7) Prepare Semiannual Certifications and/or Personnel Activity Reports for schools to account for salaries paid for with federal funds.
- D) Nutrition Claims
- 1) Prepare and submit monthly claims to National School Lunch Program as

- appropriate.
- 2) Prepare and submit year-end Cost and Revenue reporting.
- E) School Accountability Report Card
 - 1) Prepare per pupil expenditure section of the SARC annually.

6) Meetings and Trainings

- A) Office Manager Meetings & Document Pickups
 - 1) ExED will coordinate with the School to arrange for how inter-office communication including AP, deposit, grant or compliance documentation will be delivered and/or picked up by ExED staff. ExED staff will be available to discuss any issues or concerns related to these items.
- B) Annual ExED Orientation
 - 1) ExED provides an annual orientation meeting to all clients to review internal controls, compliance, payroll, and other procedures and policies to prepare the School for the upcoming school year.
- C) Office Manager and other Staff Trainings
 - 1) ExED provides initial and ongoing training as needed to the Office Manager and other staff regarding proper internal controls, ExED and School procedures and policies, and systems or software ExED may employ to serve the School.
- D) Finance Committee Guidance
 - 1) ExED provides guidance to Board & Committee members on best practices to monitor financial reports.
- E) Community Meetings
 - 1) ExED attends meetings with teachers and/or parents of the school community as needed regarding the budget and related financial issues.
- F) Principal/Executive Director Meeting
 - 1) Team Leader meets regularly with Principal or Executive Director to discuss the latest forecast and financial report and any other outstanding issues or concerns. Provides coaching on best practices to monitor the School's finances.
- G) Charter Authorizer Meetings
 - 1) ExED prepares required materials for and attends District Site Visits.
 - 2) ExED attends charter renewal meetings and hearings as needed. Any air-travel or overnight lodging expenses for ExED staff associated with these meetings will be the responsibility of the School. Any ExED travel will be pre-approved by the School.
- H) WASC Review
 - 1) Prepare materials for and attend WASC review meetings as needed.
- I) Other Meetings
 - 1) As needed ExED meets with landlords, banks, brokers, vendors, etc. to assist the School.
 - 2) As needed, meet with county office of education regarding retirement.

7) Other Support

- A) Policies and Internal Controls
 - 1) Provide suggested policies and procedures for proper internal controls.
 - 2) Provide regular policing of internal controls.
 - 3) Provide sample 990 policies including conflict of interest.
- B) State Revenue Deferral Exemption Applications
 - 1) Analyze future cash flow and determine whether the School needs to apply for exemption from upcoming deferrals when available. Prepare and complete applications for deferral exemptions.
- C) Loans & Lines of Credit
 - 1) Analyze future cash flow for need of loan or line of credit.
 - 2) Prepare applications for new and/or renewal of loans or lines of credit.
 - 3) Present line of credit to board and obtain board resolutions as needed.
- D) Client Accounting Online Portal
 - 1) Provide secure access to the School's unique client portal which provides electronic access to real-time information from accounting system, including income statements, vendor activity reports, and check registers.
 - 2) Portal also provides access to the School's documents such as financial reports, cash position reports, budgets, audits, bylaws, policies, etc.
 - 3) Portal provides sample and informational documents related to payroll, compliance, and accounting.
- E) Vendor Support
 - 1) Provide charter school industry vendor list.
 - 2) Provide annual insurance renewal support.
 - 3) Communicate with vendors as needed regarding Accounts Payable.
- F) Property Tax Exemption Filing
 - 1) As appropriate, annually submit Property Tax Exemption filing.
- G) Other Audits/Reporting
 - 1) Prepare for other audits as needed including Workers Compensation, Special Education, After School Education & Safety, Federal Single audit, Office of Inspector General, IRS, etc.
 - 2) Provide Sales and Use Tax tracking and reporting quarterly as needed.

8) Infrastructure Set-Up

- A) County Office of Education Set-up
 - 1) Complete Charter School Application and collect all required documentation to submit to local county office of education. This includes collecting documentation for charter and employer tax status, drafting fiscal Board resolutions, and completing authorization forms.
 - 2) Work with county office of education to set up the charter school as a pass through district and establish funding stream from District and the State.

- B) Revenue Enhancement Services
 - 1) Prepare Child Nutrition Application, but School is responsible for submitting.
 - 2) Prepare the Charter School Funding Survey and submit it by the required deadline.
 - 3) Prepare Consolidated Application quarterly reporting.
- C) Human Resources
 - 1) Apply for state employer identification numbers through the Employment Development Department.
- D) Accounting System
 - 1) Set up Chart of Accounts in line with State Accounting Code Structure
 - 2) Set up Internal Control Procedures and Fiscal Policies
- E) Technical Assistance
 - 1) Provide advice and recommendations on issues that may impact the fiscal soundness of the school, such as growth, matriculation, etc.
 - 2) Provide support for strategic planning issues.