

## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") dated as of \_\_\_\_\_, 2016 for reference purposes only, is made by and between LOS ANGELES UNIFIED SCHOOL DISTRICT, a school district duly organized and existing under the laws of the State of California ("LAUSD"), and **OCEAN CHARTER SCHOOL**, a California nonprofit public benefit corporation, and a charter school duly existing under the laws of the State of California ("Developer"), with reference to the following facts:

### RECITALS:

A. Developer acquired that certain real property at 12870 Panama Street, Los Angeles, CA 90066, County of Los Angeles, State of California, as described or depicted on Exhibit A attached hereto (herein "Land" or "Campus") using a portion of the funds awarded to it under the State of California's Charter School Facilities Program ("CSFP").

B. Developer transferred title to LAUSD on \_\_\_\_\_ in order to receive funds for the construction of the school facilities under LAUSD's Charter Schools Facilities Program Augmentation **in a timely manner once state funding is available.**

C. Pursuant to CSFP requirements and as approved in Board Report No. \_\_\_\_\_, LAUSD will make the Land available to Developer for the construction of a new school facility and operation of Developer's charter school pursuant to that certain Lease Agreement dated concurrently herewith between Developer and LAUSD (the "Lease").

D. In connection with the CSFP award, the Lease and the CSFP requirements, Developer desires to construct a new school facility to accommodate approximately 530 students in grades K-8<sup>th</sup> grades for Ocean on the Campus (the "Project").

E. Pursuant to Board Report No. \_\_\_\_\_, LAUSD awarded Developer an augmentation grant of up to \$25,791,888 (the "Augmentation Grant Award") to be used to in connection with and to complete the construction of the Project.

F. LAUSD is willing to allow Developer to construct the Project on the Land and to disburse funds up to the Augmentation Grant Award to Developer pursuant to the terms and conditions contained herein.

G. The recitals contained in the Lease are deemed incorporated herein as if set forth in full. The effectiveness of the Lease and this Agreement are contingent upon the satisfaction of the Conditions Precedent contained in the Lease.

NOW THEREFORE, in consideration of mutual covenants, benefits and agreements hereinafter contained, LAUSD and Developer hereby agree as follows:

## ARTICLE I

### **CONDITIONS PRECEDENT AND SUBSEQUENT**

The effectiveness of this Agreement and Developer's right and ability to commence construction of any improvements of any kind or nature on the Campus, and all of Developer's rights hereunder shall be contingent upon the satisfaction of the Conditions Precedent set forth in the Lease and satisfaction occurrence of all the following (collectively, the "Conditions Precedent"). LAUSD and Developer hereby covenant and agree that in the event that the Conditions Precedent have not been satisfied or waived as of June 30, 2018, as the sole and exclusive remedy of the parties hereto, this Agreement shall automatically terminate and neither LAUSD nor Developer shall have any further obligations under this Agreement. In addition, at any time prior to Developer's commencement of Construction (as hereinafter defined), Developer shall have the right, upon written notice to LAUSD, to terminate this Agreement, provided that Developer shall pay LAUSD's out-of-pocket costs, including attorney's fees and expenses, in connection herewith and any costs incurred by LAUSD in complying with the CSFP. The termination of this Agreement shall also terminate the Lease pursuant to the terms and conditions provided therein.

1.1 Other Approvals. At its sole cost and expense, Developer shall have obtained and provided evidence to LAUSD of all necessary consents, permits and approvals required in order to commence the construction of the Project by law, rule or regulation applicable to the Project as if a public school district was constructing it including, without limitation, any necessary approvals by the California Department of Education ("CDE"), the California Division of the State Architect ("DSA"), the California Department of Toxic Substances Control ("DTSC"), and any approval related to compliance with the California Environmental Quality Act ("CEQA"), all in a manner acceptable to LAUSD.

1.2 Funding. Developer shall have provided evidence satisfactory to LAUSD of adequate funding (including, without limitation, Developer's receipt of all of the CSFP Award) to undertake and complete the Project in accordance with the terms of the Lease and this Agreement.

1.3 LAUSD Approval of Plans. LAUSD shall have reviewed and approved the Construction Plans as provided in Section 2.3.2 below.

1.4 Lease. LAUSD and Developer shall have entered into the Lease simultaneously with this Agreement.

The continued effectiveness of this Agreement and Developer's right and ability to continue construction of any improvements of any kind or nature on the Campus, and all of Developer's rights hereunder shall be contingent upon the satisfaction occurrence of all the following (collectively, the "Conditions Subsequent"):

1.5 Proposition 39 Facilities Request. Developer's obligation to satisfy this Section 1.5 shall terminate upon Developer's occupancy of the Project. Prior to and throughout Developer's construction of the Project, Developer shall submit a valid facilities request annually

in accordance with Proposition 39 for allocation of space on LAUSD property and Developer shall execute LAUSD's agreement for occupancy of the Proposition 39 space. If Developer fails to satisfy the foregoing Proposition 39 obligation, Developer, at its sole cost and expense, shall vacate the Prop. 39 space and relocate to another property. If Developer fails to comply with the requirements of this Section 1.5 and remains in occupancy at its current location, Developer agrees that Developer shall abide by its previous Prop. 39 agreement, pay its pro rata share and, at the selection of LAUSD, pay a holdover fee equivalent to 20% of the total pro rata share for the then current school year (regardless of whether Ocean intends to holdover in its space for the entire school year) OR the cost incurred by LAUSD to prepare another school site as reasonably equivalent for the charter school intended to occupy the space in which Developer is holding over; provided, that for each subsequent year Developer holds over, Developer shall pay the holdover fee identified above. This does not prevent LAUSD from pursuing any other rights or remedies.

## ARTICLE II

### CONSTRUCTION

2.1 Definition of Construction. For purposes of this Agreement, "Construction" or "Constructing" shall include, without limitation, (i) the delivery of any materials or supplies for the pre-construction, construction, and completion of the Project, (ii) demolition and/or renovation of any existing improvements on the Land, (iii) any necessary preparation and grading of the Land, (iv) bid procedures and retention of Architect and Contractor (each as hereinafter defined), (v) retention of all subcontractors, consultants, engineers and other professionals comprising the Construction Team (as hereinafter defined), (vi) construction of the Project, (vii) construction and installation of separate meters for water, electricity, gas, cable service, telephone and other utilities appropriate for the operation of the Project, and (viii) landscaping of the Campus.

2.2 Project Schedule. Subject to Developer's satisfaction of all of the Conditions Precedent, Developer shall commence and complete the Construction in accordance with the project schedule set forth in **Exhibit B** attached hereto (the "Project Schedule"), which LAUSD hereby approves, and shall complete such Construction pursuant to the Project Schedule (subject to extension for Force Majeure Delay (as hereinafter defined), but in no event later than the date that is three (3) years from and after the date that all Conditions Precedent are satisfied.

2.3 Pre-Construction.

2.3.1 Personnel.

2.3.1.1 Architect and Contractor. Developer shall disclose to LAUSD its selection of architect ("Architect"), construction manager ("Construction Manager") and the general contractor or multiple prime contractors ("Contractor") for Construction, which Architect, Construction Manager Contractor, and subcontractors shall be licensed, in good standing and authorized to do business in the State of California throughout the Construction of the Project, and selected in accordance with the California Public Contract Code ("Contract Code") and be on LAUSD's list of approved vendors. Contractor shall be bonded for an amount

no less than 100% of the total cost of Construction and the bond shall be in a form substantially similar to that Form of Payment and/or Performance Bond set forth in **Exhibit C** hereto (the "Performance Bond"), which Performance Bond shall be maintained throughout the Construction of the Project. Prior to commencement of Construction, Developer shall provide to LAUSD a true and accurate copy of the Performance Bond.

2.3.1.2 Construction Team. Developer shall disclose to LAUSD each subcontractor listed by Contractor in the bid(s) recommended for acceptance by Developer for Construction or substituted pursuant to the Subletting and Subcontracting Fair Practices Act (Contract Code Section 4100 et seq.) (each, a "Major Sub" and collectively "Major Subs"), engineer, consultant and other professional retained for Construction (each, a "Consultant"). Developer shall, within 60 days following request by LAUSD, provide to LAUSD a list of all personnel, including Architect and Contractor, retained by Developer in connection with Construction (the "Construction Team") provided that in no event shall Developer be required to provide such list more than one time. Developer agrees to comply with California Labor Code ("Labor Code") Section 1771 in its retention of all members of the Construction Team.

2.3.1.3 Labor Compliance Program. Developer shall execute and deliver the Memorandum of Understanding attached hereto as **Exhibit D** ("MOU") concurrently with this Agreement, and shall retain LAUSD to operate and enforce a labor compliance program ("Labor Compliance Program") in accordance therewith. Developer shall adhere to the provisions of the MOU, and any Developer breach of the MOU shall be a breach under this Agreement.

2.3.1.4 Contracts. All contracts entered into by Developer related to Construction of the Project shall be collaterally assigned to LAUSD, and which assignment LAUSD may invoke without Developer's consent or the consent of the contracting party and without the payment of any fee whatsoever; provided, that LAUSD may only invoke such assignment after a Default by Developer hereunder and upon receipt of written notice from LAUSD. This collateral assignment shall be provided in the form of a dual obligee rider which allows LAUSD to act as a co-obligee with the Developer. In addition, Developer agrees that it shall competitively bid the general construction contract and any other contracts so required by applicable law, rule or regulation. All contracts entered into by Developer related to Construction shall contain appropriate language concerning the requirements of Developer's Labor Compliance Program.

2.3.2 Construction Documents. The final construction drawings and specifications for the Project (the "Construction Plans") are identified on **Exhibit E** hereto and Developer represents that the same have been approved by and comply with the requirements of DSA. Developer represents that it has obtained final approval from DSA for the Construction Plans. Developer has submitted the Construction Plans to LAUSD for LAUSD's review and approval in connection with the Lease, the Agreement, and any and all conditions to the Augmentation Grant (including, without limitation, conformance with LAUSD's Design Standards and Technical Specifications). In the event LAUSD discovers any material inconsistency between the Construction Plans and any permit or approval for the Project which has a material adverse impact on the Project or the intended use of the Project as a public school facility, LAUSD will notify Developer in writing of the same and if Developer fails to explain

the inconsistency to the reasonable satisfaction of LAUSD or fails to cure the same within a reasonable time period after written notice from LAUSD, then LAUSD may require Developer to cease such portions of the Construction that relate to such inconsistency until the discrepancy is resolved to the reasonable satisfaction of LAUSD. As a result of LAUSD's review and approval of the Constructions Plans, LAUSD shall incur no liability for the accuracy, completeness, conformance with law (including, without limitation, applicable building codes or the California Education Code) and is not reviewing such Construction Plans for purposes of confirming any of the preceding factors.

2.3.4 Permits; Compliance. Developer, at its sole cost and expense, shall be responsible for obtaining all governmental permits, consents and approvals for the Project including, without limitation, approvals from DSA, CDE, DTSC and any approval related to CEQA. Developer shall also comply with and cause the Contractor and the Construction Team to comply with the Environmental Import/Export Materials Testing requirements attached here to as **Exhibit F** (as may be revised from time to time), and the same shall be factored into all construction costs and construction bids obtained by Developer in connection with the Project. Developer shall obtain all other necessary permits, consents and approvals from all governmental agencies having authority over Construction and shall undertake all steps necessary to insure that Construction is accomplished in compliance with all applicable laws, rules and regulations and the requirements and standards of any insurance underwriting board, inspection bureau or insurance carrier insuring the Campus pursuant to this Agreement.

2.3.5 Fence. Developer shall, at its sole cost and expense, erect (to the satisfaction of LAUSD, in the reasonable discretion of LAUSD) a fence or other appropriate measure (the "Fence") to secure the Construction site to prevent access by non-Construction personnel and minimize risk of damage, destruction, injury or death. Subject to the applicable law, the Fence shall be, at a minimum, eight (8) feet high and constructed so as to prevent ingress and egress except through locked gates. Developer shall provide or cause to be provided to LAUSD a set of keys for the gates.

2.3.5.1 Fingerprinting. Beyond erecting a fence, if there is a possibility that the Contractor's employees may come in contact with LAUSD students while working on the Campus. Pursuant to Education Code Section 45125.1, Contractor shall either conduct criminal background checks of all employees of Contractor assigned to the Project site, shall certify that no employees who have been convicted of serious or violent felonies (as specified in Education Code Section 45125.1), will have contact with pupils, by utilizing the Certification Regarding Background Checks and the corresponding **Exhibit G**.

If it is determined that Contractor must provide certification of employees, as part of such certification, Contractor must provide the Developer and LAUSD with a list of all employees providing services and Contractor shall not utilize any employees who are not included on the above-referenced list.

2.3.6 Commencement of Construction. Except as otherwise disclosed to LAUSD as of the date of this Agreement, Developer agrees that no Construction or delivery of materials related to the Project shall commence unless and until the Conditions Precedent have

been satisfied, until the Fence has been completed to the satisfaction of LAUSD and until Developer has provided LAUSD at least ten (10) days for LAUSD to post notices of non-responsibility or any other notices which LAUSD deems necessary for its proper protection. Notwithstanding the preceding sentence, Developer shall have commenced construction of the Project within three (3) months after the satisfaction of the Conditions Precedent.

2.3.7 No LAUSD Liability. LAUSD shall not be the guarantor of, nor responsible for, the correctness or accuracy of any plans, specifications and/or Construction Plans, or the compliance thereof with applicable laws, rules or regulations, and LAUSD shall incur no liability of any kind by reason of granting approval of, accepting or acknowledging the Construction Plans, members of the Construction Team or commencement of Construction.

2.3.8 Acknowledgement from Construction Team. Developer shall secure from Architect, Construction Manager, and Contractor an executed statement acknowledging that the Project is not constructed by LAUSD and is not an LAUSD project, and that LAUSD is not responsible or liable for the Project.

## 2.4 Construction.

2.4.1 Construction by Developer. Developer, through its Construction Team, shall undertake Construction of the Project at its sole cost and expense (with the right to receive the CSFP Award and the Augmentation Grant Award as set forth in Article XV below). Developer shall conduct and shall cause the Construction Team to utilize all new materials (including new materials constructed from recycled materials) and supplies in building the Project (unless otherwise approved by LAUSD in writing), conduct all work with respect to Construction in a good and workmanlike manner by properly qualified personnel and in accordance with all applicable laws, rules and regulations, and such work shall be diligently prosecuted to completion once commenced.

2.4.2 Limitations on Construction. Developer in good faith and using its commercially reasonable efforts shall endeavor to conduct and shall cause the Construction Team to endeavor to conduct all work with respect to Construction with as minimal impact as commercially practicable to any student instruction (or any other student activity) at the Ocean Charter Campus.

2.4.3 Reports and Changes During Construction. The parties acknowledge that the Construction Plans may require changes during Construction, including, changes required by law or due to unforeseen circumstances. In the event of a material change to the Construction Plans, Developer shall deliver to LAUSD written notice describing the change, the reason for the change, a copy of DSA's evaluation of said change or a written, executed statement by Architect that said change does not require DSA evaluation, a statement of any decrease or increase to the estimated cost of Construction of the Project as Developer disclosed in its CSFP application, and all other details reasonably requested by LAUSD. For the purpose of this Article II a "material change" is a change or series of changes to the Construction Plans that singularly or cumulatively are reasonably estimated to (i) increase the Cost of the Project by two percent (2%) or more or (ii) increase the time to complete the project by sixty (60) days or more.

Developer covenants and agrees that it will have completed the bid process for the Construction of the Project within ninety (90) days from the satisfaction of all conditions precedent to the Development Agreement, and further covenants and agrees that it will deliver the Project Schedule (which the parties will thereafter attach hereto as Exhibit B) and Cost of the Project to LAUSD within three (3) Business Days of Developer completing such bid process. For purposes of this Agreement, "Cost of the Project" means hard and soft costs to construct the Project. Any material increase to the Cost of the Project prior to Developer commencing Construction shall be submitted to and approved by LAUSD in its reasonable discretion.

During the term of this Agreement if there is any material change in the estimated Cost of the Project, regardless of cause (e.g. whether from inaccurate estimating, any change to the Construction Plans, or cause within or outside of Developer's control), Developer shall provide evidence reasonably satisfactory to LAUSD of adequate and acceptable funding to complete Construction of the Project. If LAUSD, in its reasonable discretion, determines that Developer has not established adequate funding to complete Construction of the Project, LAUSD may issue to Developer written notice to cease Construction of the Project at a logical stage in the construction of the Project so as to minimize any adverse impact on the development or use of the Project and Developer shall do so until it has established adequate funding to complete Construction of the Project and all costs, expenses and liabilities incurred by Developer arising from the stoppage of Construction shall be the sole responsibility of Developer.

During the term of this Agreement, Developer shall provide to LAUSD a progress report in the form attached hereto as **Exhibit H** and any and all supporting documentation substantiating such report and any additional documentation reasonably requested by LAUSD ("Progress Report") on a quarterly basis starting in the first financial quarter to close after Developer commences Construction of the Project through and including the date that Developer achieves Substantial Completion.

During the term of this Agreement, Developer shall promptly notify LAUSD in writing regarding any material adverse change in its funding arrangements disclosed in satisfaction of Section 1.3 above if such change affects Developer's ability to complete the Project. LAUSD shall review Developer's information and may require Developer to provide additional information and evidence of its ability to fund and complete Construction of the Project. If, in response to such material adverse change, LAUSD, in its reasonable discretion, determines that Developer has not established adequate funding to complete Construction of the Project, LAUSD may require Developer to cease Construction of the Project at a logical stage in the construction of the Project so as to minimize any adverse impact on the development or use of the Project until satisfactory evidence of sufficient funding has been provided to LAUSD regardless of whether Developer has some funds to continue Construction but not enough to complete Construction.

As an example, and not as a limitation, Developer has funds to complete a building but not enough funds to complete the Project. LAUSD shall allow the building to be completed and require Developer not to proceed with the construction of the remainder of the Project until Developer provides evidence of sufficient funds to complete Construction of the Project.

2.4.4 Meetings and Inspections. LAUSD shall have the right, but not the obligation, to attend any and all on or off site meetings among the Developer, Contractor, Construction Manager and/or Architect to review the Project, its progress, scheduling and other related matters (“Project Meetings”). Developer shall notify LAUSD’s project manager (currently Issam Dahdul, or as otherwise designated by LAUSD) in writing at least seven (7) days in advance of any regularly scheduled Project Meetings, and shall use reasonable efforts to give LAUSD at least 24 hours prior notice of any other Project Meetings. Further, LAUSD shall have the right, but not the obligation, to inspect Construction at any time during the progress thereof. Developer shall pay costs and expense for an inspector of record approved by DSA (the “DSA Inspector”) from LAUSD or, if the DSA inspectors employed by LAUSD do not have availability for Developer’s Project, a DSA inspector reasonably approved by LAUSD to inspect the Project during Construction and after completion for compliance with the applicable DSA rules and regulations. The DSA inspector shall be permitted to access the Project at all times during construction, which access shall be coordinated between the DSA inspector and Developer, and Developer shall provide notice to all other co-located users of the Property. If LAUSD or the DSA Inspector gives notice to Developer that any aspect of Construction represents a material change from the Construction Plans, or violates any applicable law, rule or regulation, Developer shall cause the Contractor to promptly make corrections required by the DSA Inspector or reasonably required by LAUSD. Neither LAUSD’s right to make such inspections nor the making of such inspections, regardless of any assertions that such inspections amount to unauthorized supervision of Construction, or the supervision of Construction by the DSA Inspector, shall operate as a waiver of any rights of LAUSD to require that Construction be accomplished with new materials (including new materials constructed from recycled materials, unless otherwise approved by LAUSD in writing), and executed in a good and workmanlike manner in accordance with the Construction Plans in all material respects, and applicable law, rule or regulation. Further, LAUSD shall not be responsible for any delays caused by or in connection with the DSA Inspector’s inspection of the Construction, and Developer hereby waives any and all claims against LAUSD associated with delays caused by the DSA inspector.

2.4.5 Insurance. Prior to commencing any Construction or the delivery of any materials or supplies for the Project, Developer shall provide LAUSD with copies of certificates of the insurance required herein and in Article X below. At all times during Construction and until Completion of Construction (as hereinafter defined), Developer, at its sole cost and expense, shall provide and keep in force (i) "all risk" builder’s risk insurance, including vandalism and malicious mischief, covering improvements in place and all material and equipment at the job site, (ii) evidence of workers’ compensation insurance covering all persons employed in connection with the work in compliance with all applicable laws, rules and regulations, and (iii) the insurance coverage required in Article X below, such insurance to remain in full force and effect until such improvements have been completed and fully insured in accordance with Article X below.

2.4.6 Substantial Completion of the Project. Upon Substantial Completion (as hereinafter defined) of Construction of the Project, Developer shall provide written notice to LAUSD and LAUSD shall have the right, but not the obligation, to timely conduct an inspection to confirm Substantial Completion of the Project. For purpose of this Agreement, "Substantial Completion" or "Substantially Completed" shall mean that the applicable portion of the Project is physically and functionally complete in all material respects, in accordance with the applicable

portions of the Construction Plans and all applicable laws, rules and regulations, except for any items that are unfinished, deficient or require correction in order to conform with the Construction Plans in all material respects (the "Punch List Items").

2.4.7 Completion of Project Construction. Upon completion of the Punch List Items, Developer shall provide written notice to LAUSD and LAUSD shall have the right, but not the obligation, to timely conduct an inspection to confirm that the Project is complete and fully conform to the Construction Plans in all material respects. Construction shall be deemed complete only after (i) the Project is physically and functionally complete in all respects in material conformance with the Construction Plans and all applicable laws, rules and regulations, and is ready to be occupied and utilized in accordance with the terms of this Agreement, and that all Punch List Items have been successfully completed, and (ii) the applicable governmental agency having appropriate jurisdiction over the Project has issued a certificate of occupancy or its equivalent (collectively, "Completion of Project Construction").

2.4.8 No LAUSD Liability. Developer understands and agrees that LAUSD is not a guarantor of, nor responsible for, Construction or the Project as completed, or the compliance thereof with applicable laws, rules or regulations. LAUSD shall not incur liability of any kind by reason of granting approval or otherwise allowing Construction or the Project to be developed on the Campus and Developer shall indemnify and defend LAUSD from any and all liability, claims, and/or damages that may arise directly or indirectly from Construction or the Project, except to the extent that such liability, claim, and/or damages arise from LAUSD's breach of this Agreement, gross negligence or willful misconduct.

2.4.9 Notice of Completion. Within fifteen (15) days after Completion of the Project Construction, Developer shall cause a Notice of Completion to be recorded in the office of the Recorder of Los Angeles in accordance with Section 8182 of the California Civil Code ("Civil Code") or any successor statute, and shall furnish LAUSD a copy thereof upon recordation.

2.4.10 Copy of Construction Plans. Upon Completion of Project Construction, Developer shall deliver to LAUSD one (1) set of copies of the Construction Plans with any field changes reflected thereon during the Construction on compact disc or other media specified by LAUSD within ninety (90) days following issuance of a certificate of occupancy or its equivalent. Developer shall also deliver to LAUSD a copy of any warranties relating to the Project and all improvements, equipment and systems therein.

2.5 Use of Project. Developer agrees that Developer shall have no right to use the improvements of the applicable Phase of the Project until it has satisfied all of the following:

2.5.1 Developer has obtained a certificate of occupancy or its equivalent for the applicable Phase of the Project from the DSA and a completed Essential Safety Checklist & Approval Form has been issued by the Office of Environmental Health and Safety ("OEHS");

2.5.2 The DSA Inspector has completed its inspection and issued clearance for the use of the applicable Phase of the Project and a copy of such has been delivered to LAUSD;

2.5.3 Except for any Punch List Items and disputed claims, the Construction Team has released and waived all claims arising from the portions of the Construction of the Project that are complete, and all liens and encumbrances arising from the same have been discharged from the fee and leasehold as provided in Article IX; and

2.5.4 Developer shall have provided to LAUSD one (1) copy of the initial Construction Plans and any field changes for the Project.

2.6 Failure to Complete Construction. In the event Developer fails to observe the Project Schedule or timely complete Construction of the Project, LAUSD shall have the right to pursue all rights and remedies available at law. In addition to the foregoing, Developer agrees LAUSD shall have the right, but not the obligation, to pursue the completion of Construction of the Project and Developer agrees that if LAUSD makes such election Developer authorizes LAUSD to deduct from the general revenue account of the Ocean Charter school an administrative management fee in an amount equivalent to the actual costs and expenses incurred by LAUSD for its employee(s) or agent to complete Construction of the Project. The phrase "general revenue account" shall mean the general purpose entitlement and categorical block grant, as defined in subdivisions (a) and (b) of the California Education Code Section 47632. If LAUSD elects not to complete Construction of the Project, LAUSD shall secure the Campus and Developer authorizes LAUSD to deduct from the general revenue account of the Ocean Charter school the costs incurred by LAUSD to secure the Campus and an administrative management fee in an amount equivalent to the actual costs and expenses incurred by LAUSD for its employee(s) or agent to secure the Campus and maintain reasonable security to minimize damage and/or destruction of the Campus, Project and supplies.

### ARTICLE III

#### **OWNERSHIP OF THE PROJECT IMPROVEMENTS**

Subject to CSFP requirements and the Lease, during the term of occupancy by Ocean on the Campus, all improvements of the Project on the Campus shall be owned by LAUSD; provided, further, that the land upon which the Project is situated shall at all times remain the fee property of LAUSD. At the termination of the occupancy by Ocean of the Campus or upon LAUSD's request, Developer shall execute and deliver any documentation required by LAUSD to evidence LAUSD's ownership of the improvements to the Project, and LAUSD shall have no obligation to pay for the improvements of the Project or provide any compensation to Developer (except for the release of the Augmentation Grant Award under Article XV below). This Article III shall survive the expiration or earlier termination of this Agreement.

### ARTICLE IV

#### **MAINTENANCE AND REPAIR**

##### 4.1 Maintenance and Repair.

4.1.1 Maintenance and Repair Obligations. LAUSD shall not be required or obligated to do any maintenance or to make any repairs, changes, alterations, additions,

improvements or replacements of any nature whatsoever in, on or about the Project through completion of Construction. Nothing contained herein shall be construed as requiring LAUSD to make any repairs or to do any maintenance necessitated by reason of the act or omission of Developer or anyone claiming under Developer, or by reason of the failure of Developer, to observe or perform any conditions, covenants or agreements contained in this Agreement, or by reason of any damage to or destruction of other property caused by any improvements, alterations or additions made by Developer or anyone claiming through Developer. All other maintenance obligations are addressed in the Lease under Article 7, including Article 7.9 governing LAUSD supplied maintenance and operation services.

4.1.2 Developer's Maintenance and Repair and Replacement Obligations. At all times during the term of this Agreement, Developer, at its sole cost and expense and without cost to LAUSD, shall keep and maintain the Campus in good, clean, sanitary and safe condition and repair and in compliance with all laws, rules, and regulations applicable to a public school and LAUSD's standards, policies and bulletins. The foregoing is a separate and distinct obligation from Developer's obligations under the Prop. 39 occupancy or use agreement for the space occupied by the Ocean Charter school while the Project is being Constructed.

4.2 Survival. This Article IV shall survive the expiration or earlier termination of this Agreement.

## ARTICLE V

### TERM

The term of this Agreement shall commence on the Effective Date and shall expire upon the date of Completion of Project Construction and Developer's satisfaction of Section 2.5 above, unless sooner terminated pursuant to the terms herein or in the Lease (the "Expiration Date"). Notwithstanding the preceding sentence, Developer covenants and agrees that it shall achieve Completion of Project Construction on or before the date that is two (2) calendar years after the date that Developer commences Construction of the Project.

## ARTICLE VI

### CERTAIN COVENANTS

From the Execution Date until the Expiration Date, in addition to any covenants set forth elsewhere in this Agreement, Developer agrees to the following:

6.1 Litigation. Developer shall not commence any litigation with respect to Construction or the Project or affecting LAUSD's interest in the Campus without first providing written notice to LAUSD.

6.2 Funding. Developer shall maintain adequate and acceptable funding arrangements and shall fulfill its funding obligations under this Agreement in order for Developer to undertake the transactions contemplated by this Agreement and for Developer to complete Construction in accordance with the terms of this Agreement. Upon request by

LAUSD, Developer shall provide to LAUSD evidence satisfactory to LAUSD that all such funding arrangements are in place and that all such funding obligations are being fulfilled. Except as expressly provided pursuant to Article XV below, LAUSD discloses and Developer agrees that LAUSD has no obligation to provide any funding in the event Developer does not have sufficient funding to complete the Construction of the Project in accordance with the terms of this Agreement, or any obligation to complete Construction of the Project. LAUSD further discloses that the Project shall be required to comply with LAUSD's Project Stabilization Agreement and the CHPS program, and Developer may be required to temporarily cease Construction until Developer establishes compliance with the Project Stabilization Agreement and the CHPS program.

## ARTICLE VII

### COSTS

Developer shall pay, or cause to be paid: (i) all Costs of the Project; and (ii) all charges which are incurred by Developer or which may be a charge or lien against the Campus, including, without limitation, payments for insurance premiums, gas, electricity, wiring, heating, light, power, other utilities, security, trash removal, disposal and management of Hazardous Materials (as hereinafter defined) to the extent caused by Developer, interior cleaning and janitorial services, ground maintenance, landscaping, cable television, telephone, or other communications systems used, rendered or supplied upon or in connection with the Project, and any other charges, costs, obligations, liabilities, requirements and expenses which arise with regard to the Construction of the Project (collectively, "Developer Costs"), during the term of this Agreement. LAUSD shall not bear any cost, expense or liability for the Construction of the Project. This Article VII shall survive the expiration or earlier termination of this Agreement.

## ARTICLE VIII

### LIENS AND STOP NOTICE CLAIMS

8.1 Developer shall not suffer or permit any liens or stop notice claims to stand against the fee title to the Campus or against the Project, or any part thereof, by reason of any work, labor, services or materials done, or supplied, or claimed to have been done or supplied to Developer or anyone holding the Campus or the Project, or any part thereof, through or under Developer. If any such lien or stop notice claim shall at any time be filed against the Campus or the Project, Developer shall provide LAUSD written notice thereof as soon as notice of such lien, stop notice or action comes to the knowledge of Developer and shall cause the same to be discharged of record within 160 days after the date of the recordation of a notice of completion for the Project, by either payment, recorded release of lien or stop notice, recorded release bond deposit or bond, unless a bond therefor is already in effect or commencement of a lawsuit pursuant to Civil Code Section 8480, et seq. for a decree to release the property from the lien, or in the case of a stop notice, commencement of a summary proceeding pursuant to Civil Code Section 9500 et seq. or Developer's interpleader of funds subject to stop notice claims. If Developer is unable to discharge the lien or stop notice, Developer shall defend and indemnify LAUSD in any mechanics' lien or stop notice litigation filed in connection with the Campus or Project. The failure of Developer to discharge a lien recorded or stop notice filed on the Campus

or the Project, or any part thereof, within 160 days after the date of recordation of a notice of completion for the Project and Developer's refusal to defend and indemnify LAUSD in any mechanics' lien or stop notice litigation filed in connection with the Project shall constitute a Default under this Agreement and any other agreement providing Developer occupancy and use of the Campus. Nothing in this Agreement shall imply any consent or agreement on the part of LAUSD to subject its fee estate in the Campus to liability under any mechanics' lien law or to any claimant as defined in Civil Code Section 8004.

8.2 If any such liens or stop notices are not so discharged within 160 days after the date of recordation of a notice of completion for the Project, LAUSD may, without notice to Developer, without waiving its rights and remedies based on such breach of Developer and without releasing Developer from any of its obligations, cause such liens or stop notices to be released by any means it shall deem proper, including payment in satisfaction of the claim giving rise to such lien. Promptly following notice by LAUSD, Developer shall, but no later than ten (10) business days after Developer's receipt of LAUSD's notice, pay to LAUSD any sum paid by LAUSD to remove such liens, together with interest at the lesser of (a) the rate publicly announced from time to time by the largest (as measured by deposits) chartered bank operating in California, as its prime rate, reference rate or other similar benchmark rate, plus two percent (2%) or (b) the maximum rate then allowed by law (the "Interest Rate"), from the date of such payment by LAUSD, which Interest Rate shall commence as of the day LAUSD makes payment in satisfaction of the claim giving rise to such lien or stop notices and shall continue until Developer has remitted full payment to LAUSD.

8.3 In addition to the foregoing, Developer shall assure that the Project is free of any stop notices filed by Contractor or any of Contractor's subcontractors. In the event any such stop notice is filed, Developer shall provide stop notice releases or stop notice release bonds for each and every stop notice on the Project, along with dismissals of any stop notice litigation. In the event a stop notice is filed with LAUSD, Developer shall provide LAUSD with a stop notice release or stop notice release bond. In addition, Developer shall defend and indemnify LAUSD in any litigation arising from a stop notice filed on the Project.

8.4 The provisions of this Article VIII shall survive the expiration or earlier termination of this Agreement.

## ARTICLE IX

### ENVIRONMENTAL ISSUES

#### 9.1 Hazardous Materials.

9.1.1 Definitions. As used in this Agreement, the following definitions shall apply: "Environmental Laws" shall mean all federal, state and local laws, ordinances, rules and regulations now or hereafter in force, as amended from time to time, in any way relating to or regulating human health or safety, or environmental evaluations of potential school sites or health care facilities, or industrial hygiene or environmental conditions, or protection of the environment, or pollution or contamination of the air, soil, surface water or groundwater, and

includes, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601, *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.*, the Clean Water Act, 33 U.S.C. § 1251, *et seq.*, the Hazardous Substance Account Act, California Health and Safety Code § 25300, *et seq.*, the Hazardous Waste Control Law, California Health and Safety Code § 25100, *et seq.*, the Medical Waste Management Act, California Health and Safety Code § 25015, *et seq.*, and the Porter-Cologne Water Quality Control Act, California Water Code § 13000, *et seq.*, Education Code § 17210, *et seq.*, and California Code of Regulations, Title 5 § 14010, *et seq.* "Hazardous Materials" shall mean any substance or material that is described as a toxic or hazardous substance, explosive material, radioactive substance, waste or a pollutant or contaminant or infectious waste, or words of similar import, in any of the Environmental Laws, and includes, but is not limited to, asbestos, petroleum or petroleum products (including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or any mixture thereof), polychlorinated byphenyls, urea formaldehyde, radon gas, radioactive matter, medical waste, and chemicals which may cause cancer or reproductive toxicity. "Release" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment, including continuing migration, of Hazardous Materials into or through soil, air, surface water or groundwater in violation of Environmental Laws.

9.1.2 Developer Covenants. Developer shall not use, produce, process, manufacture, generate, treat, handle, store or dispose of any Hazardous Materials in, on or under the Campus or the Project, or use the Campus or the Project for any such purposes, or Release any Hazardous Materials into any air, soil, surface water or groundwater comprising the Campus or the Project, in each of the foregoing cases, in violation of any Environmental Laws. Developer shall comply with all Environmental Laws applicable to the Campus or the Project, or the construction or use or occupancy thereof, or any operations or activities therein or thereon.

9.2. Hazardous Materials Claims. Each party hereto shall immediately advise the other party in writing of: (i) any written notices received by such party (whether such notices are from the Environmental Protection Agency, or any other federal, state or local governmental agency or regional office thereof) of the violation or potential violation of any applicable Environmental Laws occurring on or about the Campus or the Project, (ii) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened in writing pursuant to any Environmental Laws, (iii) any written notices received by such party of all claims made or threatened by any third party against any party, the Campus or the Project relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials relating to the Campus or the Project (the matters set forth in clauses (i), (ii) and (iii) above are hereinafter referred to as "Hazardous Materials Claims") and (iv) any party's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Campus that could have a reasonable likelihood to cause the Campus or the Project or any part thereof to be subject to any Hazardous Materials Claims. Each party hereto shall have the right but not the obligation to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims.

9.3 Indemnity by Developer. Developer shall be solely responsible for, and shall indemnify, defend and hold harmless LAUSD and its School Board, staff, students, faculty and/or invited guests from and against, any claim, demand, lawsuit, loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, Release by Developer (including its general contractor, subcontractor, representative or owner) of Hazardous Materials on, under or derived from the Campus or the Project in violation of applicable law during the term of this Agreement, including, without limitation: (i) claims of third parties (including governmental agencies) for injury or death to any person or for damage or destruction of any property, (ii) claims for response costs, clean-up costs, costs and expenses of removal and restoration, including fees of attorneys' and experts, and costs of determining the existence of Hazardous Materials and reporting same to any governmental agency, (iii) any and all other claims for expenses or obligations, including attorneys' fees, costs, and other expenses, (iv) any and all penalties threatened, sought or imposed on account of a violation of any Environmental Law, and (v) all fees of any consultants, attorneys and engineering firms retained in connection with monitoring the Hazardous Materials; provided, however, that the foregoing indemnity shall not apply to any claim, demand, lawsuit, loss, damage, cost, expense or liability to the extent arising from (A) any act or omission on the part of the LAUSD, or the staff, faculty, and students or invited guests of LAUSD or any other party claiming through any of the foregoing (provided the same are acting in their official, professional or invited, as applicable, capacity), or (B) any Hazardous Materials that existed on, under or derived from the Campus, the Project or other properties as of the date of this Agreement or which later is found to exist following the date of this Agreement as a result of underground migration.

9.4 Removal of Hazardous Materials. To the extent Developer is liable under Section 9.3 above and in connection with any Hazardous Materials remediation required in connection with the Project, Developer, at its sole cost and expense, shall, with due care, in a safe manner and in accordance with all applicable laws, detain the spread of, ameliorate and remove from the Campus or the Project any Hazardous Materials contamination located on or beneath the Campus or the Project in violation of applicable law and shall monitor or cause to be monitored the levels of Hazardous Materials on, under or derived from the Campus and the Project or in the ground water in accordance with the terms and procedures required by any federal, state or local governmental agency having jurisdiction including, without limitation, any Regional Water Quality Control Board and the Environmental Protection Agency. Further, any and all such remediation shall be according to the following protocol: (1) any such abatement or remediation report, abatement work, and demolition work shall be performed by an LAUSD approved demolition and abatement contractor as applicable; (2) LAUSD's Facilities Environmental Technical Unit ("FETU") shall review and approve any such abatement/remediation report in writing prior to the commencement of any abatement, demolition or removal work of the applicable materials or structures; and (3) FETU shall review all such remediation work, and Ocean shall grant FETU access to all reports, records and files as requested by FETU in connection with overseeing such remediation work, access to the Campus and Leased Premises, and shall promptly respond to all inquiries of and request for information from FETU regarding such remediation work.

9.5 Survival. The provisions of this Article IX shall survive the expiration or earlier termination of this Agreement.

## ARTICLE X

### **INSURANCE; INDEMNITY**

#### 10.1 Developer Insurance.

10.1.1 Insurance. At all times during the term of this Agreement, at Developer's sole cost and expense, Developer shall, as a covenant of this Agreement, provide and keep in force and effect:

10.1.1.1 All Risk Builder's Risk Insurance. "All risk" builder's risk insurance, including vandalism and malicious mischief, covering improvements in place and all material and equipment at the job site. The minimum limits of liability shall be a combined single limit with respect to each occurrence in an amount of not less than that specified in **Exhibit I.**

10.1.1.2 Commercial General Liability Insurance. Commercial General Liability Insurance on an occurrence basis against claims for personal injury, death and/or property damage occurring in or about the Campus or the Project with respect to the Construction thereof. Such insurance shall provide primary coverage without contribution from any other insurance carried by or for the benefit of LAUSD and its Board of Education, and Developer shall obtain blanket broad-form contractual liability coverage to insure its indemnity obligations herein. The minimum limits of liability shall be a combined single limit with respect to each occurrence in an amount of not less than that specified in **Exhibit I.**

10.1.1.3 Fire and Extended Coverage. Fire and hazard "all risk" insurance covering 100% of the full replacement cost valuation of the Project. Such insurance shall provide protection against any peril included within the classification "Fire and Extended Coverage", together with insurance against fire sprinkler damage, vandalism and malicious mischief. Such insurance shall contain (i) no coinsurance or contribution clauses and (ii) a Replacement Cost Endorsement.

10.1.1.4 Automobile Insurance. Primary automobile liability insurance in an amount not less than that specified in **Exhibit I.**

10.1.1.5 Workers' Compensation Insurance. Workers' compensation insurance policies as required by law and Employer's Liability insurance in an amount not less than that specified in **Exhibit I.**

10.1.2 Developer Insurance Policies. All policies of insurance provided for herein shall be issued by insurance companies authorized to do business in California and rated in Best's Insurance Guide, or any successor thereto as having a "Best's Rating" of "A-" or better and a "Financial Size Category" of at least "VII" or better or, if such ratings are not then in effect, the equivalent thereof or such other financial rating as LAUSD may at any time consider appropriate. All policies held by Developer in connection with this Agreement shall name Developer as the insured and LAUSD and the School Board as additional insureds, and shall provide that they may not be cancelled by the insurer for nonpayment of premiums or otherwise

or be terminated or lapse of their own accord or by their own terms until at least thirty (30) days after written notice of the proposed cancellation upon all parties named in such policies as insureds. All insurance required to be carried by Developer shall contain a provision that no act or omission of Developer shall affect or limit the obligation of the insurance company to pay the amount of any loss sustained. All such policies shall contain language to the effect that any loss shall be payable notwithstanding any act or negligence of LAUSD that otherwise might result in the forfeiture of the insurance. All public liability, property damage and other casualty policies shall be written as primary policies, not contributing with any other coverage which LAUSD or Developer may carry. Developer agrees that with respect to all such policies carried by or to be carried by Developer, Developer shall require its insurance broker to provide LAUSD with written notice whenever there are paid losses on Developer's insurance policies which result in a 20% or greater erosion of limits. Upon the Execution Date, and thereafter at least ten (10) days prior to the expiration date of such policy, Developer shall deliver to LAUSD copies of the policies for all the insurance required to be carried by Developer hereunder. Developer shall cause each property insurance policy obtained by Developer to provide that the insurance company waives all right of recovery by way of subrogation against LAUSD or Developer in connection with any damage covered by any such policy or policies, and Developer hereby waives all such claims against LAUSD. LAUSD shall cause each property insurance policy obtained by LAUSD (if any) to provide that the insurance company waives all right of recovery by way of subrogation against Developer or LAUSD in connection with any damage covered by any such policy or policies, and LAUSD hereby waives all such claims against Developer.

10.1.3 Blanket Insurance. Notwithstanding the foregoing, all of the insurance requirements set forth herein on the part of Developer shall be deemed satisfied if covered by a blanket insurance policy providing the coverage required by this Agreement.

10.2 Waiver. Except as otherwise provided in this Agreement or at law or equity, LAUSD shall not be liable for and Developer hereby waives all claims against LAUSD for damage to any property or injury, illness or death of any person in or upon the Campus or the Project arising at any time during the term of this Agreement, except the extent the same results from the gross negligence or willful misconduct of LAUSD or any party claiming through LAUSD. LAUSD shall not be liable for and Developer hereby waives all claims against LAUSD arising in any way due to, in connection with or related to, directly or indirectly, the Campus or the Project or any activities by Developer in, on or about the Campus, including the Construction of the Project, except the extent the same results from the negligence or willful misconduct of LAUSD or any party claiming through LAUSD.

LAUSD and Developer hereby agree and acknowledge that Developer is acting on its own behalf in constructing the Project and is not operating as an agent of LAUSD. Should LAUSD, through no fault of LAUSD, be named as a defendant in any suit brought against Developer in connection with or related to, directly or indirectly, Developer's Construction of the Project, Developer shall pay to LAUSD the costs and expenses LAUSD incurs in such suit, including without limitation, its actual professional fees such as appraisers', accountants' and attorneys' fees.

The provisions of this Section 10.2 shall survive the expiration or sooner termination of this Agreement.

10.3 Developer Indemnity. In addition to the Developer's other indemnity obligations set forth elsewhere in this Agreement, to the fullest extent permitted by law, Developer shall indemnify, protect, defend and hold LAUSD and its staff, students, faculty and invited guests harmless from and against any and all claims, losses, costs, loss, attorneys' fees, damages, expenses and liabilities incurred or arising from any cause in connection with: (i) the Construction of the Project, (ii) the failure of Developer to pay or cause to be paid any Developer Costs, (iii) the failure of Developer to observe or perform any of the terms, covenants or conditions of this Agreement on Developer's part to be observed or performed and (iv) any claim by a third party that LAUSD is responsible for any actions by Developer in connection with the Construction of the Project (collectively "Liabilities"). Notwithstanding anything to the contrary set forth in this Section 10.3, the provisions of this Section 10.3 shall not apply to the extent that all or part of the Liabilities are due to the negligence, willful misconduct or act or omission of LAUSD or its staff or invitees (provided the same are acting in their official, professional or invited, as applicable, capacity). Developer agrees to promptly notify LAUSD of the commencement of any litigation or proceedings pending, threatened or commenced in writing (whether or not served) against Developer or any Developer representatives in connection with the matters covered hereby. The provisions of this Section 10.3 shall survive the expiration or sooner termination of this Agreement.

## ARTICLE XI

### **DEFAULT; REMEDIES**

11.1 LAUSD's Default. LAUSD shall not be in default of any of its obligations under this Agreement unless LAUSD fails to perform such obligations within a reasonable time, but in no event less than thirty (30) days, after written notice by Developer to LAUSD specifying wherein LAUSD has failed to perform such obligations; provided, however, that if the nature of LAUSD's default is such that more than thirty (30) days are required for its cure, LAUSD shall not be in default if LAUSD commences such cure within such thirty (30) day period and thereafter diligently prosecutes the same to completion.

11.2 Developer's Remedies. In the event of any default by LAUSD as described in Section 11.1 above, subject to all applicable laws that may restrict remedies against a school district, including, but not limited to, restrictions within the Education Code, Developer's sole remedies under this Agreement are to pursue LAUSD for actual damages, including reasonable attorneys' fees and costs, resulting from LAUSD's default.

11.3 Developer's Default. The occurrence of any one of the following events shall be considered a "Default" of this Agreement by Developer:

11.3.1 Costs. The failure of Developer to pay or cause to be paid before delinquency any Developer Costs or other fees, charges, or payments due hereunder, or to observe or perform any of Developer's financial covenants and obligations hereunder.

11.3.2 Construction. The failure of Developer to construct the Project in substantial accordance with the Construction Plans or to observe or perform any of its covenants and obligations hereunder pertaining to Construction.

11.3.3 Project Schedule. The failure of Developer to meet the deadline for any milestone as set forth in the Project Schedule, or to observe or perform any of its covenants and obligations hereunder pertaining to the Project Schedule.

11.3.4 Liens. The failure of Developer to discharge a lien recorded on the fee title to the Campus or the Leased Premises or on the Project, or any part thereof caused by Developer or any party claiming through Developer relating to Construction of the Project, or to observe or perform any of its covenants and obligations hereunder pertaining to liens on the Campus or on the Project.

11.3.5 Insolvency. The making by Developer of any general assignment or general arrangement for the benefit of creditors, or the filing by or against Developer of a petition to have Developer 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 Developer, the same is dismissed as soon as reasonably practical but in any event within 120 days), or the appointment of a trustee or receiver to take possession of substantially all of Developer's assets in the Project or on the Campus or of Developer's interest in this Agreement, where possession is not restored to Developer as soon as reasonably practical but in any event within 60 days, or the attachment, execution or other judicial seizure of substantially all of Developer's assets in the Project or on the Campus or of Developer's interest in this Agreement, where such seizure is not discharged as soon as reasonably practical but in any event within 60 days.

11.3.6 Assignment. The actual or attempted assignment, transfer, mortgage, encumbrance, or lease of, or the actual or attempted granting of any license, concession, franchise or other permission to use the Campus or the Project, except as provided herein, by Developer, or the actual or attempted assignment or attempted assignment of this Agreement by Developer, in violation of Article XIII hereof.

11.3.7 Failure to Perform. The failure of Developer to perform or observe any of Developer's covenants and obligations hereunder or under the Lease.

Notwithstanding anything to the contrary contained in this Agreement, LAUSD shall have no rights as a result of any Default until LAUSD gives thirty (30) days written notice to Developer specifying the nature of the Default. Developer shall then have the right to cure such Default, and Developer shall not be deemed in default if Developer cures such Default within thirty (30) days after receipt of notice of the Default; provided, however if the nature of the Default is such that it cannot be cured within said thirty (30) days, Developer shall commence the cure within said thirty (30) days and prosecute such cure with diligence to completion.

11.4 LAUSD Remedies. In the event of any Default by Developer, after the expiration of any applicable cure period provided herein to Developer, LAUSD may pursue any rights or remedies it may have at law, in equity or otherwise and the pursuit of any right or remedy shall not waive nor prohibit LAUSD from pursuing any other available right or remedy, including the following additional rights:

11.4.1 Right to Perform. LAUSD shall have the right, but not the obligation, to enter the Project or the Campus at all times for the purpose of performing any covenant or condition that Developer has failed to perform, at LAUSD's option. All costs incurred by LAUSD in so performing shall promptly be reimbursed to LAUSD by Developer, together with the administrative/management fee provided for in Section 2.6 above or 10% of the costs and expenses incurred by LAUSD or the amount expended under any performance or surety bond as an administrative/management fee, whichever is selected by LAUSD, AND interest at the Interest Rate, from the date such cost or expense is incurred by LAUSD following Developer's Default up to and including the date paid. In rendering such performance, LAUSD shall have the right to execute any agreements relating to Construction, or otherwise in connection with, the Campus and/or the Project. Any performance by LAUSD of Developer's obligations shall not waive or cure such Default.

11.4.2 Costs of Enforcement. LAUSD shall have the right to reimbursement from Developer promptly following demand by LAUSD for all costs and expenses incurred by LAUSD, including attorneys' fees (whether or not legal proceedings are instituted), in enforcing the covenants and obligations of Developer under this Agreement.

## ARTICLE XII

### **ASSIGNMENT; LEASE; ENCUMBRANCES**

12.1 Assignment by Developer. Developer shall not assign this Agreement or any rights and obligations hereunder without the prior written approval of LAUSD, which approval may be denied or conditioned in LAUSD's sole and absolute discretion. Notwithstanding anything to the contrary contained in this Agreement, the Augmentation Grant Award is personal to the Developer and is not transferrable in connection with any assignment of this Agreement.

12.2 Reserved.

12.3 Reserved.

12.4 Mortgage by Developer. Developer shall not execute a mortgage encumbering all or any portion of the right, title and estate of Developer in the improvements of the Project, without LAUSD's prior written consent which may be withheld in LAUSD's sole and absolute discretion. In the event a mortgage on the improvements of the Project is allowed, then such mortgage shall at all times be subject and subordinate to, and shall not affect or become a lien upon, LAUSD's fee estate in the Campus, and shall only encumber Developer's right, title or interest in the improvements of the Project or Developer's leasehold interest.

12.5 Encumbrance. Developer shall not, without the prior written consent of LAUSD, encumber its interest in the improvements of the Project, or any part thereof, and if Developer fails to ensure that such encumbrance is subordinated to LAUSD's fee estate in the Campus and if Developer fails to comply with this Section 12.5, such failure shall be deemed to be an immediate Default hereunder.

12.6 Other. Any assignment, transfer, mortgage, encumbrance or lease of, or any license, concession, franchise or other permission to use the improvements of the Project or the Campus granted by Developer to any person or entity shall be expressly subject and subordinate to all applicable terms and conditions of this Agreement. Any purported or attempted assignment, transfer, mortgage, encumbrance or lease of, or any license, concession, franchise or other permission to use the improvements of the Project or the Campus contrary to the provisions of this Article XII shall be void, constitute a Default under this Agreement, and, at the option of LAUSD, shall terminate this Agreement.

12.7 LAUSD Approval. Notice of any actual or proposed assignment, transfer, mortgage, encumbrance, lease or hypothecation of the improvements of the Project, the Campus or this Agreement shall be given by Developer to LAUSD, together with a copy of the proposed documentation thereof (including, in the event of an assignment, the assumption document in which the assignee or proposed assignee agrees to assume all obligations of Developer under this Agreement), with all necessary and appropriate details for LAUSD to provide an approval. Any approval or disapproval by LAUSD under this Article XII is at LAUSD's reasonable discretion.

12.8 Costs. Developer shall reimburse LAUSD for LAUSD's costs and attorney's fees incurred in conjunction with the processing and documentation of any actual or proposed assignment, transfer, mortgage, encumbrance, lease or hypothecation of the improvements of the Project, the Campus or this Agreement by Developer, or any license, concession, franchise or other permission to use the improvements of the Project or the Campus granted by Developer to any person or entity.

12.9 Assignment by LAUSD. Subject to applicable legal requirements, LAUSD shall have the right at any time and from time to time during the term of this Agreement to sell or assign all or any portion of its fee interest in the Campus; provided, however, that under no circumstances shall LAUSD assign all or part of the Campus to any entity separate from LAUSD's interests and obligations under this Agreement. Notice of any assignment or proposed assignment of this Agreement made in conjunction with such transfer shall be given by LAUSD to Developer at least thirty (30) days prior to such assignment or proposed assignment, together with a copy of the assumption document by which the assignee or proposed assignee agrees to assume all obligations of LAUSD under this Agreement.

## ARTICLE XIII

### NOTICES

Any notice or communication required or permitted hereunder shall be given in writing, sent by (a) personal delivery delivered by a representative of the party giving such notice, or (b) overnight delivery by recognized overnight courier, or (c) United States mail, postage prepaid, registered or certified mail or (d) facsimile, addressed to the person(s) identified in Exhibit I or to such other address or to the attention of such other person as hereafter shall be designated in writing by the applicable party sent in accordance herewith. Any such notice or communication shall be deemed to have been delivered either at the time of personal delivery actually received by the addressee or a representative of the addressee at the address provided above or, if delivered on a business day in the case of delivery service or certified or registered mail, as of

the earlier of the date delivered or the date seventy-two (72) hours following the date deposited in the United States mail at the address provided herein, or if by telecopier, upon electronic confirmation of good receipt by the receiving telecopier. Developer and LAUSD hereby agree that notices may be given hereunder by the parties' respective counsel and that, if any communication is to be given hereunder by Developer's or LAUSD's counsel, such counsel may communicate directly with all principals as required to comply with the provisions of this Article XIII.

## ARTICLE XIV

### MISCELLANEOUS

14.1 LAUSD's Successors. In the event of any transfer of the fee title of or interest in the Campus, LAUSD shall be relieved, from and after the date of such transfer, of all liability for LAUSD's obligations hereunder thereafter to be performed, provided such transferee accepts and assumes all such liability in writing. The obligations contained in this Agreement to be performed by LAUSD shall, subject as aforesaid, be binding on LAUSD's successors and assigns only during their respective periods of ownership. Notwithstanding anything to the contrary contained in this Agreement, all indemnities set forth in this Agreement shall survive the expiration or earlier termination of this Agreement.

14.2 Intentionally omitted.

14.3 Captions. The captions and headings in this Agreement are inserted only as a matter of convenience and for reference, and they in no way define, limit or describe the scope of this Agreement or the intent of any provision thereof.

14.4 Choice of Law. This Agreement shall be governed and construed by the laws of the State of California.

14.5 Interpretation. This Agreement shall be deemed to be jointly prepared by both of the parties hereto, and any ambiguities or uncertainties herein shall not be construed for or against either of the parties hereto.

14.6 Further Assurances. LAUSD and Developer agree to execute all documents and instruments reasonably required in order to consummate the transactions contemplated under this Agreement.

14.7 Attorneys' Fees. In the event either party hereto should commence an action against the other to enforce any obligation set forth herein, the unsuccessful party shall pay to the prevailing party its cost of litigation or arbitration, including reasonable attorneys' fees.

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

14.9 Entire Agreement. This Agreement, the Lease and the additional agreements entered into concurrently with and as a condition precedent to the effectiveness of the Lease

contain all of the agreements of the parties hereto with respect to the matters covered hereby, and no prior agreements, oral or written, or understandings or representations of any nature whatsoever pertaining to any such matters shall be effective for any purpose unless expressly incorporated in the provisions of this Agreement. The provisions of this Agreement shall not be amended or altered except by an agreement in writing signed by both of the parties hereto.

14.10 Successors and Assigns. Subject to the provisions hereof relative to assignment and to Section 13.1 hereof, this Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, transferees, successors and assigns of the respective parties hereto.

14.11 Time Is of the Essence. Time is of the essence with respect to the performance or observance of each of the obligations, covenants and agreements under this Agreement. Except as otherwise provided herein, the parties agree that any matter that requires the approval or consent of a party under this Agreement, such approval or consent shall be given or withheld within thirty (30) days following request; provided, however, if the party fails to respond in such time period or if the party denies or disapproves the request and fails to specify in detail the reasons for such denial or disapproval, then the request shall be deemed disapproved.

14.12 Gender. As used herein, the neuter gender includes the feminine and the masculine, the masculine includes the feminine and the neuter and the feminine includes the masculine and the neuter, and each includes corporation, partnership or other legal entity when the context so requires.

14.13 Waiver. Either party hereto may waive the satisfaction or performance of any conditions or agreements in this Agreement which have been inserted for its own benefit, so long as the waiver is signed and specifies the waived condition or agreement and is delivered to the other party hereto. No waiver of any provision hereof shall be deemed a waiver of any other provision hereof. Consent to or approval of any act by one of the parties hereto shall not be deemed to render unnecessary the obtaining of such party's consent to or approval of any subsequent act, nor shall any custom or practice which may develop between the parties in the administration of the terms hereof be deemed a waiver of, or in any way affect, the right of one of the parties to insist upon the performance by the other party in strict accordance with said terms.

14.14 Cumulative Remedies. No remedy herein shall be considered exclusive of any other remedy, but the same shall be cumulative and, shall be in addition to every other remedy given hereunder now or hereafter existing at law or in equity or by statute, and every power and remedy given by this Agreement may be exercised from time to time and as often as occasion may arise or as may be deemed expedient.

14.15 No Subordination. Nothing contained in this Agreement shall be deemed to subordinate LAUSD's interest in the Campus to the interest of Developer.

14.16 Severability. The invalidity or unenforceability of any provision of this Agreement as determined by a court of competent jurisdiction shall in no way affect the validity of any other provisions hereof.

14.17 Force Majeure. All time periods set forth in this Agreement shall be extended by one day for each day of Force Majeure Delay that occurs, but in no event shall the Completion of Project Construction be extended by more than 180 days as a result of Force Majeure Delays. "Force Majeure Delay" shall mean any actual delays due to strikes, lockouts or other labor disturbance, civil disturbance, riot, sabotage, blockage, embargo, inability to secure materials, supplies or labor through ordinary sources by reason of regulation or order of any government or regulatory body, severe or unusual shortages of material, supplies or labor, lightning, rain, earthquake, fire, storm, hurricane, tornado, flood, washout, explosion, terrorist act, or any other cause outside of LAUSD's or Developer's reasonable control; provided, however, that, notwithstanding the foregoing, Developer shall in any event pay any sum of money required to discharge any lien if at any time the Campus, or portion thereof, or the Project, or any part thereof, shall be in danger of being foreclosed, forfeited or lost.

14.18 Reimbursement Charges. Notwithstanding anything to the contrary set forth in this Agreement, other than in the context of a default under this Agreement, the parties shall reasonably cooperate with each other to minimize any and all reimbursement obligations under this Agreement.

14.19 Incorporation. The terms and conditions of the Exhibits attached hereto are incorporated herein by this reference thereto.

- Exhibit A: Site Plan
- Exhibit B: Project Schedule
- Exhibit C: Form of Payment and/or Performance Bond
- Exhibit D: Labor Compliance MOU
- Exhibit E: Index of DSA Approved Construction Plans
- Exhibit F: Environmental Import/Export Materials Testing
- Exhibit G: Fingerprinting Requirements
- Exhibit H: Form of Progress Report
- Exhibit I: Insurance Requirements
- Exhibit J: Form of Contractor Invoice

14.20 Days. The word "days" as used in this Agreement shall mean and refer to calendar days unless expressly stated as business days and, due to budget cuts, shall not include any furlough day observed by LAUSD. If the time period for the performance of any act under this Agreement expires on a Saturday, Sunday or any other day in which banking institutions in the State of California are authorized or obligated by law or executive order to close ("Holiday"), the act in question may be performed on the next succeeding day that is not a Saturday, Sunday or Holiday.

14.21 Signatures. Each individual executing this Agreement on behalf of Developer represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of Developer, and that this Agreement is binding upon Developer in accordance with its terms. Each individual executing this Agreement on behalf of LAUSD represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of LAUSD and that this Agreement is binding upon LAUSD in accordance with its terms.

## ARTICLE XV

### **DISBURSEMENT OF AUGMENTATION GRANT AWARD**

The Augmentation Grant Award shall be used to fund the costs of the Project, including, but not limited to the removal of the seven portable classrooms included in the Phase I and II scope of work. The removal of these buildings will be funded by the Augmentation Grant without restriction to the availability of other project funds, in order to ensure timely removal of the portable buildings. The scope of work associated with the removal of portable buildings in Phase I and II can be contractually procured by either LAUSD or Developer. In the event that the LAUSD manages the removal of said portable buildings, the augmentation grant funds can be utilized for the associated costs upon written consent from Developer. In the event the Developer manages the removal of the portable buildings, Developer shall submit a copy of all contracts required for the abatement and removal of the buildings.

With the exception of the costs associated with the removal of the seven portable classrooms, the Augmentation Grant Award shall be used by Developer to fund the Cost of the Project after the expenditure of all but \$1,000,000 of the CSFP Award and any and all other funds Developer is using to complete the Project other than the Augmentation Grant Award. Any amounts of the Augmentation Grant Award not drawn by Developer under this Agreement may be reallocated by LAUSD under its facilities bond program. LAUSD shall disburse funds up to the Augmentation Grant Award in as many as, but not more than, five (5) Disbursements (defined below) to be used by Developer to fund the Costs of the Project pursuant to the following procedure:

15.1 Application for Disbursement. At least sixty (60) days prior to the month in which Developer projects it will need to make a draw against the Augmentation Grant Award, Developer shall submit to LAUSD a written itemized statement(s) signed by Developer ("Application") setting forth:

15.1.1 the total amount projected to be incurred by Developer and to be paid for from the Augmentation Grant Award (each a "Disbursement"), and such Disbursement shall not be more than the amount reasonably estimated by Developer required to complete the projected work to be performed, material to be supplied and/or costs to be incurred or due for sixty (60) days after the Disbursement is released;

15.1.2 an invoice in the form attached hereto as **Exhibit J** showing the projected work to be performed, material to be supplied and/or costs to be incurred or due in connection with the Project (and are reasonably incurred in connection with the Cost of the Project) and the specific time period for which Disbursement is requested;

15.1.3 a Progress Report describing the portion of the Project that has been completed;

15.1.4 an officer's certificate, signed by an officer of Developer, certifying to LAUSD that there is no default under the Lease or this Agreement and that Developer has sufficient funds (after taking into account Developer's receipt of the Disbursement that is the subject of the Application) for the Completion of Project Construction, along with a bank statement, dated not less than thirty (30) days before the date of such officer's statement, evidencing the availability of such funds; and

15.1.5 the materials required to be delivered to LAUSD under Section 15.2.4 below for LAUSD's review and approval or waiver as conditions precedent to the applicable Disbursement.

15.2 Conditions Precedent to Each Disbursement. LAUSD shall have the right to condition the release of any Disbursement from the Augmentation Grant Award upon LAUSD's review and approval or written waiver of any and all of the following conditions:

15.2.1 LAUSD's receipt of a timely and complete Application, including without limitation, the contents of such Application;

15.2.2 no Default under this Agreement or the Lease is then occurring or an event that with notice and the passage of time would constitute a Default under such agreements;

15.2.3 LAUSD's inspection of the improvements and verification of completion of improvements that were to have been constructed up to the date of the Application then being reviewed by LAUSD; and

15.2.4 Prior to the first Application for Disbursement, Developer shall have delivered to LAUSD an officer's certificate, signed by an officer of Architect or Contractor, certifying to LAUSD that, based on the current Project plan and timeline, within sixty (60) days following the date of such officer's certificate, the cost required for Completion of Project Construction (including without limitation, the Specific Phase II Improvements) will be less than the sum of (i) Augmentation Grant Award plus (ii) \$1,000,000.00, along with documentation evidencing the portion of the Project that has been completed and the portion of the Project remaining to be completed (and the cost thereof) as of the date of such certificate.

15.3 Funding of the Disbursement. Provided that the conditions precedent have been reviewed and approved or waived by LAUSD, LAUSD shall use commercially reasonable efforts to wire the applicable Disbursement to an account specified and controlled by Developer

within sixty (60) days of Developer's timely and complete Application, which funds Developer shall thereafter use to pay for the Cost of the Project and for no other purpose.

IN WITNESS WHEREOF, LAUSD and Developer have executed this Agreement as of the dates set forth with the respective signatures.

LAUSD:

LOS ANGELES UNIFIED SCHOOL DISTRICT,  
a school district duly formed and existing under the  
laws of the State of California

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

DEVELOPER:

OCEAN CHARTER SCHOOL, INC.,  
a California nonprofit corporation duly  
formed and existing under the laws of the  
State of California

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

EXHIBIT A

Site Plan

(see attached)

EXHIBIT B

Project Schedule

EXHIBIT C

Form of Payment and/or Performance Bond

**FAITHFUL PERFORMANCE BOND**

WHEREAS \_\_\_\_\_, a California public benefit corporation,  
hereinafter called Developer, and

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hereinafter called CONTRACTOR, have entered into a Contract, which is incorporated by  
reference herein in its entirety, dated:

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for:

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Contract Amount:

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NOW, THEREFORE, CONTRACTOR, as Principal, and \_\_\_\_\_  
as Surety; are held and firmly bound to Developer, its successors and assigns in the amount set  
forth under the bond, for the payment whereof in the manner specified, the CONTRACTOR and  
Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and  
severally, firmly by these presents:

FAITHFUL PERFORMANCE BOND

In an amount equal to One Hundred Percent (100%) of the above Contract Amount. The  
condition of this obligation is that if the CONTRACTOR shall in a workmanlike manner  
promptly, competently, and faithfully perform all of the terms and conditions of the Contract in  
strict conformity therewith, then this obligation shall be null and void, otherwise it shall remain  
in full force and effect

The Surety, for value received, hereby stipulates and agrees that no adjustment to the Contract  
Amount and or Contract Times, alteration, additions and/or deletions to the terms of the  
Contract, or to the work to be performed thereunder, shall in anyway affect its obligations on the  
above bond, and it does hereby waive notice of any such change, adjustment, alteration, addition  
or deletion to the terms of the Contract Documents. The Surety hereby acknowledges and agrees  
that Developer may assign its rights herein to the State of California or any state agency  
providing funding or financing for the Project, a private or institutional lender providing funding  
or financing for the Project and any school district with whom Developer has a charter  
agreement without the consent of Surety.

No final settlement between the Developer and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

In case any suit is brought upon this bond, reasonable attorneys' fees shall be awarded to the prevailing party, only the amount thereof being within the Court's discretion. Attorneys' fees awarded against the Surety can exceed the penal sum of this bond.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

CONTRACTOR

SURETY

By \_\_\_\_\_  
Attorney-in-Fact

By \_\_\_\_\_  
Title \_\_\_\_\_

Address \_\_\_\_\_  
Telephone Number \_\_\_\_\_  
Bond Number \_\_\_\_\_

Developer will obtain the following certification:

CERTIFICATION BY LOS ANGELES COUNTY CLERK'S OFFICE OR THIRD PARTY  
APPROVED BY LAUSD

I hereby certify:

1. The named Surety is currently certified by the State Insurance Commissioner as an admitted Surety Insurer and such authority is in full force and effect; and
2. (A) This office has on file the financial statement of the named surety for the period ending \_\_\_\_\_ showing capital and surplus not less than ten (10) times the Contract Amount, or (B) such other evidence reasonably acceptable to the LAUSD.

EXHIBIT D

Labor Compliance MOU

(see attached)

**Memorandum of Understanding**  
**By and Between the Los Angeles Unified School District and Ocean Charter School**

This Memorandum of Understanding (“MOU”) is dated this \_\_\_\_\_ day of \_\_\_\_\_ (“Effective Date”) by and between the Los Angeles Unified School District (“LAUSD” and/or “District”), a political subdivision of the State of California, and Ocean Charter School (“**Charter School Organization Reference**”), an independent charter school organized and existing under the laws of the State of California. The District and Ocean Charter School are herein sometimes collectively referred to as the “Parties”.

Whereas, the California Labor Code requires the payment of prevailing wages which requires all workers employed on a public works project be paid not less than the general prevailing wage rate of per diem wages, including but not limited to payment for travel and subsistence; and not less than the general prevailing rate of per diem wages for holiday, overtime and shift differential work, as determined by the California State Director of Industrial Relations for each craft, classification or type of work needed to execute the work.

Whereas, Ocean Charter School] intends to construct a new school facility upon certain LAUSD-owned real property which will be partially or fully publicly funded known as [insert name of project] (“project”) located at [School Location Name].

Whereas, the District operates a state-approved Labor Compliance Program acting with delegated authority from the Labor Commissioner to enforce the applicable statutes, laws, and regulations governing the payment of prevailing wages;

Whereas, it is the intent of the District to actively enforce this program upon all District construction sites requiring the payment of prevailing wage rates.

Now, therefore, in consideration of the mutual covenants and terms contained herein, the parties agree as follows:

**1. Principles of Agreement**

The District’s Labor Compliance Department (“LCD”), as the enforcing agency, will monitor and enforce the applicable statutes, laws, and regulations governing the payment of prevailing wages on the project. Ocean Charter School as the awarding body, agrees to cooperate with the District LCD to monitor and enforce the payment of prevailing wages, including, but not limited, to the withholding of contract payments where necessary on the project and the depositing of any and all penalties incurred as a result of enforcement to the District.

**2. Ocean Charter School Rights and Obligations**

2.1. In General. Ocean Charter School through and by its Principal agrees to assist the LCD in investigation, monitoring and enforcement of prevailing wage laws and regulations.

2.2. Labor Compliance Program Approval and Listing of Prevailing Wage Requirements in Bid and Contract Documents.

2.2.1. **Ocean Charter School** agrees to include in all bid invitations:

- a. Attachment A – Notice of Labor Compliance Program Approval in accordance with the requirements of Title 8 CCR section 16429;
- b. Attachment B – Bid Language for LAUSD Labor Compliance Enforcement

2.2.2. **Ocean Charter School** agrees to include in all contracts:

- a. Attachment A – Notice of Labor Compliance Program Approval in accordance with the requirements of Title 8 CCR section 16429;
- b. Attachment C – General Conditions for LAUSD Labor Compliance Enforcement

2.3. Documents and Information. **Ocean Charter School** agrees to provide all the below information and resources to the LCD for the purposes of monitoring, investigating, and enforcement of prevailing wages:

- a. Bid Invitation and Proof of Publication
- b. Contact person for Labor Compliance matters
  - i. Contact Information of Project Manager in charge for both Prime Contractor and District Representative
  - ii. Pre-Job/Pre-Bid Notification
  - iii. Charter School Project Manager
- c. Contract Documents
  - i. Contract Language (General Conditions)
  - ii. Copy of Fully Executed Contract Agreement
  - iii. Proof of Insurance from Prime Contractor/Subcontractors (Bonding Companies with bond number)
  - iv. Scope of Work and General Conditions of Contract
  - v. Copy of Request for Proposals/Request for Qualifications
  - vi. Bid Tabulation and Selection of Prime Contractor with Award Amounts and Bid Amounts
  - vii. Notice to Proceed
  - viii. List of Contact Information for Prime and all Subcontractors
  - ix. Notice of Completion
- d. Project Documents
  - i. Inspection Reports
  - ii. Daily Construction Reports
- e. Other documents as deemed necessary

2.4. Public Works Project Award Notification (PWC 100 form) to DIR. Pursuant to Labor Code section 1773.3, **Ocean Charter School** shall, within five (5) days of award submit the PWC 100 form to the Department of Industrial Relations (“DIR”). **Ocean Charter School** will indicate Los Angeles Unified School District Labor Compliance Department as the agency responsible for carrying out the Awarding Body’s Labor Compliance Program for the project. The following contact information will be included on the form:

Name: Jessica Tam  
Email Address: [lcp@lausd.net](mailto:lcp@lausd.net)  
Contact Number: (213) 241-4665

- 2.5. Notice of Withholding of Contract Payments. **Ocean Charter School** agrees to assist the LCD in the investigation, monitoring, and enforcement of prevailing wages including, but not limited to, the withholding of contract funds as determined by the LCD. **Ocean Charter School** will withhold contract payments pursuant to Labor Code section 1727(a) from contractors when a Notice of Withholding Contract Payments has been issued by the LCD. When there has been a final determination that a contractor has violated prevailing wage requirements, whether through non-response, settlement agreement, decision by the DIR, or any other means, funds in an amount equal to the amount of back wages, training funds, penalties, and liquidated damages assessed shall be deemed forfeited by the contractor. Penalties forfeited by contractors pursuant to the LCD actions under this MOU shall be deposited to the LAUSD.
- 2.6. Job Site Posting at Project – LAUSD Monitoring. **Ocean Charter School** agrees to post Attachments A and D at the job site to inform the public and workers that this is a project monitored by a DIR approved Labor Compliance Program and that the payment of prevailing wages is required.
- 2.7. Site Visits – LAUSD Monitoring. **Ocean Charter School** agrees to allow LAUSD and representatives from LAUSD’s Work Preservation Group access to project to conduct in-person inspections at the job site randomly or as deemed necessary by the LCD. Activities will include interviewing workers while working, taking pictures of workers and/or project site.
- 2.8. Miscellaneous. – Upon receipt, **Ocean Charter School** will immediately forward to the LCD all Labor Compliance-related complaints and requests, including, but not limited to, requests for Certified Payroll Reports. Additionally, any and all documents intended for the LCD sent to **Ocean Charter School** shall be immediately forwarded to the LCD upon receipt **Ocean Charter School**.

### 3. **LAUSD’s Rights and Obligations**

- 3.1. In General. LAUSD acknowledges that the purpose of this MOU is to provide prevailing wage monitoring and enforcement services to **Ocean Charter School**. The LCD will be responsible in conducting all prevailing wage monitoring and enforcement activities as required by the California Labor Code and California Code of Regulations.
- 3.2. Expenses and Costs. Expenses and costs associated with the monitoring, investigation, and enforcement of prevailing wages will be funded through the District’s Charter Bond Fund Overhead Account.
- 3.3. LCD Administration. The LCD shall maintain its status as an approved Labor Compliance Program and continue to perform all duties and responsibilities required of such program. The LCD will provide the following administrative duties:
  - 3.3.1.1. Receive and maintain Certified Payroll Reports (“CPRs”) and all related payroll records;
  - 3.3.1.2. Act as Custodian of Record for labor compliance related documents for the project;
  - 3.3.1.3. Respond to all public record request(s) for Labor Compliance-related documents in a timely manner;

- 3.3.1.4. Maintain a database of all incidents of non-compliance of prevailing wage requirements on project. Contractors/subcontractors found to be in non-compliance with prevailing wage requirements will have their assessments posted at <http://www.laschools.org/contractor/lc/documents/download/lc-assessments/lc-assessments.xls> for three (3) years.
- 3.4. Education. The LCD will provide education to contractors and subcontractors in the prevailing wage requirements. Education activities to be provided by the LCD shall include the following:
  - 3.4.1.1. Labor Compliance Certification class;
  - 3.4.1.2. Labor Compliance Re-certification class;
  - 3.4.1.3. Online Certified Payroll Reporting System Hands-On Training;
  - 3.4.1.4. Attendance of pre-construction/job start meetings to explain prevailing wage requirements to all contractors present;
  - 3.4.1.5. Labor Compliance pre-job conference video available via LAUSD LCD website.
- 3.5. LCD Monitoring and Enforcement. The LCD shall monitor and analyze contractors' compliance with the prevailing wage requirements as mandated by the California Labor Code and California Code of Regulations. Monitoring and analysis by the LCD shall include but not be limited to the following:
  - 3.5.1.1. Require contractors and subcontractors of every tier to submit CPRs to the District's Online Certified Payroll Reporting system on a weekly basis.
  - 3.5.1.2. Monitor, review and confirm contractors' CPRs to ensure compliance with State prevailing wage laws and requirements.
  - 3.5.1.3. Investigate and resolve prevailing wage issues arising with from monitoring, review and confirmation of CPRs.
  - 3.5.1.4. Respond to complaints and conduct investigations into allegations of noncompliance of prevailing wages.
  - 3.5.1.5. Conduct source document reviews of contractors to verify compliance of prevailing wage requirements.
  - 3.5.1.6. Conduct on-site interview with workers and contractors to ensure payment of prevailing wages and compliance with prevailing wage laws for all workers working on the project. Site visits may be conducted by the District's Work Preservation Group Volunteers.
- 3.6. Staffing and Support. The LCD will assign necessary and sufficient staff to perform the administrative, education, monitoring and enforcement activities within the scope of services of this MOU. This will include providing staff to provide evidence in any hearing and providing legal representation at any hearing before the Director of Industrial Relations ("Director"), or in any court proceeding challenging a decision by the Director.
  - 3.6.1.1. A designated person from the LCD will be assigned to **Ocean Charter School** to conduct all activities referenced above and be the direct contact person for all questions related to this MOU and its activities.

#### 4. Miscellaneous

- 4.1. Law Governing: This MOU shall be governed by, interpreted under, and enforced in accordance with the laws of the State of California. In any action or proceeding arising herefrom, the parties hereby consent to the jurisdiction of any competent court within the Los Angeles County.
- 4.2. Successors and Assigns: This MOU is binding upon and shall insure to the benefit of the Parties, their respective agents, Board(s), representatives, shareholders, officers, directors, partners, divisions, corporations, subsidiaries, parents, affiliates, successors, predecessors, assigns, heirs, executors, administrators, past, present, and future.
- 4.3. Authority to Execute: Each signatory executing this MOU on behalf of the Parties represents and warrants that he or she is authorized to sign this MOU and that he or she has full and complete authority to commit the Parties to this MOU and the provisions thereof.
- 4.4. Counterparts; Facsimile Signatures: This MOU may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, together shall constitute one and the same instrument. Facsimile signatures shall be binding upon receipt.
- 4.5. Supplemental Agreements; Amendments: This MOU reflects the entire agreement between the LCD and **Ocean Charter School**. There are no additional agreements expressed or implied. However, any modification of this MOU shall be effective only if it is in writing and signed by both parties hereto.
- 4.6. Headings: The headings used in this MOU are for convenience and ease of reference only and shall not be used to construe, interpret, expand or limit the terms of the MOU.
- 4.7. Effective Date and Term of this Agreement: This MOU will commence upon execution by the authorized representatives of the parties, and will remain in effect until the expiration of the applicable statute of limitations for enforcement of prevailing wage laws on the project.

The parties hereto have caused this MOU to be executed by their duly authorized representative.

**Ocean Charter School**  
**An independent public charter school**  
**organized and existing under the laws**  
**of the State of California**

**Los Angeles Unified School District**  
**A political subdivision of the**  
**State of California**

By: \_\_\_\_\_  
 Authorized Representative

By: \_\_\_\_\_  
 Authorized Representative

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

EXHIBIT E

Index of DSA Approved Construction Plans

(see attached)

EXHIBIT F

Environmental Import/Export Materials Testing

(See Attached)

EXHIBIT G

**CONTRACTOR CERTIFICATION REGARDING BACKGROUND CHECKS**

\_\_\_\_\_ certifies that it has performed one of the following:

[Name of contractor/consultant]

Pursuant to Education Code Section 45125.1, Contractor has conducted criminal background checks, through the California Department of Justice, of all employees providing services to the **Ocean Charter School** District, pursuant to the contract/purchase order dated \_\_\_\_\_, and that none have been convicted of serious or violent felonies, as specified in Penal Code Sections 1192.7(c) and 667.5(c), respectively.

As further required by Education Code Section 45125.1, attached hereto as Attachment "A" is a list of the names of the employees of the undersigned who may come in contact with pupils.

OR

Pursuant to Education Code Section 45125.2, Contractor will ensure the safety of pupils by one or more of the following methods:

1. The installation of a physical barrier at the worksite to limit contact with pupils.
2. Continual supervision and monitoring of all employees of the entity by an employee of the entity whom the Department of Justice has ascertained has not been convicted of a violent or serious felony.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Date \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
[Name of Contractor/Consultant]

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

EXHIBIT H

Form of Progress Report

(See Attached)

## EXHIBIT I

### Specific Information or Requirements

**Builder's Risk Insurance** See Section 10.1.1 above.

For the total value of the Project, currently projected to be \$18,000,000

**Commercial General Liability Insurance:** See Section 10.1.1.1 above.

Minimum limit of not less than \$5,000,000 per occurrence, \$5,000,000 annual aggregate, and \$5,000,000 umbrella policy.

**Automobile Insurance:** See Section 10.1.1.3 above.

Minimum of \$1,000,000 per occurrence covering owned, hired and non-owned vehicles used by Developer.

**Worker's Compensation Insurance:** See Section 10.1.1.4 above.

Minimum of \$1,000,000 or that required by law, whichever is higher.

**Addresses for Notices:** See Article XIII

To Developer:            Ocean Charter.  
                                  Attn: Stephanie Edwards, Executive Director  
                                  12606 Culver Blvd.  
                                  Los Angeles, CA 90066  
                                  Telephone: 310-827-5511  
                                  Fax: 310-827-2012  
                                  E-mail: msedwards@oceans.org

To LAUSD:                Los Angeles Unified School District  
                                  333 South Beaudry Avenue, Floor 23  
                                  Los Angeles, CA 90017  
                                  Attention: Office of General Counsel –Facilities Legal  
                                  Facsimile: (213) 241-8386

and a copy to:            Los Angeles Unified School District  
                                  333 South Beaudry Avenue, Floor 23  
                                  Los Angeles, CA 90017  
                                  Attention: Issam Dahdul, Facilities Development Manager  
                                  Phone:        (213) 241-6478  
                                  Facsimile: (213) 241-6782

EXHIBIT J

Form of Contractor Invoice

(See Attached)