

SECOND AMENDED CHARTER SCHOOL AGREEMENT

DATED: October _____ 2011

PARTIES: CENTENNIAL SCHOOL DISTRICT 28J—Cooperating District
GRESHAM- BARLOW SCHOOL DISTRICT 10J—Cooperating District
PARKROSE SCHOOL DISTRICT 3—Cooperating District
REYNOLDS SCHOOL DISTRICT 7—Sponsoring District (“Districts”)

AND: OREGON BUILDING CONGRESS ACADEMY FOR
ARCHITECTURE, CONSTRUCTION AND ENGINEERING (“ACE”)

RECITALS

A. In May, 2007, pursuant to ORS Chapter 338, the developer of ACE, Oregon Building Congress Academy for Architecture, Construction and Engineering submitted to the Districts an application (attached and incorporated as Exhibit A) for formation of the Academy for Architecture, Construction and Engineering (ACE) to operate within the Districts.

B. This Amended Charter School Agreement supersedes any previous Charter Agreement.

C. Reynolds School District 7 is the sponsor of ACE pursuant to ORS 338.005(4).

D. Centennial School District 28J, Gresham-Barlow School District 10J and Parkrose School District 3 (hereinafter “Cooperating Districts” are also parties to this charter agreement based upon mutual obligations and rights conferred upon the cooperating districts by the sponsoring district and ACE.

E. Both the sponsoring district and the cooperating districts and ACE (hereinafter “Participating Districts”) have jointly agreed to various provisions within this agreement that defines the role that each shall play in the formation, organization and oversight of this Charter Agreement.

F. The Reynolds School Board held a public hearing on the provisions of the Application and evaluated the criteria set forth in ORS 338.055 and district policies, and as the sponsoring district, it determined that the Application, as amended by this Agreement, complies with the purposes and requirements of ORS 338 and district policies.

G. The cooperating district school boards have also determined that they wish to be bound by certain obligations and responsibilities to the sponsoring district and ACE that are more fully described in this Agreement so that all four school districts share some responsibilities for the ACE operations.

H. By resolution adopted _____, 2009, the Reynolds School District Board of Directors conditionally approved the Application and agreed to become a sponsor of ACE contingent upon the negotiation and execution of a contract acceptable to ACE and the Districts.

I. By resolution adopted July ____, 2009, the Gresham-Barlow School District Board of Directors agreed to become a cooperating district with ACE contingent upon the negotiation and execution of a contract acceptable to ACE and the Districts.

J. By resolution adopted July ____, 2009 the Centennial School District Board of Directors agreed to become a cooperating district with ACE contingent upon the negotiation and execution of a contract acceptable to ACE and the Districts.

K. By resolution adopted July ____, 2009, the Parkrose School District Board of Directors agreed to become a cooperating district with ACE contingent upon the negotiation and execution of a contract acceptable to ACE and the Districts.

L. This Agreement, including the Application and its Exhibits, shall constitute the agreement between the parties regarding the governance and operation of ACE and the legal authorization for the establishment of ACE under ORS 338.065(1). This Agreement shall also constitute the agreement for the formation and supervision and operation of ACE between the sponsoring district and three cooperating Districts.

M. The 2011 Oregon Legislature made numerous changes to charter school law requiring changes to this Charter Agreement.

N. This Charter School Agreement supersedes any previous Charter Agreement.

O. The parties desire that ACE be authorized to operate and conduct its affairs in accordance with the terms of this Agreement and Oregon law.

CHARTER AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual understandings, covenants, and payments herein described, the parties agree as follows:

1. Grant of Charter.

The Reynolds School District 7 (referred to herein as the sponsoring district) has approved ACE's charter school proposal ("Application"), is the sponsor of ACE known as the Academy for Architecture, Construction and Engineering ("ACE") that is to be operated in cooperation with the Centennial School District, the Gresham-Barlow School District and the Parkrose School District (hereinafter "Cooperating Districts) in accordance with the terms of this Agreement, and hereby grants a charter pursuant to the terms herein. The Sponsoring District and the Cooperating Districts, when referred to together in this Agreement will be called the "Participating District".

1.1 The parties agree to seek a waiver of ORS 338.125(1) to give priority admission to students from the Cooperating Districts from the State Board of Education.

2. Effective Date; Term; Renewal.

2.1 **Effective Date.** When this Agreement has been duly executed by all School District Boards and ACE's board of directors, it shall be legally binding on both parties and shall act as the legal authorization for the establishment of the Academy for Architecture, Construction and Engineering as a public charter school, as provided in ORS 338.065(1).

2.2 **Initial Term.** ACE shall be permitted to operate ACE for an initial term of five (5) school years, subject to the other terms of this Agreement, and thus the initial term of this Agreement shall expire on June 30 following the end of the fifth such school year. The first school year shall begin in September 2008, and thus the initial term shall expire June 30, 2013. .

2.3 **Renewal of Term.** Renewal of this Agreement will be governed by ORS 338.065. The Participating Districts agree that in order to renew the charter contract pursuant to ORS 338.065, this will take the written approval of a contract renewal by all participating Districts. If one or more of the Participating Districts notify the other Districts and ACE that it does not wish to renew the Charter Agreement, the remaining Districts that wish to renew the charter are bound by the decision of the non-renewing Participating District or Districts and agree that the Charter Agreement shall not be renewed. However, so long as Reynolds remains the sponsoring District, any remaining District that wishes to continue its relationship as a cooperating district may enter into a new charter contract with ACE, the Sponsoring District and any remaining Cooperating Districts. In this event, there shall be a new Charter Agreement between the remaining parties.

2.3.1 Nothing in Agreement precludes ACE's rights of appeal under ORS 338.065. However, the parties agree not to participate in such a hearing which contests a District's decision to not participate.

3. Application is Incorporated; Conflict between Application and Agreement.

The Participating Districts accept the Application of the developer Oregon Building Congress Academy for ACE, including all the terms and provisions therein, except as modified by this Agreement, and the Application is incorporated into this Agreement. However, in the case of any conflict between any term of the Application and any term of this Agreement, this Agreement shall govern. Furthermore, a failure by ACE to perform or fulfill any term or provision of the Application shall not be a breach of this Agreement unless such failure is specifically described as a breach in this Agreement.

4. Relationship Between Participating Districts

The Participating Districts acknowledge that each of them has an equal interest in and responsibility for the Charter Agreement with ACE. Each acknowledge the other Districts' rights under this contract to participate in the management of the day-to-day affairs of ACE, as well as the decisions that affect the relationship between ACE and the Districts.

4.1 There shall be a board of directors for ACE, as more fully described below under the section relating to governance and operation in Section 13. The Participating Districts agree to work collaboratively with each other in the formation, operation and supervision of this Charter Agreement.

5. Grade Range of ACE; Number of Students; Minimum.

5.1 **Number of Grades.** During the term of this Agreement, ACE may provide instruction to 500 11th and 12th graders from the sponsoring Districts on a part-time basis.

5.2 **Number of Students.** ACE's plan is to enroll 500 students, roughly 250 students in grade 11 and 250 students in grade 12. However, ACE may in its discretion allow the number of students between 11th and 12th grade to vary. ACE is required to notify all sponsoring Districts in writing if at any time it wishes to change the number of students it wishes to enroll or the grade levels of those enrollees.

5.3 **Minimum Number of Students in Charter School.** As provided in ORS 338.115(5), ACE shall maintain an active enrollment of at least 25 students. It is understood that for purposes of counting, this means 25 full time equivalency students which may come from any of the Participating Districts. For example, a full time equivalency student may mean one student who is attending .3 time, a second student from another district attending .3 time, and a third student attending .3 time. These three students are the equivalent of 1 full time student.

6. Enrollment and Admissions.

6.1 **Voluntary Enrollment; Who is Eligible.** Student enrollment in ACE shall be voluntary. All students who meet legal age requirements applicable to a particular grade level will be eligible for enrollment. These requirements will be consistent with District policies relating to admission of students into any grade. Other than the age of a student and the preferences allowed by law (see Section 6.6) or authorized by a waiver duly granted by the State Board of Education, and the preference for District residents described in Section 6.8, there will be no criteria for selection of students. A student will be deemed admitted to and enrolled in ACE when the student's application has been unconditionally accepted by ACE following completion of a phase of the enrollment process described below and after conditions to such acceptance have been satisfied. Enrollment of special education students is governed by Section 7.

6.1.1 Because there four Participating Districts, it is the goal of the parties that there will be an annual agreement between the Districts on the number of spaces available for each District's students. The allocation for available seats for each sponsoring District shall be based on the October ADM count of the previous year at each District's high schools, and the percentage of that student population to the total number of students for ACE. For example, if a District has a student population at its high schools that equal 25% of the 500 seats available, then that District will be entitled to 125 seats within the charter school. All parties acknowledge that even though a District may be allocated a certain number of seats based upon the percentage of ADM that their high school student population bears to the whole, the Districts are not responsible for filling those seats at ACE, and there shall be no financial penalty to any District who does not have the number of students actually enroll in the charter school to fill the number of seats that District has allocated for the charter school.

6.1.2 Once a waiver is obtained from the State Board of Education on granting ACE the authority to give priority to Cooperating Districts' students, an annual agreement between the Participating Districts will be made.

6.2 **Phased Enrollments; Deadlines.** ACE may, in its discretion, elect to conduct a series of open enrollments for each school year, provided the process conforms to this Agreement. Each year, ACE will set deadlines by which applications must be received for each phase of the enrollment process and will determine the number of students to be admitted in each grade. These deadlines may change from year to year at the discretion of ACE. ACE Board will approve any forms and policies that may otherwise be needed to govern the enrollment process, and may change those from time to time as they determine what works best. ACE will accumulate all applications received on or before the deadline for each phase of enrollment; applicants are not accepted on a "first come, first served" basis, except as provided in Section 6.5 [after waiting list is exhausted].

6.3 **Application Process; First Phase of Enrollment Process.** Beginning on a date set each year by ACE and up through the deadline for the first phase of enrollment set under Section 6.2, prospective students may apply for admission to ACE for the school year that begins the following September. For the first phase of the enrollment process, if the number of applications received by the deadline for the first phase is less than or equal to the number of students to be admitted for each grade as determined under Section 6.2, then all the applications for that grade will be accepted (applications from nonresidents are governed by Section 6.8). To illustrate, if the determined number of students to be admitted for a grade is 25, and if 20 applications are received, then all 20 applicants will be accepted. The remaining five "available spaces" will be filled in the second or later phases.

If the number of applications received for any grade is greater than the number of students to be admitted for that grade, then ACE will conduct an equitable lottery, in a manner determined by ACE and consistent with state law and District policy, to admit the maximum allowed number of students for that grade and to create a waiting list for subsequent admission should a space become available later. To illustrate, if the number of students to be admitted for a grade is 25, and if 40 applications are received, then 25 applicants will be accepted through the lottery process, and a waiting list of 15 can be determined [with order of priority on the waiting list also determined through the lottery process].

To take into account the priority given by law to resident students (as provided in Section 6.8), if, out of the 40 applications, 30 are from resident students and 10 are from nonresidents, then a lottery will be held first as to the 30 resident applications and 25 will be accepted, with five going on the waiting list. Then a lottery will be held among the 10 nonresidents to determine order of priority on the waiting list.

6.4 **Second and Additional Phases of Enrollment.** If ACE receives fewer applications than the maximum number of students allowed for any grade, then ACE will set a second application deadline. The admissions process will be the same as with the first phase, but will apply only with respect to the "available spaces," if any, for each grade. However, ACE may also accept additional applicants in order to create or expand a waiting list for any grade.

Finally, if after the second enrollment there still remain “available spaces” in any grade, or ACE desires to create or expand a waiting list for any grade, ACE may set a third and additional application deadlines before the school year begins. The admissions process will be the same as with the second phase, again applying only with respect to the “available spaces” for each grade (or to create or expand a waiting list for any grade). Thereafter, including during the school year, additional students who apply will be added to the waiting list in the order the applications are received.

6.5 **Use of Waiting List; Filling Spaces if No Waiting List.** If at any time a student who has been enrolled declines to attend ACE, or if an attending student withdraws or is permanently expelled, ACE may admit the next student on its waiting list for the applicable grade. ACE may enroll the first student who applies after a space becomes available in a situation where (a) the final phase of enrollment under Section 6.4 has been completed, or the space becomes available during the school year; and (b) either there is no waiting list for the applicable grade or all students on the waiting list for that grade have already enrolled or have been extended an offer to enroll and have declined.

6.5.1 In the event one or more sponsoring Districts have students who are placed on a waiting list, while one or more sponsoring Districts are not able to use the number of spaces allocated to the charter school for students attending those Districts, the sponsoring District with students on the waiting list may negotiate with the sponsoring District who has spaces available to the charter school for the use of those available spaces.

6.6 **Preferences After First Year.** As provided in ORS 338.125(1), in the second and following years of operation, ACE may give admissions preference to (1) students who were enrolled in ACE in the prior year, and (2) applicants who have siblings who are presently enrolled in ACE and who were enrolled in ACE in the prior year: (3) students from the Cooperating Districts provided that such a waiver is granted by the State Board of Education..

6.7 **Nondiscrimination.** As provided in ORS 338.125(3), ACE may not limit student admission based on race, religion, sex, sexual orientation, ethnicity, national origin, disability, income level, proficiency in the English language or athletic ability, but may limit admission to students within a given age group or grade level.

6.8 **Nonresident Students; Limitations.**

6.8.1 As provided in ORS 338.125(2), if space is available, ACE may admit students who do not reside in the Participating Districts. At each phase of the enrollment process, preference will be given to residents of the participating Districts if the State Board of Education grants such a waiver. Nonresident applicants may be accepted to fill any “available spaces” (including spaces on waiting lists) in accordance with this Section 6.8. For the purpose of Section 6.8, the term “nonresident student” does not include any student residing within the boundaries of any of the Participating Districts in this Agreement. The Districts acknowledge that each resident student of a particular Participating District is a nonresident of the other Participating Districts. However, for

the purposes of Section 6.8, nonresident students are only those who reside outside the attendance boundary of all Participating Districts.

6.8.1.1 The Participating Districts agree that if a nonresident student attends the charter school, Reynolds School District shall retain 5% of the ADM that a Participating District would retain for a nonresident student pursuant to ORS 338.155. Reynolds School District shall apply all monies received for resident students based upon ORS 338.155 for the operation of ACE.

6.8.2 For ease of reference, all phases of enrollment for which the application deadline is on or before May 1 will be referred to as “pre-May 1-phases”; and all phases that take place after May 1 will be referred to as “post-May 1-phases.” “New applications” means applications received as of the deadline that applies to any particular phase, as contrasted with applications received at an earlier phase.

6.8.3 At each pre-May 1-phase, nonresident applicants will be placed on a waiting list, the order of which will be determined by lottery at each phase (thus, those received in the first phase will be placed in numerical order by lottery; those received in the second phase will likewise be placed in order following the waiting list from the first phase, and so on for each other pre-May 1-phase).

6.8.4 This subsection 6.8.4 applies to the final pre-May 1-phase. Any available spaces for any grade as of the final pre-May 1-phase will be filled in the following order: (a) new applications from resident students; (b) applications from nonresident students received at earlier phases in the order determined by the lottery for each of those phases; and (c) new applications from nonresident students. Applicants will be placed on the waiting list in the following order: (i) resident students placed on the waiting list at earlier phases; (ii) new applications from resident students at the final pre-May 1-phase; (iii) nonresident students placed on the waiting list at earlier phases; and (iv) new applications from nonresident students placed on the waiting list at the final pre-May 1-phase. The students on the waiting list at that point have priority over all students, resident and nonresident, who apply at a later phase (the post-May 1-phases).

6.8.5 This subsection 6.8.5 applies to the post-May 1-phases. Any available spaces for any grade at each post-May 1-phase will be filled in the following order: (a) new applications from resident students; and (b) new applications from nonresident students. Applicants will be added to the end of any existing waiting list in the following order: (i) new applications from resident students; and (ii) new applications from nonresident students.

6.8.6 The parties recognize that acceptance of a nonresident applicant at the final pre-May 1-phase or at any post-May 1-phase could create uncertainty and unfairness because of the possibility that the law requires that a resident applicant who is accepted at a later phase must be given priority and thus could “bump” the previously accepted nonresident. Therefore, the parties agree that once a nonresident is accepted in the manner described above, the nonresident will not be “bumped” by a resident who has

submitted an application as part of a later phase of enrollment; if necessary, the parties will work together to seek a waiver of the applicable state law.

6.8.7 In the event a nonresident student is enrolled in ACE, ACE agrees to:

6.8.7.1 Provide written notice of the student's enrollment to the Sponsoring District within 10 days. The written notice must include contact information for the enrolled student's parent or guardian.

6.8.7.2 Provide written notice of the student's withdrawal (for any reason other than graduation from high school) to the Sponsoring District within 10 days. The written notice must include contact information for the enrolled student's parent or guardian.

6.9 **Dual Enrollment.** During a school year, if ACE learns that one of its students remains enrolled at another private or public school (other than a Participating District's high schools), ACE will notify the other school of this fact and will inform the student's parents that they should take whatever steps may be required to have their child withdrawn from enrollment in the other school or from enrollment in ACE.

6.9.1 The parties acknowledge that students enrolled in ACE may also be enrolled part-time in their school district high school. This shall not be considered dual enrollment. It shall only be considered dual enrollment if a student enrolled in ACE is also enrolled in another high school program outside of their own resident school district.

6.9.2 The Participating Districts agree to enter into all necessary contracts so that students enrolled in ACE can continue to take certain courses at their home high schools so that the educational program at ACE will qualify as a comprehensive education program when combined with certain courses at the students' high school. The Participating Districts and ACE will allocate certain monies under this Agreement that will demonstrate the payment from ACE to the Participating districts for those courses at the student's high school. This will be regarded as a contracted service.

6.9.3 The parties will enter into an agreement where each Participating District will agree to provide ACE with data collection, grades, attendance and related information as a contracted service. This agreement shall be in the form of the attached Exhibit A.

7. **Special Education Students.**

7.1 **Special Education Students; IDEA.** In this Agreement, the term "special education students" means children with disabilities to whom the Individuals with Disabilities Education Act ("IDEA") applies.

7.2 **Responsibility of Participating District.** Each Participating District acknowledges that it alone is responsible for the special education services of resident students who are attending ACE. Each Participating District acknowledges that the other Participating Districts have no responsibility to serve the special education needs of that special education

student, and the Participating District who has an obligation to serve an eligible special education student shall indemnify, defend and hold harmless the other Participating Districts from any special education action, including an Oregon Department of Education complaint, due process hearing or federal lawsuit relating to special education program of that particular student. Nothing shall bar Participating Districts from entering into intergovernmental agreements between themselves for the provision of special education services to students who are enrolled at ACE.

7.3 **Application and Enrollment.**

7.3.1 ACE application form will ask if the student has an Individualized Education Program (“IEP”) under IDEA. For any prospective student with an IEP, ACE will, immediately, or as soon as practicable, notify the IEP team leader (if known) or the respective District’s liaison for special education issues. The latest date for the notification to the district is the date on which ACE knows the student is admitted and eligible for special education services. A representative from ACE will attend the IEP team meeting at which the team will determine whether or not ACE is the appropriate placement. This representative shall be a regular education teacher unless the district approves in advance of the meeting that another ACE representative will attend. If the IEP team cannot meet before ACE holds its enrollment lottery under Section 6, then the IEP student(s) will be included in the lottery as if the placement had been approved. Any student with an IEP whose application is accepted will receive a conditional acceptance; the acceptance and enrollment will become final when the IEP team has determined that ACE is the appropriate placement.

7.3.2 ACE will admit students without regard to their status as special education students, if the student's IEP team determines that the school is the appropriate placement. The parties intend by this process to ensure that ACE does not unintentionally discriminate against enrolling special education students or otherwise violate applicable laws.

7.3.3 For a special education student who is not a resident of a Participating District, ORS 338.165 shall apply. ACE, the Sponsoring District and the resident school district of such student shall enter into a written agreement for the provision of special education services to the student. The Cooperating Districts are not responsible for special education services or the costs for such student.

7.4 **Child find; Accepted Students Later Determined to be Special Education Students.** ACE will work closely with the Participating Districts and any other referring school district to ensure that the Child Find responsibilities are carried out in good faith with respect to students enrolled in ACE. ACE will ensure that at least one of its teaching staff has been trained in the Child Find process, or if none have been so trained, ACE will arrange for at least one of its teaching staff to receive such training. ACE will promptly notify the student’s resident district and the Sponsoring District if an ACE student is suspected of having a disability and may need evaluation to determine eligibility for special education and will comply with the respective District’s practices and policies for referral of any District student for evaluation. Any student

referred for evaluation shall remain enrolled at ACE until an IEP team determines that ACE is not the appropriate placement for that student.

7.4.1 ACE shall provide a list of newly admitted and enrolled students on a monthly basis so that the Districts are able to identify students who are in the evaluation process.

7.5 **Administering the IEP's.**

7.5.1 ACE will work closely with the Participating Districts and any other resident school district referring special education students to ensure that special education and related services are provided. The parties recognize there will likely be several methods or "delivery mechanisms" for providing these services, and because there is no way to know in advance the specific needs of all special education students who will enroll at ACE, there is no way to specify in this Agreement anything more than a general framework or set of principles for seeing to it that the IEP's are administered.

7.5.2 The following shall apply:

7.5.2.1 ACE will comply with all Participating District policies and regulations (including those regarding discipline) and the requirements of state and federal law concerning the education of children under IDEA.

7.5.2.2 Each IEP team must include a Participating District representative and appropriate District specialists. ACE will have a teacher or designee on the IEP team of each enrolled special education student. ACE will work closely with the rest of the IEP team to determine how to meet the goals of the IEP, and how to arrange for the special accommodations and services required. The IEP team will continue to evaluate the placement during the school year, as the IEP team deems appropriate. ACE will not change the student's program without IEP team action. ACE shall provide the accommodations and modifications to the regular education curriculum and instruction called for in the student's IEP. ACE teachers will assist the district in the development of progress reports related to annual IEP goals. ACE teachers will cooperate with the district in evaluation and reevaluation process, including completing teacher observation/behavior checklists, and sharing results of academic assessments and work samples.

7.5.2.3 ACE staff will comply with training required by an IEP team for delivery of services to an ACE student, although the Participating Districts are responsible for providing special education services. The Participating Districts will pay the costs of any training of ACE staff that the IEP team determines is required to accomplish the implementation of an IEP for a resident student of the each Participating District. This is limited to costs for substitutes, consultants, course fees, and necessary supplies and materials.

7.5.2.4 The Participating Districts or responsible referring Districts have the discretion to determine which specialized programs will be offered on site at the ACE facility. For those services that the IEP team, the Districts, and ACE

mutually agree would be best delivered by District employees, ACE will make every reasonable effort to work closely with District staff to assist in the effective delivery of the services. This might include either on-site or pull-out service delivery.

7.5.2.5 For those services that the IEP team, the Participating Districts, and ACE mutually agree would be best delivered by ACE employees, ACE and the District may negotiate a contract under which the Participating Districts will compensate ACE for such special services.

7.5.2.6 Special education transportation will only be provided to an ACE special education student if it is a related service on the student's IEP.

7.5.2.7 ACE shall protect all personally identifiable student information relating to special education students attending ACE and will maintain a complete special education file.

7.5.2.8 ACE will cooperate with the Participating Districts in the event any one of them is required to participate in a special education administrative complaint or due process proceeding.

7.6 **Funding for Special Education Students.** ORS 338.165 governs funding relating to special education students. The parties understand that each special education student counts as 2.0 ADM [not counting other “additional amounts” for English as a Second Language or other items described in ORS 327.013(7)(a)]. Therefore, the 40% of the General Purpose Grant that is payable to ACE under ORS 338.165(3)(a) for special education students equates to 80% of 1.0 times the General Purpose Grant. To illustrate, if the District’s General Purpose Grant were to be \$5,000, the District would receive 2.0 times that amount, or \$10,000 for each special education student; the amount payable to ACE for each special education student would be \$4,000; the District would retain the remainder of \$6,000; any portion of such \$6,000 payable to ACE for services provided under Section 7.5 would be governed by the separate contract described in Section 7.5.2(e).

8. School Year; School Day; Hours of Operation.

ACE may be flexible in its calendar and in the scheduling of its daily activities, provided it conforms to any requirements of state law and to the calendars of the sponsoring districts. However, ACE anticipates that its annual calendar shall generally match the calendar of the Participating Districts, and ACE may maintain a typical nine-month school year for its regular academic program. If ACE adopts a calendar different from the Participating Districts’ calendars that result in additional service costs to these Districts for services ACE either requests or requires under separate contract on those days that ACE is open but these Districts are not open (for example, costs of providing special education services), ACE shall reimburse the Participating Districts for these costs. The number of instructional hours during each school year shall comply with requirements of state law.

9. Records.

ACE shall comply with all record keeping requirements of federal and state law and shall provide any reports, as necessary, to meet the Districts' reporting obligations to the Oregon Department of Education. Before the first year of operation, and from time to time thereafter as state requirements change, the Participating Districts shall provide ACE with a list of records and information required for them to meet their state reporting requirements. ACE shall comply with all applicable federal and state laws concerning the maintenance, retention and disclosure of student records, including, without limitation, the Oregon Public Records Law. All records established and maintained in accordance with this Agreement shall be open to inspection by the Districts.

9.1 The parties acknowledge that ACE owes a recordkeeping requirement for each Participating District and that ACE shall comply with all applicable federal and state laws concerning the maintenance, retention and disclosure of student records for each Participating District. The Participating Districts hereby acknowledge that they shall abide by the applicable federal and state laws concerning the maintenance, retention and disclosure of student records and in the event that any Participating District obtains a record protected under state and federal law from disclosure relating to a student of another Participating District, that the Participating District receiving such information shall comply with all requirements of state and federal law relating to student records.

10. Program and Curriculum, Goals, and Evaluation.

10.1 Acceptance by District of Program and Curriculum.

10.1.1 The Participating Districts accept the curriculum and program design of ACE as set forth in the Application, and further developed by them and ACE. Each Participating District agrees to waive any of their program and curricular requirements that are not incorporated into the curriculum design. The Participating Districts' intent is to allow ACE, within the requirements of state law, to promote and implement new, innovative, and flexible programs, curricula, learning environments, and learning methods.

10.1.2 The parties acknowledge that the ACE curriculum has been jointly developed by ACE and the Participating Districts. As such, the parties acknowledge that the curriculum to be used at ACE is jointly owned by all Participating Districts. The Participating Districts agree that none of them shall take any action that will otherwise transfer the ownership of the curriculum to any other party outside of the four Participating Districts and will take all actions necessary to protect the curriculum that has been developed, and to assure that the curriculum is maintained in its current state with no modifications or changes by any Participating District. The Participating Districts further agree that because the curriculum was developed with the mutual effort of all of them, no one Participating District has the right or power to modify, change or amend the curriculum. It shall take the written consent of all four Participating Districts to make any modification, change or amendment to the curriculum which is the subject of this Agreement.

10.1.3 The curriculum at the ACE Charter School will be developed and sustained within a community of practical application of core academic knowledge and specific Career Technical Education (CTE) content (specifically: architecture, construction and engineering). Math, Language Arts and Science Oregon State Standards and curriculum will be analyzed to identify how these subjects are embedded within the CTE content areas. The school will begin with the development of the CTE curriculum core content in order to develop Math, Language Arts and Science-enhanced CTE curriculum as they relate to essential workplace skills. A comprehensive and rigorous curriculum will be developed through a system of professional development and training of staff, total integration of students' ACE Charter School education and "neighborhood school" experience and within a framework of CTE pedagogy.

10.1.4 The parties agree that the Application sets forth the overall goals, standards and general operational policies of ACE, and that the Application is not a complete statement of each detail of ACE's operation. To the extent that ACE desires to implement specific programs, policies, procedures or other specific terms of operation that supplement or otherwise differ from those in the Application, ACE shall be permitted to implement such programs, policies, procedures and specific terms of operation, provided that they are consistent with the goals, standards and general operational policies set forth in the Application, this Agreement and ORS chapter 338.

10.2 **Responsibilities of ACE.** ACE is responsible for doing the following in compliance with state law:

10.2.1 Designing and implementing its curriculum and other components of its educational program as set forth in the Application.

10.2.2 Conforming to all state requirements concerning subjects, academic content, and other educational matters.

10.2.3 Providing required services, if any, to students who are English language learners (ESL students) under ORS 336.079 and other provisions of the law.

10.2.4 Providing required services, if any, to academically low achieving students.

10.2.5 Implementing the state-required assessments as provided in ORS 338.115(1)(L).

10.2.6 Surveying its student population for eligibility for free and reduced lunches under federal and state law if it elects to provide lunch for its students.

10.3 **Goals and Evaluation.** Although ACE has many goals, many of which are set forth in the Application, only the specific goals relating to student performance that will be developed by the ACE Board for overall program evaluation are to be considered in evaluating whether ACE has failed to meet the requirements for student performance (and thus could be a basis for termination of this Agreement) under ORS 338.105(1)(b). The goals will be set by the board and will be reviewed annually. Goals will include, but may not be limited to the following

areas: (1) student GPA; (2) Student completion of Capstone Project; (3) college credits earned; (4) graduation rates; and (5) program enrollment.

10.4 **Annual Report.** ACE will submit an annual report to the Participating Districts and the State Board of Education in accordance with ORS 338.095(1) on the performance of ACE and its students by October 15 of each year. This report will include information necessary to make a determination of compliance with the requirements of ORS Chapter 338. This report will include, among other things, information relating to the goals and evaluation described in Section 10.3. ACE complies with this section when it submits one report to the Participating Districts. It need not submit a separate report for each sponsoring District; however, the one annual report must be physically sent by ACE to each sponsoring District.

11. School Facility and Transportation.

11.1 Facility

11.1.1 ACE will located at 4222 NE 158th Ave., Portland, Oregon 97230 for the 2008-09 school year and into the foreseeable future. If any one of the following three deadlines are not met, ACE will promptly notify the Participating Districts. (A) ACE must enter into a lease, purchase agreement, or other binding agreement relating to a school facility on or before June 1, 2008. On execution of a rental, lease, or purchase agreement for a facility, ACE will forward to the Districts a copy of the agreement. (B) ACE must obtain any required conditional use permit, design review approval, and building permits on or before August 15, 2008. (C) ACE must obtain any required occupancy permit on or before September 15, 2008.

11.2 **Approvals and Permits; Payment of Expenses.** ACE is responsible for obtaining all necessary permits and approvals relating to use of the facility, including building and occupancy permits, and any health and safety approvals. ACE has full responsibility for all costs related to its facility and any playground equipment, other equipment, furniture, and fixtures; such responsibility includes purchase costs, rental, utilities, maintenance, repair, cleaning, and replacement.

11.3 **Transportation.** The Participating Districts are not responsible for providing transportation by bus or otherwise of any students to ACE. The Participating Districts may provide transportation in accordance with each district's transportation policy. The Participating Districts will allow ACE students to ride on District buses to and from ACE, to the extent seats are available for such students; but this does not obligate the Districts to add or extend existing bus routes or other transportation services, as provided in ORS 338.145(2). The Participating Districts will give ACE a two-week notice if a bus on a particular route has consistently become too full to transport ACE students so that parents have time to make other arrangements. The parties recognize that many of ACE students may not be able to use existing District bus routes for transportation to and from ACE.

12. Financial Matters; Funding; Annual Budgets; Annual Audit.

12.1 **No Tuition; Fees.** ACE will not charge tuition to students, except as may be allowed under ORS 339.155 or other applicable law. As noted in ORS 338.115(1)(g), the

following laws shall apply to the ACE: ORS 339.141, ORS 339.147, and ORS 339.155. In accordance with state law, ACE may charge reasonable fees for instructional materials, after-school programs, and student activities. ACE shall waive all fees for indigent students in accordance with applicable federal and state law.

12.2 **Annual Funding.**

12.2.1 **Keeping Count.** ACE shall identify and count, and keep accurate records of, its number of enrolled students and their days present and absent; attendance; special education students; students eligible for and enrolled in an English as a Second Language program under ORS 336.079 and the Oregon Pupil Accounting Manual; and other data required in order to calculate average daily membership, weighted average daily membership (ADMw), and related terms necessary to determine funding under state law, particularly ORS 338.155 and 327.013. ACE shall use the Participating District's student information system and shall be responsible for proper input of required information.

12.2.2 ACE may enter into separate agreements with Participating Districts as a contracted service that allows a Participating District to keep all records required in this section.

12.2.3 **Calculating ADMw and Funding.**

12.2.3.1 For each school year, the Sponsoring District shall provide funding to the ACE in accordance with ORS 338.155(2), as that formula may be changed from time to time. Until the law is changed, the funding shall be 95% of the Districts' "Charter School Rate," as determined by the State of Oregon Department of Education; multiplied by the ACE ADMw. The parties acknowledge that because the student will be attending ACE part-time, the sponsoring District shall provide one-half of the 95% or 47.5% of the ADM for each resident student attending ACE on a half-time basis. A Participating District shall have no financial obligation to fund any seats allocated to the sponsoring District but unused by a District resident student.

12.2.3.2 ACE shall determine its ADMw for the period to be covered by reports given to the Participating Districts [using projected ADMw for the first reports specified below].

12.2.3.3 The calculation of the additional amounts under ORS 327.013(7)(a) shall include, but not be limited to, an additional 0.2375 for each student in average daily membership eligible for and enrolled in an English as a Second Language program under ORS 336.079.

12.2.3.4 This Agreement will be changed to conform to any changes in state law relating to the calculation of ADMw or otherwise that affects funding of charter schools.

12.2.4 **Reports to Districts.** ACE shall give written reports to the Participating Districts, containing the data set forth in Sections 12.2.1 and 12.2.2, on or before the

tenth (10th) day of each of the following months of each school year: July, August, September, October, November, December, January, February, March, April, and May. The July and August reports (and possibly the September report), and thus the payments due from the District based on those reports, will be based on the ACE projected ADMw.

12.2.5 Dates of Payments by Districts to ACE.

12.2.5.1 Pursuant to ORS 338.155(8), the Sponsoring District shall send payment to ACE in the percentages set out by applicable law (generally 8.33% per month but currently 16.67% in July) within 10 days after receiving payments from the State School Fund pursuant to ORS 327.095.

12.2.5.2 The parties recognize that there may be fluctuations from month to month in the total sum on which the monthly percentage amounts are calculated due to fluctuations in the Charter School ADMw during a school year, as well as due to possible changes in the state's determination of the general purpose grant or Charter Schools Rate, and thus the amount payable by the Participating District to the Charter School may change from month to month. There will be an adjustment with the final [May or June] payment, as provided in state law, to reflect changes in calculation of ADMw and changes, if any, in the general purpose grant amount or Charter Schools Rate, as well as changes with respect to funding during prior school years that may be based on final calculations of ADMw and the general purpose grant amount or Charter Schools Rate that are not finalized until after the end of a school year.

12.2.6 **End of State Funding.** The financial commitment on the part of the Sponsoring District contained in this Agreement is subject to annual appropriation by the State of Oregon, and they have no obligation to fund charter school operations if State funding does not occur.

12.3 **Initial Budget; Annual Budgets.** The Participating Districts approve ACE's proposed budget for the first year of operation as set forth in Exhibit B, which is attached and incorporated. On or before May 1 of each year, ACE shall submit to the Participating Districts its proposed budget for the following school year, so that they can review it as part of their consideration of ACE's financial stability. ACE shall be responsible for all costs associated with school operations, including the costs of subcontracting for goods and services, except as expressly provided in this Agreement.

12.4 **Fiscal Agent.** Reynolds School District will act as the fiscal agent for grant funds to ACE. Otherwise, ACE shall act as its own fiscal agent. With respect to collection and disbursement of funds, the Participating Districts shall mutually agree with ACE on who will act as the fiscal agent. The ACE board of directors and administration shall be responsible for budgetary planning and determination of day-to-day purchasing, staffing and other expenditures

12.5 **Fiscal Year.** The fiscal year of ACE shall begin on July 1 of each year and end on June 30 of the subsequent year.

12.6 **Financial Records, Audits and Accounting Reports.** ACE shall maintain and retain appropriate financial records in accordance with all applicable federal and state laws. ACE shall have audits performed in compliance with any applicable laws, as such laws may be changed from time to time. At the present time, ORS 338.095(2) requires ACE to have an annual audit of the accounts of ACE prepared in accordance with the Municipal Audit Law, ORS 297.405 to 297.555 and 297.990, and requires that the annual audit be forwarded to the Participating Districts, the State Board of Education, and the Department of Education. ACE shall provide a copy of its financial audit by December 31 of each year.

12.7 **Financial Management.** ACE shall operate in accordance with generally accepted standards of fiscal management applicable to Oregon nonprofit corporations, provided that ACE's accounting method shall comply in all instances with governmental accounting requirements that explicitly apply to charter schools. Subject to this Agreement, ACE through its Board of Directors shall be fiscally responsible for its own operations within the limitations of any funding provided by the Districts and other revenues derived by ACE. ACE's budget and accounting system must be compatible with the Sponsoring District's budget and accounting system.

12.8 **Other Sources of Funds for ACE; Fund Raising.** In addition to the funding under Section 12.2, ACE may accept gifts, donations, grants and loans, including those described in ORS 338.155(9) and ORS 338.185. ACE shall comply with all state and federal laws regarding reporting of charitable contributions. ACE shall record all gifts, donations, loans, and grants in the financial records required in Section 12.6. As provided in ORS 338.125(4), ACE may conduct fund-raising activities, but it shall not require a student to participate in fund-raising activities as a condition of admission to ACE.

13. Governance and Operation.

13.1 Corporate Status; Governing Board.

13.1.1 ACE is and will remain an Oregon nonprofit corporation throughout the term of this Agreement. ACE shall govern and operate ACE as set forth in this Agreement, and the governing board of ACE will be the board of directors of ACE. The governing board shall be comprised of board members meeting the requirements of Section 13.1.4 and Section 13.6.

13.1.2 At the request of the Participating Districts, ACE will give them a copy of its Articles of Incorporation and Bylaws. If ACE makes any changes to its Articles of Incorporation or Bylaws, it will give copies of the changes to the Participating Districts. If one or more of the Participating Districts believe that any such changes violate either this Agreement or state or federal law, they will so notify ACE. If ACE agrees, it will make necessary changes to the Articles or Bylaws to conform to this Agreement or the applicable law; if the parties do not agree, the matter will be resolved under Section 19.8.

13.1.3 ACE's Bylaws will include a provision specifying that upon termination of this Agreement or dissolution of ACE, the assets of ACE that were purchased with

public funds shall be given to the State Board of Education, as provided in ORS 338.105(6).

13.1.4 ACE's Bylaws will include a provision requiring that there shall be a majority of ACE's directors whose legal residence is within the boundaries of the Participating Districts. ACE shall provide the addresses of these majority directors of ACE in ACE's annual report under paragraph 10.5 of this agreement.

13.2 **Exempt Status under Section 501(c)(3) of Internal Revenue Code.** ACE has obtained a letter from the IRS stating that ACE is qualified as an exempt organization under Section 501(c)(3) of the Internal Revenue Code.

13.3 **Nonreligious, Nonsectarian Status.** As provided in ORS 338.035(7), ACE shall not be affiliated with any nonpublic sectarian school or religious institution. As provided in ORS 338.115(4), ACE shall not violate the Establishment Clause of the First Amendment to the United States Constitution or section 5, Article I of the Oregon Constitution, or be religion based.

13.4 **Public Meetings.** ACE and its Board of Directors, when acting as the Governing Body of ACE, are subject to the provisions of the Oregon Public Meetings Law, ORS 192.610 to 192.690.

13.5 **Operational Powers.** Subject to applicable federal and state laws and any restrictions in this Agreement, ACE shall have authority to exercise independently all powers granted to nonprofit corporations and charter schools under Oregon law.

13.5.1 **Governing Board.** The governing board of ACE shall be a board of directors. ACE will have the majority of the positions on the board of directors, and this board shall be comprised of 11 members. A minority of positions on the board of directors shall be allocated to the Participating Districts. Since there are four Participating Districts and five available seats on the board of directors for ACE, the Participating Districts agree to provide a fifth director selected from one of them by a majority vote of the Participating Districts giving one Participating District two seats on the governing board.

13.5.2 It is anticipated that one or more superintendents of Participating Districts may act as Board members of ACE. In the unlikely circumstance that one of the Participating Districts has a conflict with ACE over the terms of the Agreement, the superintendent of that Participating District shall recuse himself/herself from consideration on the issue in both his/her board member or superintendent capacity. Such superintendent shall appoint a designee from the Participating District to deal with the dispute on behalf of the Participating District.

14. Employment Matters.

14.1 **ACE is Employer.** All provisions of this Section 14 are subject to state and federal laws and applicable collective bargaining agreements, if any. The Participating Districts shall not be the employer of any employees of ACE. ACE may choose to enter into contracts to provide services to it or to fulfill responsibilities of ACE under this Agreement, in which case the

people actually providing the services or fulfilling the responsibilities will be employees of such contractor; otherwise, ACE will be the employer of the staff at ACE. ACE shall control the selection of employees.

14.2 **Staff Hiring, Compensation, Benefits, PERS.**

14.2.1 ACE's governing board, in its sole discretion, has complete authority to hire, evaluate, promote, discipline, supervise, and terminate ACE employees, and to set all terms and conditions of employment, including all decisions regarding compensation and benefits. ACE will be responsible for providing substitutes for all ACE teachers requiring substitutes.

14.2.2 At least one-half of the total full-time equivalent (FTE) teaching and administrative staff at ACE shall be licensed in accordance with ORS 338.135(7). For any individual hired as a teacher, ACE shall provide the Districts with evidence of certification, if any, or other qualification within 60 days after the individual's initial date of hire.

14.2.3 For any employee of the Participating Districts who chooses to work for ACE, any leave of absence from that Participating District shall be governed by ORS 338.135.

14.2.4 Licensed and classified staff and other employees of ACE will not be included in the Participating Districts' respective bargaining units. Employee membership in a labor organization and collective bargaining shall be governed by ORS 338.135.

14.2.5 Pursuant to ORS 338.135(5), ACE shall participate in the Public Employees Retirement System (PERS) for its employees.

14.3 **Employee Records.** ACE shall be responsible for establishing and maintaining personnel records for its employees, and for the maintenance, retention and disclosure of employee records, all in compliance with all applicable federal and state laws. ACE shall meet any and all reporting obligations to the Teacher Standards and Practices Commission ("TSPC") regarding its employees.

14.4 **Criminal Records Checks.** As provided in ORS 338.115(1)(e), ORS 181.539, 326.603, 326.607, and 342.232 (relating to criminal records checks) shall apply to ACE. ACE shall not knowingly employ an individual (i) for whom a criminal background investigation has not been initiated or (ii) who has been convicted of an offense that would preclude that individual from working in a public school in Oregon. No later than October 15 of each school year that ACE is in operation under this Agreement, ACE shall provide to the Participating Districts a list containing the names and job positions of all its employees. Such list shall also indicate for each employee the date of initiation of the criminal background investigation required by Oregon law. ACE shall provide written verification of its compliance with this section to each sponsoring district by the October 15th date.

15. **Application of and Compliance with Laws.**

15.1 **Compliance with Laws; Non-Exemption from Certain Laws.** ACE shall comply with all applicable federal, state, and local laws and regulations (including Oregon Administrative Rules developed by the Oregon Department of Education regarding charter schools). As provided in ORS 338.115(1), although statutes and rules that apply to school district boards, school districts or other public schools shall generally not apply to ACE, the following laws shall apply to ACE:

- 15.1.1 Federal law.
- 15.1.2 ORS 192.410 to 192.505 (Public Records Law).
- 15.1.3 ORS 192.610 to 192.690 (Public Meetings Law).
- 15.1.4 ORS 297.405 to 297.555 and 297.990 (Municipal Audit Law).
- 15.1.5 ORS 326.565, 326.575 and 326.580 (student records).
- 15.1.6 ORS 181.534, 326.603, 326.607, 342.223 and 342.232 (Criminal Records Checks).
- 15.1.7 ORS 337.150 (Textbooks)
- 15.1.8 ORS 339.141, 339.147 and 339.155 (Tuition and Fees).
- 15.1.9 ORS 659.850, 659.855, and 659.860 (Discrimination).
- 15.1.10 ORS 30.260 to 30.300 (Tort Claims).
- 15.1.11 Health and safety statutes and rules.
- 15.1.12 The statewide assessment system developed by the Department of Education under ORS 329.485(2).
- 15.1.13 ORS 329.045 (Academic Content Standards and Instruction).
- 15.1.14 ORS 329.451 (high school diploma, modified diploma, extended diploma and alternative certificate).
- 15.1.15 ORS 329.496 (physical education)
- 15.1.16 Any statute or rule that establishes requirements for instructional time provided by a school each day or during a year.
- 15.1.17 ORS 339.250(12) (prohibition on infliction of corporal punishment).
- 15.1.18 ORS 339.326 (notice concerning students subject to juvenile law petitions).

15.1.19 ORS 339.370, 339.372, 339.388 and 339.400 (reporting of child abuse and sexual conduct and training on prevention and identification of child abuse and sexual conduct);

15.1.20 ORS Chapter 657 (Employment Department Law).

15.1.21 ORS Chapter 338.

15.1.22 Oregon Administrative Rules developed by the Oregon Department of Education regarding ORS Chapter 338; and

15.1.23 Any statute or rule that is listed in this charter agreement

15.2 **Waiver.** As provided in ORS 338.025(2), ACE may apply to the State Board of Education to grant a waiver of any provision of ORS Chapter 338. ACE shall give the Participating Districts a copy of any application for a waiver promptly after submitting it and shall give the Participating Districts a copy of any grant of a waiver promptly after receiving it.

15.3 **Amendment of Agreement to Conform to New and Changed Laws.** The parties intend that where this Agreement refers to federal or state law that they be bound by any amendment to such laws, upon the effective date of such amendments, unless such amendments do not apply to charter schools. To illustrate, under Section 12.6 of this Agreement, ACE is required to have an annual audit prepared in accordance with the Municipal Audit Law, because ORS 338.095(2) requires this to be done. However, if ORS 338.095(2) were to be amended so that different audit standards were to apply to charter schools, the parties intend that thereafter they would be bound by the law as amended; ACE would not be required to continue to have audits performed in accordance with the Municipal Audit Law, notwithstanding the language in Section 12.6. If, at any time during the term of this Agreement, the state amends existing statutes or develops any new rules, regulations or statutes that may affect the terms of this Agreement, change restrictions or requirements on ACE, or otherwise affect ACE, ACE and the Participating Districts shall review this Agreement and conform it accordingly.

15.4 **School Policies.** ACE shall adopt policies as may be required by law and may in its discretion adopt other policies governing operation of ACE. ACE will make such policies available for review at the Participating Districts' request. ACE specifically adopts the Reynolds School District's discipline policy, and all parties agree that the Reynolds School District's discipline policy will apply to students enrolled at ACE. In the event that a student enrolled in ACE commits an offense that is subject to the Reynolds School District's discipline policy, the student of a particular Participating District will review the individual student consequences at that student's home school within its resident district. Each shall continue to be subject to their respective resident district's policies and rules during the time that student is attending classes or activities at their resident district.

16. Insurance and Indemnification.

16.1 **Insurance; Proof; Renewals.** ACE shall, at its own expense, secure and retain and provide proof of insurance of the types and in the amounts set forth in this Section 16. As provided in ORS 338.115(13), prior to beginning operation, ACE shall show proof of such

insurance to the Sponsoring Districts; copies of certificates of insurance shall suffice as proof. If ACE fails to provide such a certificate within ten (10) days after demand by one or more Participating Districts, it or they may purchase the insurance required and bill ACE. ACE shall procure and pay for renewals of such insurance prior to the time of expiration of such policies, and ACE shall deliver to the Participating Districts certificates of such renewal policies before the expiration of any existing policy. For all insurance policies procured by ACE, ACE agrees to make each Participating District a named insured on that policy.

16.2 **Property Insurance.** The parties anticipate that ACE will enter into a lease or other agreement relating to the ACE facility. ACE shall ensure that such lease or other agreement provides that (a) the facility is to be insured under an all-risk or special forms policy of insurance [such insurance may be purchased by the owner of the building or by ACE; and (b) such policy is a replacement cost policy.

16.3 **Commercial General Liability Insurance.**

16.3.1 ACE shall maintain a commercial general liability insurance policy (occurrence form) with respect to the ACE facility and the operation of ACE, in accordance with this Agreement. The policy shall be in effect no later than when ACE, or any of its employees, agents, or subcontractors, enters the ACE facility to do any work in connection with the ACE facility. ACE shall maintain such a policy thereafter throughout the term of the Agreement, including all extensions and renewals.

16.3.2 Subject to the following sentence, the limit of ACE's policy shall be a minimum of \$2,000,000 for bodily injury and property damage per occurrence, \$2,000,000 annual aggregate. The minimum limits of liability may be satisfied by using a combination of commercial general liability insurance and commercial excess/umbrella liability insurance (following form). In addition, ACE's policy shall contain coverage for premises medical payments in a minimum amount of \$10,000.

16.3.3 Such policy shall provide for contractual liability coverage with respect to the indemnity obligation set forth in Section 16.9 of this Agreement.

16.4 **Liability Insurance for Directors and Officers.** ACE shall procure and maintain liability insurance for directors and officers in an amount not less than \$1,000,000 each loss, \$1,000,000 each policy year, covering ACE, the Oregon Building Congress Academy, the governing board of ACE, employees, and volunteers against liability arising out of wrongful acts and employment practices. Continuous "claims made" coverage will be acceptable, provided the retroactive date is on the effective date of this Agreement.

16.5 **Business Auto Liability Insurance.** ACE shall procure and maintain business auto liability insurance with coverage for all owned, non-owned and hired vehicles with combined single limits of liability of \$1,000,000 per occurrence for bodily injury and property damage.

16.6 **Workers' Compensation Insurance.** ACE shall procure and maintain workers' compensation insurance pursuant to ORS chapter 656 on all ACE employees.

16.7 **Honesty Bond.** ACE shall procure and maintain an honesty bond to cover all employees and volunteers of ACE. Limits are to be determined by the ACE governing board, but no less than \$25,000. Coverage shall include faithful performance and loss of moneys and securities.

16.8 **Policy Requirements.** The insurance policies required by this Agreement (i) with respect only to the commercial general policy under Section 2 and the business auto liability policy under Section 4, shall name the Participating Districts as additional insureds; (ii) shall be issued for periods of not less than one year; (iii) shall be issued by insurance companies admitted to do business in the State of Oregon; and (iv) shall contain a provision that they cannot be cancelled, reduced in amount, substantially modified, or not renewed without thirty (30) days prior written notice to the other party.

16.9 **Indemnification.**

16.9.1 **ACE Indemnifies Participating Districts.** To the extent not covered by insurance or otherwise barred by the Oregon Tort Claims Act in ORS Chapter 30, ACE agrees to indemnify and hold the Participating Districts, their Boards, agents and employees harmless from all liability, claims and demands on account of injury, loss or damage, including, without limitation, claims arising from (1) the possession, occupancy or use of property of ACE (including after school use of buildings by outside groups), its faculty, students, patrons, employees, guests or agents; (2) civil rights violations, bodily injury, personal injury, sickness, disease, death, property loss or damage or any other losses of any kind whatsoever which arise out of or are in any manner connected with ACE's operations. This indemnification shall not apply to any liability claims or demands resulting from the negligence or wrongful act or omission of any Participating District Board members, officers, agents, or employees. ACE agrees to indemnify, hold harmless and defend the Participating Districts from all contract claims in which ACE or Oregon Building Congress Academy has obligated them without the Participating Districts' prior written approval. This indemnification shall not apply to any damages incurred regarding any act or omission of ACE or Oregon Building Congress Academy that is later determined to be required by law or this Agreement. The foregoing provision shall not be deemed a relinquishment or waiver of any kind of applicable limitations of liability provided in the Oregon Tort Claims Act. ACE shall assure that any management contract between it and Oregon Building Congress Academy shall contain a provision in which Oregon Building Congress Academy agrees to defend, indemnify and hold harmless the Participating Districts from all liability, claims and demands resulting from Oregon Building Congress Academy's employees or agents.

16.9.2 **Districts Indemnify ACE.** To the extent not covered by insurance or otherwise barred by the Oregon Tort Claims Act in ORS Chapter 30, the Participating Districts agree to indemnify and hold ACE and Oregon Building Congress Academy, its Board, agents and employees harmless from all liability, claims and demands on account of injury, loss or damage, including without limitation, claims arising from civil rights violation, bodily injury, personal injury, sickness, disease, death, property loss or damage or any other losses of any kind whatsoever which arise out of or are in any manner connected with Districts' operations. This indemnification shall not apply to any liability

claims or demands resulting from the negligence or wrongful act or omission of any ACE or ACE Board member, officer, or employee. This indemnification shall not apply to any liability claims or demands resulting from the negligence or wrongful act of any Participating District employee working at ACE whose negligent or wrongful act or omission is caused or directed by ACE or Oregon Building Congress Academy. This indemnification shall not apply to any damages incurred regarding any act or omission of the Participating Districts or Participating District Boards that is later determined to be required by law or this Agreement. The foregoing provision shall not be deemed a relinquishment or waiver of any kind of applicable limitations of liability provided in the Oregon Tort Claims Act.

16.9.3 **Survival of Indemnification.** This indemnification, defense and hold harmless obligation on behalf of ACE and the Participating Districts shall survive the termination of this Agreement. Any indemnified party shall have the right, at its own expense, to participate in the defense of any suit, without relieving the indemnifying party of any of its obligations hereunder.

16.9.4 **Sponsoring Districts' Mutual Indemnification.** The Participating Districts agree to indemnify, defend and hold harmless each other, their board, agents and employees harmless from all liability, claims and demands on account of injury, loss or damage caused by a Participating District, to the extent outlined in Sections 16.9.1 and 16.9.2.

17. **Relationship between Districts and ACE.**

17.1 **Full Faith and Credit.** ACE agrees that it will not extend the faith and credit of the Districts to any third person or entity. ACE acknowledges and agrees that it has no authority to enter into a contract that would bind the Districts. ACE's governing board has the authority to approve contracts to which ACE or Oregon Building Congress Academy is a party, subject to the requirements and limitations of the Oregon Constitution, state law, and the provisions of this Agreement.

17.2 **Districts' Disclaimer of Liability.** The parties to this Agreement expressly acknowledge that ACE is not operating as the agent, or under the direction and control, of the Participating Districts Boards except as required by law or this Agreement, and that the Participating Districts Boards assume no liability for any loss or injury resulting from:

17.2.1 The acts or omissions of ACE (or Oregon Building Congress Academy), its directors, trustees, agents or employees;

17.2.2 The use and occupancy of the building occupied by ACE or any matter in connection with the condition of such building; or

17.2.3 Any debt or contractual obligation incurred by ACE (or Oregon Building Congress Academy).

18. **Termination.**

18.1 **Grounds for Termination.**

18.1.1 As provided in ORS 338.105(1), the grounds for termination of this Agreement by the Sponsoring District are as follows:

18.1.1.1 Failure to meet the terms of the Agreement or ORS Chapter 338.

18.1.1.2 Failure to meet the requirements for student performance stated in this Agreement.

18.1.1.3 Failure to correct a violation of a federal or state law that is described in ORS 338.115.

18.1.1.4 Failure to maintain insurance as described in this Agreement.

18.1.1.5 Failure to maintain financial stability.

18.1.2 If one or more of the Cooperating Districts have reason to believe that ACE has materially breached this contract in one or more of the grounds set forth in subsection 18.1 above, it shall notify all Participating Districts of the breach. All Cooperating Districts shall have the right to bring material breaches to the attention of each other and the Sponsoring District. Such notification must be in writing, with a copy to ACE.

18.1.3 In order to proceed with a termination under this section, all Participating Districts must agree in writing to proceed with contract termination. In the event at least one of the Participating Districts does not agree to terminate the contract under Section 18, the Participating Districts agree that those that wish to terminate the contract will be given the opportunity to withdraw from the contract, rather than to proceed with a termination of the contract.

18.1.4 In the event the Participating Districts cannot agree on termination of the contract, the parties agree to mediate this matter with a mediator mutually selected by the four Participating Districts. If mediation fails to result in a resolution, the Cooperating District that wishes to withdraw from the contract shall be entitled to do so.

18.2 **Notice of Breach; Opportunity to Cure; Dispute Resolution.**

18.2.1 The parties recognize that the grounds for termination in Section 18.1 may involve subjective judgment and may involve disputes between the parties as to whether proper grounds for termination exist, and therefore the following process is agreed to as a means for dealing with alleged breaches of this Agreement.

18.2.2 If any of the Participating Districts believe that any breach of this Agreement by ACE has occurred, it will give ACE written notice setting forth the alleged breach.

18.2.3 If ACE agrees that a breach has occurred, ACE will cure the breach within thirty (30) days after the Participating Districts' notice was given. If, however, the breach is such that ACE, by acting with due diligence, could not reasonably complete the cure within such time, ACE shall not be in default unless ACE either (a) fails to commence to cure the breach within such 30-day or other specified period, or (b) fails to diligently prosecute to completion all steps necessary to completely remedy the breach as soon as is reasonably practicable after the Participating District gives such notice.

18.2.4 If ACE does not agree that a breach has occurred, ACE will give the Participating Districts a written explanation of the reasons why it believes no breach has occurred. The parties will then attempt in good faith to resolve their differences, and either party may at any time demand resolution of the dispute under Section 19.8.

18.3 **Notice of Intent to Terminate; Hearing; Appeal.**

18.3.1 If the breach by ACE has not been timely cured, or if it cannot be cured, and if the matter is not being resolved by mediation, then the Districts may decide to terminate this Agreement, in which case it will give ACE 60 days prior written notice of its intent to terminate this Agreement. Such notice shall state the grounds for termination.

18.3.2 ACE may appeal the Participating Districts' decision to terminate this Agreement directly to the District Boards. It will take the decision of the Sponsoring District's Board to terminate this agreement. ACE may respond to the allegations in the Participating Districts' written notification by offering documentary evidence and oral argument. The Participating Districts bear the burden of proving the allegations in the written notification by a preponderance of the evidence. ACE has the burden of proof for any affirmative defense to the allegations by a preponderance of the evidence.

18.3.3 The District Boards' decision may only be appealed to the Oregon Department of Education according to ORS 338.105(3).

18.4 **Prompt Termination for Health and Safety Reasons.**

18.4.1 As provided in ORS 338.105(4), notwithstanding sections 18.1—18.3, the Sponsoring District may terminate this Agreement immediately and close ACE if ACE is endangering the health or safety of its students.

18.4.2 ACE's governing body may request a hearing from the Sponsoring District's decision on the termination of this Agreement under this subsection 18.4. The Sponsoring District shall hold a hearing within 10 days after receiving the request.

18.4.3 ACE's governing body may appeal a decision of the Sponsoring District under this subsection 18.4 to the State Board of Education. The State Board of Education shall hold a hearing within 10 days after receiving the appeal request.

18.4.4 Throughout the appeals process, ACE shall remain closed at the discretion of the Sponsoring District unless the State Board of Education orders it to open ACE and not terminate this Agreement.

18.5 Termination by ACE; Dissolution.

18.5.1 As provided in ORS 338.105(7), ACE's governing body may only terminate the Agreement or dissolve or close ACE at the end of a semester, unless the Participating Districts agree to another date. If ACE intends to terminate this Agreement or dissolve or close ACE, it shall give notice to the Participating Districts at least 180 days prior to the proposed effective date of the termination, closure or dissolution.

18.5.2 If ACE should cease operations for whatever reason, including, but not limited to, the non-renewal or termination of this Agreement, or dissolution of ACE, it is agreed that ACE's governing board shall supervise and have authority to conduct the winding up of the business and affairs of ACE; provided, however, that in doing so, the Participating Districts do not assume any liability incurred by ACE beyond the funds allocated to it by the Participating Districts under this Agreement. If ACE's governing board fails to conduct such winding up in accordance with applicable laws and standards, the Participating Districts may take appropriate legal action to do so. Upon dissolution, ACE must transfer all student education records to the Sponsoring District.

18.6 Effects of Termination or Dissolution. Until the effective date of termination of this Agreement, the Sponsoring District shall continue to make the funding payments under Section 12. As provided in ORS 338.105(5), termination of this Agreement shall not abridge ACE's legal authority to operate as a private or nonchartered public school. Upon dissolution or termination, all permanent records shall be transferred to the Participating Districts.

18.7 Assets Currently Owned by ACE; Property Inventory Control. ACE certifies that prior to execution of this Contract it does not own any assets that (a) were purchased with public funds and (b) ACE holds for the account of ACE. The parties acknowledge that ACE operates one or more other charter schools and nonprofit operations and that it may have acquired other assets with public funds relating to such other operations. ACE shall maintain records of purchase orders for all assets relating to ACE that cost \$500.00 or more. These records shall indicate whether the assets were purchased with public funds (as defined in Section 18.8) or non-public funds. No later than October 15 of each year that ACE is in operation, ACE shall provide the Districts with a copy of this purchase order record for the preceding fiscal year.

18.8 Definition of Public Funds. For purposes of this Contract, public funds shall include any and all funds distributed to the ACE:

18.8.1 By the Participating Districts, pursuant to ORS 338.155 and ORS 338.165, and

18.8.2 By the Oregon Department of Education, including any and all federal grant funds that ACE may apply for and be awarded by the Oregon Department of Education, and

18.8.3 By any agency, division or branch of the United States Government, or any entity created by an agency, division or branch of the United States Government.

18.9 Distribution of Assets upon Termination.

18.9.1 This Section 18.9 will apply if this Contract is terminated, at expiration of the term (including all extensions and renewals), upon dissolution of ACE, or for any other reason that ACE ceases operations as a public charter school under this Contract.

18.9.2 If any of the foregoing events in Section 18.9.1 occurs, all assets purchased with public funds and still owned by ACE shall be given to the state Board of Education in accordance with ORS 338.105(6). ACE will be entitled to retain ownership of (a) any asset that is listed on Exhibit C and is identified as being purchased with non-public funds, and (b) any other asset that ACE has acquired through the expenditure of non-public funds.

18.9.3 The parties acknowledge that assets costing less than \$500 may have little value at the time this Section 18.9 applies. Therefore, ACE will not be held responsible by the Participating Districts for identifying assets costing less than \$500 and purchased with public funds and giving them to the state Board of Education, but the Participating Districts do not waive any rights that the state Board of Education may have to enforce ORS 338.105(6). If ACE does not maintain records of purchase orders for all assets, or cannot provide records showing that an asset was purchased with non-public funds, then it shall be assumed that the asset was purchased with public funds, and upon termination the asset in question shall be given to the State Board of Education pursuant to ORS 338.105(6).

18.9.4 If one Participating District withdraws from the contract or otherwise terminates its relationship under this contract with ACE, it agrees that all money donated and equipment donated to ACE will remain at ACE until ACE is dissolved or the contract is otherwise terminated. After that time whatever equipment remains returns to the Participating District originally providing the equipment. If ACE is terminated, whatever assets were donated to ACE by particular Participating Districts shall return to that District. If money is distributed by the Oregon Department of Education following the termination of ACE, the Participating Districts will share in that money equally if all four Districts have terminated the Charter Agreement. If one or more Participating Districts have withdrawn from the contract, but ACE is later dissolved or terminated, then each Participating District shall share in the return of assets based upon the number of years that particular District was in the contract with ACE. For example, if all four Participating Districts terminate the contract after a period of five years, each District shares equally in the return of assets. However, if one District withdrew from the contract prior to the termination or dissolution of ACE, then that District would share in the percentage of the total number of years the charter school was in operation. For example, if the charter school is in operation for four years prior to dissolution, and one District was only involved in the contract for two of those four years, then that particular District would receive 0.5 of 25% or 12.5% of assets returned to the Districts because of their lesser participation in the length of the contract.

19. Miscellaneous Provisions.

19.1 **Entire Agreement.** This Agreement, with Exhibits and the Application, contains all terms, conditions and provisions of the agreement between the parties relating to creation and operation of ACE and contains the entire understanding and all representations, understandings, and discussions of the parties relating thereto. All prior agreements, representations, drafts, statements, understandings, and discussions are merged herein and superseded and cancelled by this Agreement. Neither party is relying upon any statement or representation not embodied in this Agreement or in any other written agreement made concurrently herewith.

19.2 **Severability.** If any provision of this Agreement is determined to be unenforceable or invalid by a court of law for any reason, the remainder of the Agreement shall remain in effect, unless otherwise terminated by one or both of the parties in accordance with the terms of this Agreement.

19.3 **Amendment.** This Agreement may be modified or amended only by written agreement between ACE and the Participating District Superintendents (or designee) or School Boards. The modification or amendment of this Agreement requires the unanimous written consent of the sponsoring Districts. If, at any time during the term of this Agreement, any party desires to amend the Agreement, it may send the proposed amendment(s) to the other parties, and thereafter the parties will in good faith discuss and negotiate possible amendments. This subsection does not impose on either party any duty to accept any amendment proposed by the other party.

19.4 **No Waiver.** The parties agree that no assent, express or implied, to any breach by either of them of any one or more of the agreements expressed herein shall be deemed or be taken to constitute a waiver of any succeeding or other breach.

19.5 **Governing Law.** This Agreement shall be governed by, subject to and construed under the laws of the State of Oregon without regard to its conflicts of law provisions.

19.6 **Assignment; Successors and Assigns.** This Agreement may not be assigned by ACE under any circumstances, it being expressly understood that the charter granted by this Agreement runs solely and exclusively to ACE. This does not limit ACE's or ACE's right to enter into contracts and Agreements to the full extent allowed to charter schools under Oregon law. The parties recognize that this provision does not limit ACE's right to enter into a management contract with Oregon Building Congress Academy for its operations as set forth in Section 13.5 above. Except as otherwise expressly provided in this Agreement, the provisions of this Agreement bind and benefit the legal representatives, successors and assigns of the parties.

19.7 **Notice.** Any notice, statement, demand, request, consent, approval or other communication (collectively referred to in this Section 19.7 as "notices" or "notice") required or permitted to be given or made by either party, or its agent, to the other, pursuant to this Agreement or pursuant to any applicable law or requirement of public authority, shall be in writing and given by one of the following methods (with the effective date of the notice to be as set forth below):

19.7.1 By personal delivery to the person indicated on the execution page of this Agreement (to be effective when actually delivered);

19.7.2 By facsimile to the facsimile number set out on the execution page of this Agreement, provided that the original notice is sent by one of the other methods described in this Section or by first class U.S. Mail [notice by facsimile to be deemed effective when receipt either is acknowledged by the addressee or its office or is confirmed by confirming transmission equipment (provided this occurs before 5:00 p.m. Pacific Time on a business day, otherwise it will be deemed effective on the next business day)];

19.7.3 By registered or certified mail, postage prepaid, with return receipt requested (to be deemed effective two (2) days after mailing); or

19.7.4 By nationally recognized reputable overnight courier, prepaid (to be deemed effective on the date that the courier warrants that delivery will occur).

Notice sent by courier or mail shall be addressed to the other party [to the attention of the person identified on the execution page of this Agreement] at the address set forth on the execution page of this Agreement or such other person or address which may be designated by a party in writing.

19.8 **Dispute Resolution; Mediation.**

19.8.1 If any dispute arises between the Participating Districts and ACE concerning this Agreement, including, without limitation, an allegation of any breach or default, either party may request mediation of the matter. The party requesting mediation shall do so by giving written notice to that effect to the other party, specifying in the notice the nature of the dispute. Mediation requires the consent of both parties, and nothing in this section shall be construed to require either party to mediation without that party's consent.

19.8.2 If the parties cannot agree upon a mediator, either party may request the Oregon Department of Education to appoint the mediator.

19.8.3 At any time during the mediation process, or if the parties are unable to reach an agreement through mediation, either party may give notice to the other party and to the mediator that it is terminating its participation in the mediation; after that, either party may request a hearing before and decision by the District Boards.

19.8.4 The parties shall share equally the fees and expenses of any mediator and each party shall pay its own expenses incurred in any mediation.

19.8.5 As to any dispute that is not being determined through mediation, ACE may request a hearing before and decision by the Participating District Boards.

19.8.6 ACE may appeal to the State Board of Education concerning those matters within its jurisdiction under ORS Chapter 338.

19.9 **Delegation by Participating Districts.** The parties agree and acknowledge that the functions and powers of the District Boards may be exercised by the Superintendent of the Districts, or by the Superintendent’s designee, provided that any ultimate decision regarding renewal, non-renewal, or termination of this Agreement may be made only by the District Boards.

19.10 **Prior Actions.** As a condition precedent to this Agreement becoming effective on the effective date specified above in Section 2.1, ACE shall have taken, completed and satisfied on or before the date specified herein any action or obligation which is required to be completed before such effective date, and failure to do so shall constitute grounds for the Participating Districts to declare this Agreement null and void.

19.11 **ACE Authority to Enter Into Agreement.** ACE expressly affirms that the signatories on its behalf who sign below have the authority to enter into this Agreement on behalf of ACE and that the Board of Directors of ACE has duly approved of this Agreement. At the Participating Districts’ request, ACE shall provide to the Districts a copy of its written resolution authorizing ACE to enter into this Agreement.

19.12 **Definition of Business Day.** For purpose of this Agreement, “business day” means a day in which the Participating Districts’ administrative offices are open. “Business day” does not include (a) Saturdays, (b) Sundays, (c) official state holidays listed in ORS 336.010, (d) federal holidays, (e) District scheduled spring vacation, (f) any day(s) in which the administrative office is closed due to inclement weather, or (g) any day that the Participating Districts’ administrative office is closed due to action taken by, or ordered to be closed by, the Districts’ Board of Directors or the Board’s designee, or the government of the City or County in which the Districts are located, or the State of Oregon, or the federal government.

19.13 **Incorporation of Application and Exhibits.** Attached hereto and incorporated herein by this reference are Exhibit A (The Application); Exhibit B (Goals and Evaluation, referred to in Section 10.3); and Exhibit C (List of assets, referred to in Section 18.7).

EXECUTED this _____ day of _____, 2011.

CENTENNIAL SCHOOL DISTRICT 28J

By: _____

Title: School Board Chairperson

Address for notice purposes:
Rich Shultz, Acting Superintendent
Centennial School District 28J
18135 SE Brooklyn Street
Portland OR 97236
Phone: 503-760-7990
Fax: 503-762-3689

GRESHAM-BARLOW SCHOOL DISTRICT 10J

By: _____

Title: School Board Chairperson

Address for notice purposes:
Jim Schlachter, Superintendent
Gresham-Barlow School District
1331 NW Eastman Parkway
Gresham OR 97030

Phone: 503-618-2450
Fax: 503-661-1589

PARKROSE SCHOOL DISTRICT 3

By: _____

Title: School Board Chairperson

Address for notice purposes:
Karen Fischer Gray, Superintendent
Parkrose School District
10636 NE Prescott Street
Portland OR 97220
Phone: 503-408-2100
Fax: 503-408-2140

REYNOLDS SCHOOL DISTRICT 7

By: _____

Title: School Board Chairperson

Address for notice purposes:
Joyce Henstrand, Superintendent
Reynolds School District
1204 NE 201st Avenue
Fairview OR 97024
Phone: 503-661-7200
Fax: 503-667-6932

**ACADEMY FOR ARCHITECTURE,
CONSTRUCTION AND ENGINEERING**

By: _____

Title: _____

Address for notice purposes:
Richard D. O'Connor
Executive Director
Oregon Building Congress
9450 SW Commercial Circle, Suite 260
Wilsonville OR 97070
Phone: 503-685-8313