

**Fourth Draft**  
**Friday, December 7, 2018**

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**CONTINUING DISCLOSURE AGREEMENT**

**between**

**CUTLER CHARITABLE FOUNDATION,  
as Foundation**

**AND**

**U.S. BANK NATIONAL ASSOCIATION,  
as Dissemination Agent**

**Dated as of December 1, 2018**

**Relating to:**

**\$ \_\_\_\_\_  
Public Finance Authority  
Charter School Lease Revenue Bonds  
(21<sup>st</sup> Century Public Academy Project)  
Series 2018A**

**\$ \_\_\_\_\_  
Public Finance Authority  
Taxable Charter School Lease Revenue Bonds  
(21<sup>st</sup> Century Public Academy Project)  
Series 2018B**

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This instrument drafted by:  
Barnes & Thornburg LLP (BWJ)  
225 South Sixth Street, Suite 2800  
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## CONTINUING DISCLOSURE AGREEMENT

This Continuing Disclosure Agreement (the “Disclosure Agreement”), dated as of December 1, 2018, is executed and delivered by Cutler Charitable Foundation, a New Mexico nonprofit corporation and a 501(c)(3) organization (the “Foundation”) and U.S. Bank National Association, as dissemination agent (the “Dissemination Agent”), in connection with the issuance by the Public Finance Authority (the “Authority”) of its (i) Charter School Lease Revenue Bonds (21<sup>st</sup> Century Public Academy Project), Series 2018A (the “Series 2018A Bonds”), in the original aggregate principal amount of \$\_\_\_\_; and (ii) Taxable Charter School Lease Revenue Bonds (21<sup>st</sup> Century Public Academy Project), Series 2018B (the “Series 2018B Bonds” and together with the Series 2018A Bonds, the “Series 2018 Bonds”), in the original aggregate principal amount of \$\_\_\_\_. The Series 2018 Bonds are being issued pursuant to an Indenture of Trust, dated as of December 1, 2018 (the “Indenture”), by and between the Authority and U.S. Bank National Association, as trustee (the “Trustee”). The proceeds of the Series 2018 Bonds are being loaned by the Authority to the Foundation pursuant to a Loan Agreement, dated as of December 1, 2018 (the “Loan Agreement”). Pursuant to the Loan Agreement, the Foundation has covenanted and agreed to provide and to cause the Charter School to provide the continuing disclosure of certain financial information and operating data and timely notices of the occurrence of certain events.

**Section 1. Purpose of Disclosure Agreement.** This Disclosure Agreement is being executed and delivered by the Foundation and the Dissemination Agent for the benefit of the Registered Owners of the Series 2018 Bonds (for such purpose beneficial owners of the Series 2018 Bonds shall also be considered Registered Owners of the Series 2018 Bonds) and to assist Piper Jaffray & Co., Minneapolis, Minnesota (the “Participating Underwriter”), in complying with the Rule.

**Section 2. Defined Terms.** Any capitalized terms not defined herein shall have the meanings given to such terms in the Indenture.

“*Annual Report*” means the financial information and operating data required to be transferred by the Foundation to the Dissemination Agent pursuant to Section 3(a)(1) and 4(a)(1) of this Disclosure Agreement.

“*Annual Report of the Charter School*” means the financial information and operating data of the Charter School required to be submitted by the Foundation to the Dissemination Agent on behalf of the Charter School pursuant to Section 3(b)(1) and 4(b)(1) of this Disclosure Agreement.

“*Authority*” means the Public Finance Authority, its successors and assigns.

“*Beneficial Owner*” means any person which (a) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Series 2018 Bonds (including persons holding Bonds through nominees, depositories or other intermediaries), or (b) is treated as the owner of any Series 2018 Bonds for federal income tax purposes.

“*Business Day*” has the same meaning as defined in the Indenture.

“*Charter School*” means 21<sup>st</sup> Century Public School, a New Mexico public charter school, its successors and assigns.

*“Charter School Operations Reports”* means the financial information and operating data required to be transferred by the Foundation to the Dissemination Agent on behalf of the Charter School pursuant to Section 3(b)(4) of this Disclosure Agreement.

*“Charter School Quarterly Reports”* means the financial information and operating data required to be transferred by the Foundation to the Dissemination Agent on behalf of the Charter School pursuant to Section 3(b)(2) of this Disclosure Agreement.

*“Charter School’s Audited Financial Statements”* means the Charter School’s annual financial statements, prepared in accordance with State reporting requirements.

*“Charter School’s Disclosure Reports”* means the Charter School’s Disclosure Reports to be filed by the Foundation as required under Sections 3(b) and 4(b) of this Disclosure Agreement.

*“Charter School’s Disclosure Representative”* means any officer of the Charter School or its designee or such other person as the Charter School shall designate in writing to the Dissemination Agent from time to time.

*“Charter School’s Fiscal Year”* means the fiscal year of the Charter School.

*“Construction Report”* means the report on the construction of Phase II (as defined in the Indenture) required to be transferred by the Foundation to the Dissemination Agent pursuant to Section 3(b)(3) of this Disclosure Agreement.

*“Disclosure Reports”* means, collectively, the Foundation’s Disclosure Reports and the Charter School’s Disclosure Reports.

*“Dissemination Agent”* means U.S. Bank National Association, as dissemination agent under this Disclosure Agreement, its successors and assigns.

*“EMMA”* means the Electronic Municipal Market Access system operated by the MSRB and the primary portal for complying with the continuing disclosure requirements of the Rule and any successor portal identified by the MSRB.

*“Events Notices”* means the notices required to be given by the Foundation and the Charter School pursuant to Section 5 of this Disclosure Agreement.

*“Foundation”* means Cutler Charitable Foundation, a New Mexico nonprofit corporation, its successors and assigns.

*“Foundation’s Audited Financial Statements”* means the Foundation’s annual financial statements, prepared in accordance with GAAP or State reporting requirements, as applicable.

*“Foundation’s Disclosure Representative”* means any officer of the Foundation or its designee or such other person as the Foundation shall designate in writing to the Dissemination Agent from time to time.

*“Foundation’s Disclosure Reports”* mean the Foundation’s Disclosure Reports to be filed by the Foundation as required under Sections 3(a) and 4(a) of this Disclosure Agreement.

*"Foundation's Fiscal Year"* means the fiscal year of the Foundation, which may be the same or different from the Charter School's Fiscal Year.

*"Indenture"* means the Indenture of Trust, dated as of December 1, 2018, between the Authority and the Trustee, as the same may be amended from time to time.

*"Listed Events"* means any of the events listed in Section 5 of this Disclosure Agreement.

*"Loan Agreement"* means the Loan Agreement, dated as of December 1, 2018, between the Authority and the Foundation, as the same may be amended from time to time.

*"MSRB"* means the Municipal Securities Rulemaking Board, located at 1900 Duke Street, Suite 600, Alexandria, Virginia 22314, its successors and assigns.

*"Official Statement"* means the Official Statement dated December \_\_\_\_, 2018, relating to the Series 2018 Bonds.

*"Participating Underwriter"* means Piper Jaffray & Co., as original purchaser of the Series 2018 Bonds, its successors and assigns.

*"Quarterly Report"* means the financial information and operating data of the Foundation required to be transferred by the Foundation to the Dissemination Agent pursuant to Section 3(a)(2) of this Disclosure Agreement.

*"Repository"* means EMMA.

*"Rule"* means SEC Rule 15c2-12(b)(5) promulgated by the SEC under the Securities Exchange Act of 1934, as amended or supplemented by the SEC from time to time.

*"SEC"* means the Securities and Exchange Commission, its successors and assigns.

*"Series 2018 Bonds"* means the Series 2018A Bonds and the Series 2018B Bonds.

*"Series 2018A Bonds"* means the Authority's Charter School Lease Revenue Bonds (21<sup>st</sup> Century Public Academy Project), Series 2018A, in the original aggregate principal amount of \$\_\_\_\_\_.

*"Series 2018B Bonds"* means the Authority's Taxable Charter School Lease Revenue Bonds (21<sup>st</sup> Century Public Academy Project), Series 2018B, in the original aggregate principal amount of \$\_\_\_\_\_.

*"Significant Bondholder"* means a Beneficial Owner of \$1,000,000 or more of the Series 2018 Bonds.

*"State"* means the State of New Mexico.

*"Trustee"* means U.S. Bank National Association, its successors and assigns.

*"Underwriter"* means Piper Jaffray & Co., its successors and assigns.

**Section 3. Provision of the Foundation's Annual Reports, Quarterly Reports, and Operations Reports.**

(a) *Foundation's Annual Report and Quarterly Report.* The Foundation shall provide the following financial and operating information for holders of the Series 2018 Bonds:

(1) *Annual Reports.* No later than December 31 of each year, commencing December 31, 2019 for the fiscal year ended June 30, 2019, the Foundation shall provide to the Repository, or shall cause the Dissemination Agent to provide to the Repository, an Annual Report which is consistent with the requirements of Section 4(a) of this Disclosure Agreement. In each case, the Annual Report may be submitted as a single document or as separate documents comprising a package, and may cross-reference other information as provided in Section 4(a) of this Disclosure Agreement; provided that the Foundation's Audited Financial Statements may be submitted separately from the balance of the Annual Report and later than the date required above for the filing of the Annual Report if the Foundation's Audited Financial Statements are not available by that date, but the unaudited financial information available on such date is submitted. The Foundation shall provide a written certification, in substantially the form attached hereto as EXHIBIT A, with the Annual Report furnished to the Dissemination Agent to the effect that such Annual Report constitutes the Annual Report required to be furnished by the Foundation hereunder. The Annual Report shall be provided at least annually notwithstanding a fiscal year longer than twelve (12) calendar months. The Foundation may change its current fiscal year, but must notify the Authority and the Repository or any other filing system approved by the SEC, of each such change within thirty (30) days after the later of the adoption of a new fiscal year and the end of the fiscal year that occurs before the former fiscal year would have ended.

(2) *Quarterly Report.* On or before forty-five (45) days after the end of each fiscal quarter (each a "Quarterly Submission Date"), commencing with the quarter ending March 31, 2019, the Foundation shall provide to the Repository, or shall cause the Dissemination Agent to provide to the Repository, certain financial information relating to the Foundation as specified in Section 4(a) hereof (the "Quarterly Report"), including a certificate substantially in the form attached hereto as EXHIBIT B. The Quarterly Report may be submitted as a single document or as separate documents comprising a package, and may cross-reference other information as provided in Section 4 of this Disclosure Agreement.

If the Foundation's financial statements are included in a consolidated schedule to the Charter School's financial statements, the Foundation and the Charter School may submit a joint Quarterly Report that complies with Section 3(b)(2) and Section 4 of this Disclosure Agreement.

(b) *Annual Report of the Charter School, Charter School Quarterly Report, and Charter School Operations Reports.* The Foundation shall provide the following financial and operating information of the Charter School for the benefit of the holders of the Series 2018 Bonds:

(1) *Annual Reports of the Charter School.* No later than December 31 of each year, commencing December 31, 2019 for the fiscal year ended June 30, 2019, the Foundation shall provide or cause to be provided to the Repository, or shall cause the Dissemination Agent to provide to the Repository, an Annual Report of the Charter School which is consistent with the requirements of Section 4(b)(1) of this Disclosure Agreement. If the Dissemination Agent is to provide any such Annual Report of the Charter School to the Repository, not later than five (5) Business Days prior to said date, the Foundation shall provide the Annual Report of the Charter

School to the Dissemination Agent, including a certificate in substantially the form attached hereto as EXHIBIT C. In each case, the Annual Report of the Charter School may be submitted as a single document or as separate documents comprising a package, and may cross-reference other information as provided in Section 4 of this Disclosure Agreement; provided that the Charter School's Audited Financial Statements may be submitted separately from the balance of the Annual Report of the Charter School and later than the date required above for the filing of the Annual Report of the Charter School if the Charter School's Audited Financial Statements are not available by that date, but the unaudited financial information available on such date is submitted. The Annual Report of the Charter School shall be provided at least annually notwithstanding a fiscal year longer than twelve (12) calendar months. The Charter School may change its current fiscal year, but must notify the Authority and the Repository or any other filing system approved by the SEC, of each such change within thirty (30) days after the later of the adoption of a new fiscal year and the end of the fiscal year that occurs before the former fiscal year would have ended.

At such time in the future if the Foundation's financial statements are included in a consolidated schedule to the Charter School's financial statements or if the Foundation's financial statements are required by State requirements to be a component unit of Albuquerque Public Schools, the Foundation and the Charter School may submit a joint Annual Report that complies with Section 3 and Section 4 of this Disclosure Agreement and the filing deadline shall be December 31 of each year.

(2) *Charter School Quarterly Reports.* On or before forty-five (45) days after the end of each Quarterly Submission Date, commencing with the quarter ending March 31, 2019, the Foundation shall provide to the Repository, or shall cause the Dissemination Agent to provide to the Repository, certain financial information relating to the Charter School as specified in Section 4(b) hereof (the "Charter School Quarterly Reports"), including a certificate substantially in the form attached hereto as EXHIBIT D. The Charter School Quarterly Reports may be submitted as a single document or as separate documents comprising a package, and may cross-reference other information as provided in Section 4 of this Disclosure Agreement.

If the Foundation's financial statements are included in a consolidated schedule to the Charter School's financial statements or if the Foundation's financial statements are required by State requirements to be a component unit of Albuquerque Public Schools, the Foundation and the Charter School may submit a joint Quarterly Report that complies with Section 3 and Section 4 of this Disclosure Agreement.

(3) *Construction Reports.* On or before the last day of every month while Phase II is under construction, commencing January 2019, the Foundation shall provide to the Repository, or shall cause the Dissemination Agent to provide to the Repository, certain financial information relating to the construction of Phase II as specified in Section 4(c) hereof (the "Construction Reports"). In each case, the Construction Report may be submitted as a single document or as separate documents comprising a package, and may cross-reference other information as provided in Section 4 of this Disclosure Agreement. The Construction Report shall be in substantially the form of the certificate attached hereto as EXHIBIT G.

(4) *Charter School Operations Reports.* Within thirty (30) days of its receipt or completion, the Foundation shall provide to the Repository, or shall cause the Dissemination Agent to provide to the Repository, the following information:

(i) a copy (which may be sent electronically) of the Charter School's adopted annual budget for the next Fiscal Year;

(ii) a five-year comprehensive capital assessment plan (which may be sent electronically) with respect to the Foundation's capital facilities, detailing the condition and projected sources of funding such needs, if any; provided, such obligation shall commence with the fiscal year ending June 30, 2024 and on each fifth anniversary thereof;

(iii) any correspondence from the Charter School's authorizer relating to (a) academic goals for students of the Charter School or (b) any information relating to the status of the Charter School's charter, either positive or negative;

(iv) information with respect to the incurrence of additional Financial Obligations authorized under the Covenant Agreement or subordinate financial obligations, including the principal amount of the financial obligation, the interest rate and whether such interest rate is variable or fixed, the principal and interest payment dates, the final maturity date, the annual payment requirements, and whether there is a balloon payment or not; and

(vi) the official 40 Day, 80 Day, and 120 Day enrollment counts for the Charter School as reported to Albuquerque Public Schools.

(c) As soon as is practicable after the completion of any of the disclosure reports required by paragraph (a) and (b) (collectively referred to as the "Disclosure Reports"), the Foundation shall provide each Disclosure Report to the Dissemination Agent. The Dissemination Agent shall, at the Foundation's cost, transmit the information contained in the Disclosure Reports in accordance with the requirements of Section 7 hereof.

(d) If the Foundation does not provide to the Dissemination Agent a copy of an Annual Report or Annual Report of the Charter School by the applicable dates required in Section 3(a)(1) and 3(b)(1) above, the Dissemination Agent shall send a notice to the Foundation, the Repository, and the Participating Underwriter, in substantially the forms attached as EXHIBIT A or EXHIBIT C, as applicable, to this Disclosure Agreement. If the Charter School does not provide to the Dissemination Agent a copy of the Quarterly Report or the Charter School Quarterly Reports by the applicable date required in Section 3(a)(2) and 3(b)(2) above, the Dissemination Agent shall send a notice to the Foundation, the Repository, and the Participating Underwriter, in substantially the forms attached as EXHIBIT E or EXHIBIT F, as applicable, to this Disclosure Agreement. In the event that the Foundation files the Disclosure Reports directly with the Repository on or before the dates required in Section 3(a) and 3(b) above, the Foundation shall promptly provide the Dissemination Agent with a certification, or other documentation reasonably required by the Dissemination Agent, that the filing of the Disclosure Report was made in a timely manner on or before the date required herein and such filing contained the information required by this Disclosure Agreement.

(e) The Dissemination Agent shall:

(i) determine each year prior to the date for providing the Annual Report and Annual Report of the Charter School the name and address (physical or electronic, as applicable) of the Repository; and

(ii) provided the Annual Report and Annual Report of the Charter School have been provided to the Dissemination Agent by the Foundation, file a report with the Foundation, and (if the Dissemination Agent is not the Trustee) the Dissemination Agent, certifying that the Annual Report or the Annual Report of the Charter School, as applicable, has been provided pursuant to this Disclosure Agreement, stating the date it was provided to the Repository.

#### **Section 4. Content of Annual Reports, Quarterly Reports and Construction Reports.**

(a) *Content of Foundation's Reports.* The Foundation shall include the following financial and operating information in each Annual Report and Quarterly Report:

(1) *Annual Reports of the Foundation.* Each Annual Report shall contain or include by reference the Foundation's Audited Financial Statements for their prior fiscal year and which may be consolidated (if determined appropriate by the Charter School and the Foundation) or if required by the State as a schedule or component unit of Albuquerque Public Schools. *If the Foundation's Audited Financial Statements are not available by the time the Annual Report is required to be filed pursuant to Section 3(a), the Annual Report shall contain financial statements that have not been reviewed in a format similar to the Foundation's Audited Financial Statements, and the Foundation's Audited Financial Statements shall be filed in the same manner as the Annual Report when they become available.*

To the extent not included in the Foundation's Audited Financial Statements, the Annual Report shall also include a certificate substantially in the form attached hereto as EXHIBIT A with respect to the Foundation that provides certain Foundation data, demonstrates the Foundation's compliance with the Loan Agreement.

(2) *Quarterly Reports of the Foundation.* Each Quarterly Report shall contain unaudited cash basis financial statements of the Foundation for such fiscal quarter consisting of at least statements of financial position (balance sheets and income statements) as of the end of such quarter and statements of activities for such fiscal quarter and year to date (subject to year end adjustments).

(3) The Annual Reports and the Quarterly Reports are together referred to as the "Foundation's Disclosure Reports." Any or all of the Foundation's Disclosure Reports may be incorporated by reference from other documents, including official statements, which have been submitted to the Repository.

(b) *Content of Charter School's Reports.* The Foundation shall include the following financial and operating information of the Charter School in the Annual Report of the Charter School and the Charter School Quarterly Report:

(1) *Annual Reports of the Charter School.* The Annual Report of the Charter School shall contain or include by reference the Charter School's Audited Financial Statements for their prior fiscal year and which may be consolidated (if determined appropriate by the Charter School and the Foundation) or if required by the State as a schedule or component unit of Albuquerque Public Schools. *If the Charter School's Audited Financial Statements are not available by the time the Annual Report of the Charter School is required to be filed pursuant to Section 3(b)(1) hereof, the Annual Report of the Charter School shall contain unaudited financial statements in a format similar to the Charter School's Audited Financial Statements contained in APPENDIX*



*C to the Official Statement, and the Charter School's Audited Financial Statements shall be filed in the same manner as the Annual Report of the Charter School when they become available.*

To the extent not included in the Charter School's Audited Financial Statements, the Annual Report of the Charter School shall also include a certificate substantially in the form attached hereto as EXHIBIT C with respect to the Charter School that provides certain Charter School data, demonstrates the Charter School's compliance with certain operating covenants contained in the Covenant Agreement, and provides updates to the information in the Official Statement found in certain table(s) under the heading "APPENDIX A – THE FOUNDATION, THE CHARTER SCHOOL, AND THE SCHOOL FACILITY." If New Mexico reporting requirements change with respect to any of the reportable categories/tables set forth in the certificate form in EXHIBIT C hereto, then the Charter School shall be allowed to make corresponding adjustments in the format/information reported in such tables to comply with the changes.

(2) *Charter School Quarterly Reports.* The Charter School Quarterly Report shall contain unaudited financial statements of the Charter School for such fiscal quarter consisting of at least statements of financial position (balance sheets and income statements) as of the end of such quarter and statements of activities for such fiscal quarter and year to date, each prepared in accordance with State reporting requirements, as in effect from time to time (subject to year end adjustments).

(3) *Construction Reports.* Each Construction Report for each month shall include for such month the draw request, an AIA statement and an inspecting architect's or owner's representative report along with a certificate of the Foundation's Disclosure Representative, in substantially the form of the certificate attached hereto as EXHIBIT G, stating: (i) the estimated occupancy date for Phase II; (ii) the percentage of Phase II completion; and (iii) the percentage of the Series 2018 Bond proceeds and dollar amount of the Series 2018 Bond proceeds allocable to Phase II that have been expended as of the date of the certificate.

(c) *Annual Conference Calls.* Commencing in 2019, the Foundation shall hold an annual conference call with Beneficial Owners by December 31 of each calendar year following issuance of the Charter School's Audited Financial Statements for the immediately preceding fiscal year. The Charter School will participate in the conference call as required by the Covenant Agreement. Upon request of any Significant Bondholder, such conference call shall take place within three (3) Business Days of issuance of such annual financial statements. Notice of the annual conference call shall be posted to EMMA at least three (3) Business Days prior to the occurrence of the call. The Dissemination Agent shall only be required to post notice of such annual conference call if requested to do so in writing by the Charter School. Such conference call shall be recorded and posted to EMMA for at least a thirty (30) day period following occurrence of the conference call.

(d) Any or all of the Disclosure Reports may be incorporated by reference from other documents, including official statements, which have been submitted to the Repository. If the Disclosure Report information is changed or this Disclosure Agreement is amended in accordance with its terms, then the Foundation is to include in the next Disclosure Report to be delivered thereunder, to the extent necessary, an explanation of the reasons for the amendment and the effect of any change in the type of financial information or operating data provided.

**Section 5. Material Events.** The Foundation agrees to provide or cause to be provided, in a timely manner not in excess of ten (10) business days, (i) to the Participating Underwriter, and (ii) to the Repository or to any other filing system approved by the SEC, notice (an “Events Notice”) of the occurrence of any of the following events (the “Listed Events”) with respect to the Series 2018 Bonds:

- (a) Principal and interest payment delinquencies;
- (b) Non-payment related defaults, if material;
- (c) Unscheduled draws on debt service reserves reflecting financial difficulties;
- (d) Unscheduled draws on credit enhancements reflecting financial difficulties;
- (e) Substitution of credit or liquidity providers, or their failure to perform;
- (f) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security;
- (g) Modifications to rights of security holders, if material;
- (h) Bond calls, if material, and tender offers;
- (i) Defeasances;
- (j) Release, substitution, or sale of property securing repayment of the securities, if material;
- (k) Rating changes;
- (l) Bankruptcy, insolvency, receivership or similar event of the obligated person;
- (m) The consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and
- (n) Appointment of a successor or additional trustee or the change of name of a trustee, if material.

Each Events Notice shall be so captioned and shall prominently state the date, title and (to the extent less than all of the Series 2018 Bonds are affected by the related material event) CUSIP numbers of the affected Series 2018 Bonds. The Foundation may from time to time choose to provide notice of the occurrence of certain other events, in addition to those listed above.

**Section 6. EMMA.** The SEC has designated the EMMA system operated by the MSRB as the nationally recognized municipal securities information repository and the exclusive portal for complying with continuing disclosure requirements of the Rule. Until the EMMA system is amended or altered by

the MSRB or the SEC, the Dissemination Agent shall make all filings required under this Disclosure Agreement solely with EMMA.

**Section 7. Dissemination Agent.** The Foundation has engaged the Dissemination Agent to assist the Foundation in disseminating information hereunder. The Foundation shall send all Disclosure Reports required by Section 3 hereof, and Event Notices required by Section 5 hereof, to the Dissemination Agent. The Dissemination Agent shall, within five (5) Business Days of receipt of such Disclosure Report and within three (3) Business Days receipt of an Events Notice, forward such information to (i) the Repository and/or the MSRB or any other filing system approved by the SEC, as appropriate; (ii) the Authority; (iii) the Participating Underwriter; and (iv) any Registered or Beneficial Owner of the Series 2018 Bonds identified in writing by the Participating Underwriter. The Foundation agrees to pay any reasonable costs incurred by the Dissemination Agent as a result of disseminating information to any requesting Registered or Beneficial Owners of the Series 2018 Bonds. The Foundation may discharge the Dissemination Agent or any successor Dissemination Agent with or without appointing a successor Dissemination Agent. The Dissemination Agent does not have any duty to review the materials described in this paragraph prior to disseminating such materials.

**Section 8. Termination of Obligations.** Pursuant to paragraph (b)(5)(iii) of the Rule, the Foundation's obligation to provide the Disclosure Reports and any Events Notices, as set forth in this Disclosure Agreement, shall terminate as upon the defeasance, prior redemption, or paying in full of all the Series 2018 Bonds. If the Foundation's obligations under the Loan Agreement are assumed in full by some other entity, such person shall be responsible for compliance with this Disclosure Agreement in the same manner as if it were the Foundation's, and the original Foundation shall have no further responsibility hereunder. If such termination or substitution occurs prior to the final maturity of the Series 2018 Bonds, the Foundation shall give notice of such termination or substitution in the same manner as for a Listed Events under Section 5.

**Section 9. Enforceability and Remedies.** This Disclosure Agreement is intended to be for the sole benefit of the Registered Owners of the Series 2018 Bonds (for such purpose beneficial owners of the Series 2018 Bonds shall also be considered Registered Owners of the Series 2018 Bonds), the Authority, and the Underwriter and shall create no rights in any other person or entity.

This Disclosure Agreement shall be enforceable by or on behalf of any such Registered Owner of the Series 2018 Bonds, provided that the right of any Registered Owner to challenge the timely filing, failure to file or the adequacy of the information furnished pursuant to this Disclosure Agreement shall be limited to an action by or on behalf of Registered Owners representing at least 25% of the aggregate outstanding principal amount of the Series 2018 Bonds. The parties hereto acknowledge that this Disclosure Agreement is also enforceable on behalf of the Registered Owners of the Series 2018 Bonds by the Trustee, and the Trustee may, and upon the written direction of (i) the Registered Owners of not less than 25% of the aggregate outstanding principal amount of the Series 2018 Bonds or (ii) the Underwriter, shall proceed to protect and enforce the rights of the Registered Owners of the Series 2018 Bonds pursuant to this Disclosure Agreement; provided that in all cases the Trustee shall be entitled to the indemnification and other provisions of the Indenture with regard to any actions. Prior to proceeding at the request or direction of the Underwriter the Trustee may require the same types of indemnification and related protections from the Underwriter to which the Trustee would otherwise be entitled under the Indenture if so requested or directed by the Registered Owners under the terms of the Indenture. Any failure by the Foundation to comply with the provisions of this Disclosure Agreement shall not be an Event of Default under the Loan Agreement or the Indenture.

The Registered Owners' and the Trustee's rights to enforce the provisions of this Disclosure Agreement shall be limited solely to a right, by action in mandamus or for specific performance, to compel the Foundation to perform the Foundation's obligations under this Disclosure Agreement, and the Foundation, its directors, officers and employees shall incur no liability under this Disclosure Agreement by reason of any act or failure to act hereunder. Without limiting the generality of the foregoing, neither the commencement nor the successful completion of an action to compel performance under this Section 9 entitles the Trustee or any other person to attorneys' fees, financial damages of any sort or any other relief other than an order or injunction compelling performance; provided that the Trustee shall nevertheless be entitled to attorneys' fees and such other rights and amounts as provided in the Indenture.

**Section 10. Amendment.** Notwithstanding any other provision of this Disclosure Agreement, the Foundation and the Dissemination Agent may amend this Disclosure Agreement (and the Dissemination Agent shall agree to any amendment so requested by the Foundation) and any provision of this Disclosure Agreement may be waived if such amendment or waiver is supported by an opinion of counsel expert in federal securities laws acceptable to the Foundation and the Dissemination Agent to the effect that such amendment or waiver would not, in and of itself, cause the agreements herein to violate the Rule if such amendment or waiver had been effective on the date hereof but taking into account any subsequent change in or official interpretation of the Rule.

The Foundation shall provide notice of each amendment or waiver to the Repository or any other filing system approved by the SEC. The initial annual financial or operating information provided by the Foundation after the amendment or waiver shall explain, in narrative form, the reasons for the amendment or waiver and the effect of the change in the type of operating data or financial information being provided.

**Section 11. Counterparts.** This Disclosure Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute one instrument.

**Section 12. Governing Law.** This Disclosure Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico, provided that to the extent this Disclosure Agreement addresses matters of federal securities laws, including the Rule, this Disclosure Agreement shall be construed in accordance with such federal securities laws and official interpretations thereof.

**Section 13. Severability.** If any portion of this Disclosure Agreement shall be held invalid or inoperative, then, so far as is reasonable and possible (i) the remainder of this Disclosure Agreement shall be considered valid and operative, and (ii) effect shall be given to the intent manifested by the portion held invalid or inoperative.

**Section 14. Other Instruments.** The Foundation and the Dissemination Agent covenant and agree that they will execute such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out this Disclosure Agreement.

**Section 15. Captions, Titles, and Headings.** The captions, titles, and headings used in this Disclosure Agreement are for convenience only and shall not be construed in interpreting this Disclosure Agreement.

**Section 16. Entire Agreement.** This Disclosure Agreement contains the entire understanding among the parties and supersedes any prior understandings or written or oral agreements between them respecting the subject matter of this Disclosure Agreement.

**Section 17. Duties and Liabilities of Dissemination Agent.** The Dissemination Agent shall have only such duties as are specifically set forth in this Disclosure Agreement. The Dissemination Agent shall have no duty or obligation to review or verify any information provided to them by the Foundation or to determine the materiality of a Listed Event and shall not be deemed to be acting in any fiduciary capacity for the Foundation, the Holders or any other party. The Dissemination Agent shall have no responsibility for a failure of the Foundation to report a Listed Event to the Dissemination Agent. Except in its role as Trustee under the Indenture, the Dissemination Agent shall have no power or authority to enforce performance of the Foundation's duties and obligations thereunder and shall not be required to take any action to cause the Foundation to comply with its obligations hereunder. The obligations of the Foundation under this Section shall survive resignation or removal of the Dissemination Agent and payment of the Series 2018 Bonds.

The fact that the Dissemination Agent of any affiliate thereof may have any fiduciary or banking relationship with the Foundation apart from the relationship created by this Disclosure Agreement shall not be construed to mean that the Dissemination Agent has actual knowledge of any event or condition except as may be provided by written notice from the Foundation. Nothing in this Disclosure Agreement shall be construed to require the Dissemination Agent to interpret or provide an opinion concerning any information disseminated hereunder. If the Dissemination Agent receives a request for an interpretation or opinion, the Dissemination Agent may refer such request to the Foundation for response.

**Section 18. Dissemination Agent Compensation.** The Foundation shall pay to or reimburse the Dissemination Agent for its reasonable fees and expenses for the Dissemination Agent's services (including attorneys' fees) rendered in accordance with this Disclosure Agreement.

**Section 19. Indemnification of Dissemination Agent.** In addition to any and all rights of the Dissemination Agent for reimbursement, indemnification and other rights pursuant to the Rule or under law or equity, the Foundation shall indemnify and hold harmless the Dissemination Agent and its respective officers, directors, employees and agents from and against any and all claims, damages, losses, liabilities, reasonable costs and expenses whatsoever (including attorney fees) which such indemnified party may incur by reason of or in connection with the Dissemination Agent's performance under this Disclosure Agreement and in the enforcement of its indemnification rights hereunder; provided that the Foundation shall not be required to indemnify the Dissemination Agent for any claims, damages, losses, liabilities, costs or expenses to the extent, but only to the extent, caused by the misconduct or gross negligence of the Dissemination Agent in such disclosure of information hereunder. The obligations of the Foundation under this Section shall survive resignation or removal of the Dissemination Agent and payment of the Series 2018 Bonds.

**Section 20. Notices.** Any notices or communications to or among any of the parties to this Disclosure Agreement may be given as follows:

To the Foundation:                      Cutler Charitable Foundation  
4300 Cutler Avenue Northeast  
Albuquerque, NM 87109  
Phone: (505) 254-0280  
Fax: (505) 254-85071  
Attn: Board Chair

To the Dissemination Agent:      U.S. Bank National Association  
633 West 5<sup>th</sup> Street, 24<sup>th</sup> Floor

Los Angeles, CA 90071  
Phone: (213) 615-6052  
Attn: U.S. Bank Global Corporate Trust

To the Underwriter: Piper Jaffray & Co.  
800 Nicollet Mall, J12NPF  
Minneapolis, MN 55402  
Phone: (612) 303-6661  
Fax: (612) 303-6966  
Attn: Nicholas P. Hagen, Senior Vice President

Any person may, by written notice to the other persons listed above, designate a different address or telephone number(s) to which subsequent notices or communications should be sent.

**Section 21. Electronic Signatures.** The parties agree that the electronic signature of a party to this Disclosure Agreement shall be as valid as an original signature of such party and shall be effective to bind such party to this Disclosure Agreement. For purposes hereof: (i) "electronic signature" means a manually signed original signature that is then transmitted by electronic means; and (ii) "transmitted by electronic means" means sent in the form of a facsimile or sent via the internet as a portable document format ("pdf") or other replicating image attached to an electronic mail or internet message.

(The remainder of this page is intentionally left blank.)

**U.S. BANK NATIONAL ASSOCIATION, as  
Dissemination Agent**

By: \_\_\_\_\_  
Its: Authorized Officer

**(Signature Page to Continuing Disclosure Agreement – 21<sup>st</sup> Century Public Academy)**

**CUTLER CHARITABLE FOUNDATION,** as  
Foundation

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

(Signature Page to Continuing Disclosure Agreement – 21<sup>st</sup> Century Public Academy)



**EXHIBIT A**

**FORM OF FOUNDATION'S CERTIFICATE FOR ANNUAL FILING  
OF CERTAIN FOUNDATION OPERATING COVENANTS**

Name of Issuer: Public Finance Authority

Name of Bond Issue: Charter School Lease Revenue Bonds  
(21<sup>st</sup> Century Public Academy Project)  
Series 2018A  
Taxable Series 2018B

Dissemination Agent: U.S. Bank National Association

Name of Foundation: Cutler Charitable Foundation

Name of Charter School: 21<sup>st</sup> Century Public School

Date of Issuance: December \_\_\_\_\_, 2018

NOTICE IS HEREBY GIVEN that the Foundation is providing to the Dissemination Agent the following operational information as required under Sections 3(a)(1) and 4(a)(1) of the Continuing Disclosure Agreement, dated as of December 1, 2018 (the "Disclosure Agreement"), between the Dissemination Agent and the Foundation. The Disclosure Agreement requires that the Foundation provide this information to the Dissemination Agent by December 31 of each year. Defined terms used in this certificate and not defined herein shall have the meanings granted to such terms in the Indenture of Trust, dated as of December 1, 2018 (the "Indenture"), between the Authority and the Dissemination Agent, as trustee. The information contained below is unaudited, but is derived from the annual audited financial statements of the Foundation.

1. As of June 30, 20\_\_, the amount on deposit in the Capital Improvements Fund is \$\_\_\_\_\_.

This certificate is being provided by the Foundation to the Dissemination Agent [by][after] December 31.

The undersigned certifies that the audited financial statements and this certificate comply with the requirements of Section 4(a)(1) of the Disclosure Agreement.

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

**CUTLER CHARITABLE FOUNDATION, as Foundation**

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

**EXHIBIT B**

**QUARTERLY REPORT CERTIFICATE FOR FOUNDATION'S FINANCIAL INFORMATION**

Name of Issuer: Public Finance Authority  
Name of Bond Issue: Charter School Lease Revenue Bonds  
(21<sup>st</sup> Century Public Academy Project)  
Series 2018A  
Taxable Series 2018B  
Dissemination Agent: U.S. Bank National Association  
Name of Foundation: Cutler Charitable Foundation  
Name of Charter School: 21<sup>st</sup> Century Public School  
Date of Issuance: December \_\_\_\_\_, 2018

Pursuant to the Continuing Disclosure Agreement, dated as of December 1, 2018 (the "Disclosure Agreement"), by the Foundation and the Dissemination Agent, the undersigned representative of the Foundation, certifies that the enclosed unaudited financial statements of the Foundation for the quarter ended \_\_\_\_\_, 20\_\_\_\_, comply with the requirements of Sections 3(a)(2) and 4(a)(2) of the Disclosure Agreement.

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

**CUTLER CHARITABLE FOUNDATION, as Foundation**

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

EXHIBIT C

FORM OF FOUNDATION'S CERTIFICATE FOR ANNUAL FILING  
OF CERTAIN CHARTER SCHOOL OPERATING COVENANTS

Name of Issuer: Public Finance Authority

Name of Bond Issue: Charter School Lease Revenue Bonds  
(21<sup>st</sup> Century Public Academy Project)  
Series 2018A  
Taxable Series 2018B

Dissemination Agent: U.S. Bank National Association

Name of Foundation: Cutler Charitable Foundation

Name of Charter School: 21<sup>st</sup> Century Public School

Date of Issuance: December \_\_\_\_, 2018

NOTICE IS HEREBY GIVEN that the Foundation is providing to the Dissemination Agent the following operational information as required under Sections 3(b)(1) and 4(b)(1) of the Continuing Disclosure Agreement, dated as of December 1, 2018 (the "Disclosure Agreement"), between the Dissemination Agent and the Foundation. The Disclosure Agreement requires that the Foundation provide this information to the Dissemination Agent by December 31 of each year. Defined terms used in this certificate and not defined herein shall have the meanings granted to such terms in the Indenture of Trust, dated as of December 1, 2018 (the "Indenture"), between the Authority and the Dissemination Agent, as trustee. The information contained below is unaudited, but is derived from the annual audited financial statements of the Charter School.

1. As of June 30, 20 \_\_, the Charter School's:
  - (a) Cash on Hand was equal to \$ \_\_\_\_\_.
  - (b) Days Cash on Hand was \_\_\_\_ days (Cash on Hand in the amount of \$ \_\_\_\_\_, divided by the quotient of Operating Expenses of \$ \_\_\_\_\_ for the fiscal year ended June 30, divided by 365).
  - (c) The amount of Cash on Hand required to comply with the covenant contained in the Covenant Agreement for current fiscal year is \$ \_\_\_\_\_ (equal to at least [45/75] Days Cash on Hand and, based on the information set forth in (b) above, the Charter School [is/is not] in compliance with such covenant).
  - (d) The Charter School's Debt Service Coverage Ratio, including Principal and Interest Requirements on all Financial Obligations of the Charter School for fiscal year 20 \_\_ was \_\_\_\_\_.
  
2. The following tables in APPENDIX A to the Official Statement are to be updated. The Charter School may change the listed tables if they change operation reports or consolidate or make reporting changes in the future.
  - A. Table titled "Faculty";
  - B. Table titled "Teacher Retention";
  - C. Table titled "Teaching Experience";
  - D. Table titled "Historical Enrollment – 40 Day Count";
  - E. Table titled "Historical Enrollment – 80 Day Count";
  - F. Table titled "Historical Enrollment – 120 Day Count";
  - G. Table titled "Current Enrollment";
  - H. Table titled "Projected Enrollment";
  - I. Table titled "Demographics";

- J. Table titled "Historical and Current Waiting Lists";
- K. Table titled "Student Retention Rates During the School Year";
- L. Table titled "All Student Reading Results – Percent Proficient and Above";
- M. Table titled "All Student Math Results – Percent Proficient and Above";
- N. Table titled "All Student Science Results – Percent Proficient and Above";
- O. Table titled "NMPED Overall Final Grade of the Charter School and Competing Public Schools".

[Insert Tables Here]

This certificate is being provided by the Foundation to the Dissemination Agent [by][after] December 31.

The undersigned certifies that the audited financial statements and this certificate comply with the requirements of Section 4(b) of the Disclosure Agreement.

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

**CUTLER CHARITABLE FOUNDATION**, as Foundation

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

**EXHIBIT D**

**QUARTERLY REPORT CERTIFICATE FOR CHARTER SCHOOL FINANCIAL INFORMATION**

Name of Issuer: Public Finance Authority

Name of Bond Issue: Charter School Lease Revenue Bonds  
(21<sup>st</sup> Century Public Academy Project)  
Series 2018A  
Taxable Series 2018B

Dissemination Agent: U.S. Bank National Association

Name of Foundation: Cutler Charitable Foundation

Name of Charter School: 21<sup>st</sup> Century Public School

Date of Issuance: December \_\_\_\_\_, 2018

Pursuant to the Continuing Disclosure Agreement, dated as of December 1, 2018 (the "Disclosure Agreement"), by the Foundation and the Dissemination Agent, the undersigned representative of the Foundation, certifies that the enclosed unaudited financial statements of the Charter School for the quarter ended \_\_\_\_\_, 20\_\_, comply with the requirements of Sections 3(b)(2) and 4(b)(2) of the Disclosure Agreement.

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

**CUTLER CHARITABLE FOUNDATION, as Foundation**

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

**EXHIBIT E**

**NOTICE TO REPOSITORIES BY FOUNDATION OF FAILURE TO  
FILE ANNUAL OR QUARTERLY REPORT**

Name of Issuer: Public Finance Authority

Name of Bond Issue: Charter School Lease Revenue Bonds  
(21<sup>st</sup> Century Public Academy Project)  
Series 2018A  
Taxable Series 2018B

Dissemination Agent: U.S. Bank National Association

Name of Foundation: Cutler Charitable Foundation

Name of Charter School: 21<sup>st</sup> Century Public School

Date of Issuance: December \_\_\_\_\_, 2018

NOTICE IS HEREBY GIVEN that the Foundation has not provided an [Annual Report] [Quarterly Report] with respect to the above-named Series 2018 Bonds as required by the Continuing Disclosure Agreement, dated as of December 1, 2018, between the undersigned Dissemination Agent and the Foundation. The Foundation anticipates that the [Annual Report] [Quarterly Report] will be filed by \_\_\_\_\_.

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

**U.S. BANK NATIONAL ASSOCIATION,**  
as Dissemination Agent

By \_\_\_\_\_  
Authorized Signatory

cc: Cutler Charitable Foundation  
Piper Jaffray & Co.  
Public Finance Authority

**EXHIBIT F**

**NOTICE TO REPOSITORIES OF FAILURE TO FILE ANNUAL REPORT, QUARTERLY REPORT,  
OR OPERATIONS REPORT OF THE CHARTER SCHOOL**

Name of Issuer: Public Finance Authority  
Name of Bond Issue: Charter School Lease Revenue Bonds  
(21<sup>st</sup> Century Public Academy Project)  
Series 2018A  
Taxable Series 2018B  
Dissemination Agent: U.S. Bank National Association  
Name of Foundation: Cutler Charitable Foundation  
Name of Charter School: 21<sup>st</sup> Century Public School  
Date of Issuance: December \_\_\_\_\_, 2018

NOTICE IS HEREBY GIVEN that the Foundation has not provided an [Annual Report of the Charter School][Charter School Quarterly Report/Charter School Operations Report] with respect to the above-named Series 2018 Bonds as required by the Continuing Disclosure Agreement, dated as of December 1, 2018, between the undersigned Dissemination Agent and the Foundation. The Foundation notified the Dissemination agent that it anticipates that the [Annual Report of the Charter School] [Charter School Quarterly Report/Charter School Operations Report] will be filed by \_\_\_\_\_.

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

**U.S. BANK NATIONAL ASSOCIATION**, as Dissemination Agent

By \_\_\_\_\_  
Authorized Signatory

cc: 21<sup>st</sup> Century Public Academy  
Piper Jaffray & Co.  
Public Finance Authority

**EXHIBIT G**

**CONSTRUCTION REPORT FORM**

Name of Issuer: Public Finance Authority  
Name of Bond Issue: Charter School Lease Revenue Bonds  
(21<sup>st</sup> Century Public Academy Project)  
Series 2018A  
Taxable Series 2018B  
Dissemination Agent: U.S. Bank National Association  
Name of Foundation: Cutler Charitable Foundation  
Name of Charter School: 21<sup>st</sup> Century Public School  
Date of Issuance: December \_\_\_\_, 2018

NOTICE IS HEREBY GIVEN that the Foundation is providing to the Dissemination Agent the following operational information as required under Section 4(b)(3) of the Continuing Disclosure Agreement, dated as of December 1, 2018 (the "Disclosure Agreement"), between the Dissemination Agent and the Foundation. The Disclosure Agreement requires that the Foundation provide this information to the Dissemination Agent on or before the last day of every month while Phase II is under construction, commencing January 2019. Defined terms used in this certificate and not defined herein shall have the meanings granted to such terms in the Indenture of Trust, dated as of December 1, 2018 (the "Indenture"), between the Authority and the Dissemination Agent, as trustee. The information contained below is unaudited.

As of the date below:

- (a) the estimated occupancy date for Phase II is \_\_\_\_\_, 20\_\_;
- (b) Phase II is \_\_\_\_\_ percent completed; and
- (c) \_\_\_\_\_ percent of the dollar amount of the Series 2018 Bond proceeds allocable to Phase II which have been expended (\$\_\_\_\_\_ of the Series 2018 Bond proceeds) as of the date of this certificate.

The Foundation hereby provide the Dissemination Agent with the information checked below:

<u>Attached</u>	
_____	Draw Request (without exhibits)
_____	AIA Statement
_____	Inspecting Architect's or Owner's Representative's report



Dated \_\_\_\_\_, 20\_\_.

**CUTLER CHARITABLE FOUNDATION, as Foundation**

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

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