

File ID Number: 12-0308
Introduction Date: 1-25-12
Enactment Number: 12-0198
Enactment Date: 1-25-12
By: B

OAKLAND UNIFIED SCHOOL DISTRICT
Office of the Board of Education
January 25, 2012

To: Board of Education

From: Tony Smith, Ph. D, Superintendent,
Timothy E. White, Assistant Superintendent of Facilities Planning &
Management, Buildings & Grounds and Custodial Services

Subject: Approval of the Joint-Use Lease Agreement between the Tuller Corporation
dba Adventure Time Extended Day Care and Oakland Unified School District
for Use of Existing Classroom Space for Child Care Purposes at Various District
School Sites Located within the Boundaries of Oakland, CA.

ACTION REQUESTED

Approval by the Board of Education of the Joint-Use Lease Agreement between Adventure Time Extended Day Care and Oakland Unified School District for Adventure Time to provide before and after school program services to OUSD students at the following school sites:

1. Chabot Elementary School located at 6686 Chabot Road
2. Crocker Highlands Elementary School located at 525 Midcrest Road
3. Glenview Elementary School located at 4215 La Cresta Avenue
4. Hillcrest Elementary School located at 30 Marguerite Drive
5. Joaquin Miller Elementary School located at 5525 Ascot Drive
6. Kaiser Elementary School located at 25 South Hill Court Montclair
7. Montclair Elementary School located at 1757 Mountain Boulevard
8. Thornhill Elementary School located at 5880 Thornhill Drive

BACKGROUND

The District desires to allow Adventure Time ("Tenant") the use of certain school buildings and rooms at the above-referenced school sites for before and after school program services including home work assistance, academic, personal and social development, sports activities and special activities for OUSD students as follows:

Site: Chabot Elementary School

- Multipurpose and Library Rooms totaling 4000 sq. ft. for the hours of 3:00 p.m. until 5:00 p.m., Monday through Friday.

- Adventure Time portable classroom totaling 960 sq. ft. for the hours of 7:00 a.m. until 9:00 a.m., and 2:00 p.m. until 6:00 p.m., Monday through Friday.

Site: Crocker Highlands Elementary School

- Multipurpose Room totaling 2000 sq. ft., for the hours of 3:00 p.m. until 5:00 p.m., Monday through Friday.
- Adventure Time portable classroom totaling 480 sq. ft. for the hours of 7:00 a.m. until 6:00 p.m., Monday through Friday.

Site: Glenview Elementary School

- Multipurpose Room totaling 2000 sq. feet. for the hours of 3:00 p.m. until 5:00 p.m., Monday through Friday.
- Cafeteria totaling 2000 sq. feet, for the hours of 2:00 pm. until 6:00 p.m., Monday through Friday.

Site: Hillcrest Elementary School

- Auditorium 2000 sq. ft. for the hours of 7:00 a.m. until 9:00 a.m., and 2:00 p.m. until 6:00 p.m., Monday through Friday.

Site: Joaquin Miller Elementary School

- Auditorium 2000 sq. ft. for the hours of 3:00 p.m. until 5:00 p.m., Monday through Friday.
- Adventure Time portable classroom totaling 480 sq. ft. for the hours of 7:00 a.m. until 6:00 p.m., Monday through Friday.

Site: Kaiser Elementary School

- Auditorium 2000 sq. ft. for the hours of 7:00 a.m. until 9:00 a.m., and 2:00 p.m. until 6:00 p.m., Monday through Friday.

Site: Montclair Elementary School

- Auditorium totaling 2000 sq. ft. for the hours of 3:00 p.m. until 5:00 p.m., Monday through Friday.
- Adventure Time portable classroom totaling 480 sq. ft. for the hours of 7:00 a.m. until 9:00 a.m., and 2:00 p.m. until 6:00 p.m., Monday through Friday.

Site: Thornhill Elementary School

- Auditorium Room totaling 2000 sq. ft. for the hours of 3:00 p.m. until 5:00 p.m., Monday through Friday.
- Adventure Time portable classroom totaling 480 sq. ft. for the hours of 7:00 a.m. until 9:00 a.m., and 2:00 p.m. until 6:00 p.m.

The District, pursuant to section 17527(a) of the Education Code, is authorized "to enter into agreements to make vacant classrooms or other space in operating school buildings available for rent or lease to other school districts, educational agencies, except private educational institutions which maintain kindergarten or grades 1 to 12, inclusive, governmental units, nonprofit organizations, community agencies, professional agencies, commercial and noncommercial firms, corporations, partnerships, businesses, and individuals, including during normal school hours of the school is in session".

The District, pursuant to section 17529 of the Education Code, has determined by approving this Agreement, that leasing the Premises to Tenant will not (1) interfere with the educational programs or activities of any school or class conducted on the School Site, (2) unduly disrupt the residents in the surrounding neighborhood, or (3) jeopardize the safety of the children at the School Site.

Tenant agrees that District's fee interest shall at all times be and remain unsubordinated to any leasehold mortgage which may be imposed upon Tenant's leasehold interest hereunder or upon the improvements, and that nothing contained in this Agreement shall be construed as an agreement by District to subject its fee interest to any lien.

FISCAL IMPACT

Tenant will pay the District the following amounts for the 2012 calendar year:

Site: Chabot Elementary School

- Two Thousand Three Hundred and Eighty-three Dollars, Eighty-five cents (\$2,383.85) per month.

Site: Crocker Highlands Elementary School

- Two Thousand Sixty-nine Dollars, Fifty-eight cents (\$2,069.58) per month

Site: Glenview Elementary School

- Two Thousand One Hundred Eighty-two Dollars, Twenty-one cents (\$2,182.21) per month

Site: Hillcrest Elementary School

- Two Thousand One Hundred Eighty-two Dollars, Twenty-one cents (\$2,182.21) per month

Site: Joaquin Miller Elementary School

- Two Thousand One Hundred Eighty-two Dollars, Twenty-one cents (\$2,182.21) per month

Site: Kaiser Elementary School

- Two Thousand One Hundred Eighty-two Dollars, Twenty-one cents (\$2,182.21) per month

Site: Montclair Elementary School

- Two Thousand One Hundred Eighty-two Dollars, Twenty-one cents (\$2,182.21) per month

Site: Thornhill Elementary School

- Two Thousand One Hundred Ten Dollars, Six cents (\$2,110.06) per month

The rent amount paid by Tenant to District will increase by a three percent (3%) escalator every year thereafter.

RECOMMENDATION

That the Board of Education approves the Joint-Use Lease Agreement between Tuller Corporation dba Adventure Time Extended Day Care and Oakland Unified School District For Use of Existing Classroom Space for Child Care Purposes at Various District School Sites Located Within the Boundaries of Oakland, CA.

ATTACHMENT

Joint-Use Lease Agreement between the Tuller Corporation dba Adventure Time Extended Day Care and Oakland Unified School District For Use of Existing Classroom Space for Child Care Purposes at Various District School Sites Located Within the Boundaries of Oakland, CA.

**JOINT-USE LEASE AGREEMENT BETWEEN TULLER
CORPORATION DBA ADVENTURE TIME EXTENDED DAY CARE
AND OAKLAND UNIFIED SCHOOL DISTRICT
FOR USE OF EXISTING CLASSROOM SPACE FOR CHILD CARE
PURPOSES AT VARIOUS DISTRICT SCHOOL SITES LOCATED
WITHIN THE BOUNDARIES OF OAKLAND, CA**

THIS JOINT USE AGREEMENT AND LEASE is made this 25th day of January, 2012, by and between the OAKLAND UNIFIED SCHOOL DISTRICT, a California public school district of California ("District") and TULLER CORPORATION DBA ADVENTURE TIME EXTENDED DAY CARE, a California ("Tenant"), referred to collectively as the "Parties" ("Lease" or "Agreement").

RECITALS

WHEREAS, Tenant requires space to provide before and after school day care services to District students ("Program" or "Activities"), as further defined herein; and

WHEREAS, District has space, all as further depicted on **Exhibit "A"** ("Premises") and located in Oakland, California, at: Chabot; Crocker Highlands; Glenview; Hillcrest; Kaiser; Miller; Montclair and Thornhill School sites ("School Site(s)"); and

WHEREAS, District desires to allow Tenant to use the Premises on the designated School Sites while providing services for Tenant's Program and as further detailed in this Agreement; and

WHEREAS, District, pursuant to section 17527(a) of the Education Code, is authorized "to enter into agreements to make vacant classrooms or other space in operating school buildings available for rent or lease to other school districts, educational agencies, except private educational institutions which maintain kindergarten or grades 1 to 12, inclusive, governmental units, nonprofit organizations, community agencies, professional agencies, commercial and noncommercial firms, corporations, partnerships, businesses, and individuals, including during normal school hours of the school is in session"; and

WHEREAS, District intends to utilize a portion of the School Site(s) as an operating school building during the term of this Agreement and Tenant shall not have use of the areas indicated as "N.I.C" in **Exhibit "A,"** as the District shall be using those areas of the School Site; and

WHEREAS, District, pursuant to section 17529 of the Education Code, has determined by approving this Agreement, that leasing the Premises to Tenant will not (1) interfere with the educational programs or activities of any school or class conducted on the School Site, (2) unduly disrupt the residents in the surrounding neighborhood, or (3) jeopardize the safety of the children at the School Site;

WHEREAS, Tenant agrees that District's fee interest shall at all times be and remain unsubordinated to any leasehold mortgage which may be imposed upon Tenant's leasehold interest hereunder or upon the improvements, and that nothing contained in this Agreement shall be construed as an agreement by District to subject its fee interest to any lien.

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

AGREEMENT

1. Use of Property. District agrees to allow use of the Premises at the School Site(s) by Tenant to perform Tenant's Activities, as more fully described in **Exhibit "B,"** attached hereto and made a part of this Agreement. The Premises subject to this Agreement are described in **Exhibit "A,"** attached hereto and made a part of this Agreement. Tenant shall have use of the Premises at all times to perform Tenant's Activities only, subject to modification by the Parties, and only to the extent Tenant pays Rent for the portion of the Premises Tenant wishes to use.

2. Condition of Premises.

2.1. The Premises are leased to Tenant on an "AS IS" basis. District shall not be required to make or construct any alterations including structural changes, additions or improvements to the Premises. By entry and taking possession of the Premises pursuant to this Agreement, Tenant accepts the Premises in "AS IS" condition.

2.2. Tenant acknowledges that neither District nor District's agents have made any representation or warranty as to the suitability of the Premises to the conduct of Tenant's business. Any agreements, warranties or representations not expressly contained herein shall in no way bind either District or Tenant, and District and Tenant expressly waive all claims for damages by reason of any statement, representation, warranty, promise or agreement, if any, not contained in this Agreement.

2.3. The Premises includes an outdoor area which shall be exterior area(s) that are easily accessible and/or adjacent to the Classrooms. Tenant acknowledges that District may from time to time and at its sole discretion, change the area that it provides to Tenant as an outdoor area.

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

4. Term.

4.1. The term of this Agreement shall be for five (5) years. The commencement date shall be January __, 2012, ("Commencement Date") and unless sooner terminated under any provision hereof, this Agreement shall end on January __, 2017 ("Term").

4.2. Renewal of Agreement

4.2.1. If the Parties wish to further renew this Agreement after the first five (5) years, this can only be done by a separate writing executed by both Parties that complies with all of the following provisions:

4.2.1.1. It specifically authorizes further tenancy by Tenant and specifies the terms of that tenancy, and

4.2.1.2. It is approved by each Party's governing body prior to the end of the Term.

4.3. On the last day of the Term hereof, or on sooner termination of this Agreement, Tenant shall surrender to District the Premises and any then existing improvements in good order, condition and repair, reasonable wear and tear excepted, free and clear of all liens, claims and encumbrances. This condition shall be similar to that existing as of the Commencement Date of this Agreement excepting normal ordinary wear and tear and any structural improvements made by District subsequent to the Commencement Date. This Agreement shall operate as a conveyance and assignment to District of any improvements identified by District to remain on the School Sites. Tenant shall remove from the Premises all of Tenant's personal property, trade fixtures, and any improvements made by Tenant which Tenant and District agreed would be removed by Tenant. All property not so removed shall be deemed abandoned by Tenant. If the Premises are not so surrendered at the termination of this Agreement, Tenant shall indemnify District against loss or liability resulting from delay by Tenant in so surrendering the Premises including, without limitation, any claims made by any succeeding Tenant or losses to District due to lost opportunities to Agreement to succeeding tenants.

5. Rent.

5.1. For and in consideration of the use of the Premises for the Term of this Agreement, Agreement Tenant agrees to pay District the following sums per month ("Rent"):

- Chabot Elementary School: Two Thousand Three Hundred and Eighty-three Dollars, Eighty-five cents (\$2,383.85) per month.
- Crocker Highlands Elementary School: Two Thousand Sixty-nine Dollars, Fifty-eight cents (\$2,069.58) per month
- Glenview Elementary School: Two Thousand One Hundred Eighty-two Dollars, Twenty-one cents (\$2,182.21) per month
- Hillcrest Elementary School: Two Thousand One Hundred Eighty-two Dollars, Twenty-one cents (\$2,182.21) per month
- Joaquin Miller Elementary School: Two Thousand One Hundred Eighty-two Dollars, Twenty-one cents (\$2,182.21) per month
- Kaiser Elementary School: Two Thousand One Hundred Eighty-two Dollars, Twenty-one cents (\$2,182.21) per month
- Montclair Elementary School: Two Thousand One Hundred Eighty-two Dollars, Twenty-one cents (\$2,182.21) per month
- Thornhill Elementary School: Two Thousand One Hundred Ten Dollars, Six cents (\$2,110.06) per month

- 5.2. Rent for the first month shall be due upon commencement of this Agreement. Thereafter, rent shall be due on the first of each month until the expiration or termination of this Agreement.
- 5.3. Rent includes the utility charges for the Premises. Utilities include water, irrigation, gas, electricity, telephone, security and fire alarm monitoring, data and communication lines and service, trash pick-up, and sewage fees.
- 5.4. Rent for each Site shall increase by three percent (3%) on the anniversary of the Commencement date of each subsequent year. The increase shall be based upon the preceding year's Rent.
- 5.5. Tenant shall pay promptly to District, the monthly Rent on the first day of each month in advance during the term of the Agreement, without deduction, setoff, prior notice or demand.
- 5.6. Tenant acknowledges that late payment by Tenant to District of the Rent and other sums due hereunder will cause District to incur costs not contemplated by this Agreement, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, if District does not receive any installment of rent or any other sum due from Tenant by 4:00 p.m. within ten (10) days after such amount is due, Tenant shall pay to District, as additional rent, a late charge equal to five percent (5%) of such overdue amount or the maximum amount allowed by law, whichever is less. The parties hereby agree that such late charges represent a fair and reasonable estimate of the costs District will incur by reason of late payment by Tenant. Acceptance of such late charge by District shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent District from exercising any of its other rights and remedies granted hereunder.
- 5.7. Taxes, costs, expenses, assessments, levies, possessory interest taxes, late charges, and other charges and governmental fees, general and special, ordinary and extraordinary, unforeseen, as well as foreseen, of any kind or nature whatsoever, which prior to or during the Term of this Agreement, assessed, levied, or imposed upon or become due and payable which Tenant is required to pay hereunder, together with all interest and penalties that may accrue thereon in the event of Tenant's failure to pay such amounts, and all reasonable damages, costs, and attorneys' fees and expenses which District may incur by reason of any default of Tenant or failure on Tenant's part to comply with the terms of this Agreement, shall be deemed to be additional rent ("Additional Rent") and, in the event of nonpayment by Tenant, District shall have all of the rights and remedies with respect thereto as District has for the nonpayment of the monthly rent. The provisions of this Section shall survive the expiration or earlier termination of this Agreement.
- 5.8. Any amount due to District not paid when due shall bear interest at one and one-half percent (1.5%) per month commencing thirty (30) days after the due date, but not to exceed the maximum rate permitted by law. Payment of interest shall be in addition to any late charges owing pursuant to this Agreement and shall not excuse or cure any default by Tenant under this Agreement.

6. Maintenance and Repairs.

- 6.1. District shall maintain the Premises in a good condition consistent with the condition of the Premises existing at the time of delivery, including all custodial duties and pest abatement. Tenant acknowledges and accepts that the Premises are leased in "AS IS" condition. District shall keep and maintain the structural elements of the buildings, as hereinafter defined, on the Premises the condition existing at the time Tenant takes possession of the Premises excepting normal wear, tear and damage by casualty.
- 6.2. District makes no representations or warranties for the structure of the building as it exists. District agrees that if the structural elements of the building become damaged to a lesser condition than currently exists, and if such structural damage is due to no fault or negligence of Tenant, then District will repair the damage in such a manner as to bring it back to a condition which is similar to the condition which exists at the time Tenant takes possession of the Premises; however, District may terminate this Agreement if such repair cost exceeds One Hundred Fifty Thousand dollars (\$150,000) per incident. District agrees to pro-rate Tenant's rent during the "repair" period, if the resulting structural damage prohibits Tenant from carrying out its normal daily activities. If District elects not to perform a repair estimated to cost in excess of One Hundred Fifty Thousand dollars (\$150,000), then Tenant may elect to remain in possession of the Premises and pay the stipulated rent unless changed through mutual agreement of the parties or Tenant may elect to terminate this Agreement.
- 6.3. As used in this Agreement, the term "structural elements of the building" are defined as and shall be limited to the foundation, footings, floor slab but not flooring, structural walls excluding glass and doors, and the roof excluding skylights. Plumbing, electrical and heating systems shall be considered "structural elements of the building" excluding, however, those repairs and maintenance items which can be completed without wall or floor removal in which case these repairs shall be the responsibility of Tenant.
- 6.4. District shall have no maintenance or repair obligations with respect to the Premises except as expressly provided in this Section. Tenant hereby expressly waives the provisions of Subsection 1 of section 1932 and sections 1941 and 1942 of the Civil Code of California and all rights to make repairs at the expense of District as provided in section 1942 of said Civil Code.
- 6.5. If Tenant wishes to have any improvements, alterations, work, or other services performed on the Premises that are not part of the maintenance or repair services indicated herein, Tenant shall request that work, describing:
 - 6.5.1. The type of work that would be subject to this provision includes, for example, painting that is requested that is neither repainting nor painting to bring the facility to its original condition, new room dividers, installing or removing casework, whiteboards, or other fixtures, and similar Tenant-requested improvements.

6.5.2. The District shall prepare and provide to Tenant an estimate for that work. If Tenant accepts that estimate, the District shall perform that work as indicated in the estimate and Tenant shall pay for that work as indicated in the estimate, which shall be due and owing with the next month's Rent, unless otherwise agreed to in writing by the Parties.

7. Title to and Removal of Tenant's Improvements / Facilities.

- 7.1. Tenant shall not construct or cause to be constructed on the Premises any improvements ("Tenant's Improvements") without express prior written consent from District. Tenant's Improvements must be deemed by Tenant as necessary to the operation of its Activities.
- 7.2. Tenant shall at its own expense obtain all necessary environmental and governmental approvals and permits, including, without limitation, the California Environmental Quality Act ("CEQA"), any necessary approvals from any local authority including any Site(s), grading, zoning, design review and other required permits or approvals, if applicable, prior to commencing construction and shall provide District with evidence of approval by all applicable governmental agencies.
- 7.3. Any modifications to Site(s) must be approved in writing in advance by District. Contractor must be approved as well. All contractors and subcontractors of Tenant, if any, shall be duly licensed in the State of California. Tenant shall be solely responsible for maintaining the Premises and Tenant's Improvements installed thereon during the term of this Agreement, including any extensions, and for compliance with all applicable laws or ordinances, rules and regulations.
- 7.4. Under all circumstances, Tenant must seek and receive approval from the Division of the State Architect for all of Tenant's Improvements.
- 7.5. Title to removable furniture, equipment and/or other personal property placed by Tenant onto the Premises, but not affixed thereto, shall be held solely by Tenant. These items shall remain the personal property of Tenant and shall not be treated as real property or become a part of the School Site(s) unless District accepts or Tenant abandons any of this personal property at the end of the Term.
- 7.6. On or before the expiration of this Agreement, or within thirty (30) days after any earlier termination of this Agreement, Tenant shall remove Tenant's Improvements, at its sole expense. Tenant shall repair any damage to the School Site(s) and/or the Premises, caused by removal of Tenant's Improvements and restore the School Site(s) and the Premises to good condition, less ordinary wear and tear. In the event that Tenant fails to timely remove Tenant's Improvements, District, upon fifteen (15) days written notice, may either (1) accept ownership of Tenant's Improvements with no cost to District, or (2) remove Tenant's Improvements at Tenant's sole cost. In the event that District chooses to accept ownership of Tenant's Improvements, Tenant shall execute any necessary documents to effectuate the change in ownership of Tenant's Improvements. In the event that District removes Tenant's Improvements, Tenant shall pay all invoices for the

removal of Tenant's Improvements within thirty (30) days of receipt of such invoices.

8. Fingerprinting and Criminal Background Verification. Unless District determines that the Tenant, its employees, agents, subcontractors, invitees, and/or volunteers will have limited and/or no contact with District students, Tenant shall be responsible for ensuring compliance with all applicable fingerprinting and criminal background investigation requirements described in Education Code section 45125.1, which may be met under the fingerprinting provisions of Title 22 of the California Code of Regulations and applicable provisions of the California Health and Safety Code relevant to community care facility licensing (Health & Saf. Code, § 1500 et seq.). Tenant shall provide in writing verification of compliance with the aforementioned fingerprinting and criminal background investigation requirements to District prior to each individual's commencement of employment or participation in any Tenant activity and prior to permitting contact with any pupils.

9. Use of the Premises.

9.1. Tenant shall use the Premises solely for the purpose of the Program and during the times set forth in Exhibit "A."

9.2. Tenant shall not use the Premises for any use other than that specified in this Section without the prior written consent of District. Tenant agrees to maintain the Premises and to conduct the Program in a manner that meets all federal, state and local regulations relating to the Premises and to the operation of the Program, and to comply with all federal, state and local laws, regulations and ordinances, now or hereafter enacted concerning the Premises, the use of the Premises, and/or the Program. The execution of this Agreement shall be subject to the Tenant obtaining any and all permits or approvals which may be required in order for Tenant to operate the Program on the Premises. Tenant shall not use or permit the Premises to be used in whole or in part during the term of this Agreement for any purpose or use in violation of the laws or ordinances applicable thereto. Tenant shall indemnify, defend, and hold District harmless against any loss, expense, damage, attorneys' fees or liability arising out of failure of Tenant to comply with any applicable law, regulation, rule or ordinance. Tenant shall not commit or suffer to be committed, any waste upon the Premises, or allow any sale by auction upon the Premises, or allow the Premises to be used for any unlawful purpose, or place any loads upon the floor, walls or ceiling which endanger the structure, or place any harmful liquids in the plumbing, sewer or storm water drainage system of the Premises. No waste materials or refuse shall be dumped upon or permitted to remain upon any part of the Premises except in trash containers designated for that purpose. Any uses which involve the serving and/or sale of alcoholic beverages and the conducting of games of chance are prohibited on the Premises. Tenant shall comply with District-wide policy prohibiting the use of tobacco products on the Premises at all times. Tenant shall not use or permit the use of the Premises or any part thereof for any purpose which is inimical to public morals and welfare or morally objectionable as unsuitable for a public educational facility. Tenant agrees to immediately respond to concerns expressed by neighbors or District relating to the operation of the Premises.

- 9.3. If required, Tenant and all subtenants shall obtain a use permit from the City in which the School Site(s) is located for Tenant's use throughout the term of this Agreement. Tenant shall require all subtenants, licensees, and invitees, to use the Premises only in conformance with the permitted use and with applicable governmental laws, regulations, rules and ordinances.
- 9.4. Tenant represents that it is qualified to administer and operate the Program. Tenant shall be solely responsible for the administration and operation of the Program, including the hiring of all employees. Tenant shall be responsible for verifying the qualifications, credentials, certificates, and licenses of its staff, agents, consultants and/or subcontractors who may provide services in conjunction with Tenant's activities on the Premises.
- 9.5. Tenant's use of the Premises shall be exclusively limited to its Activities during the operation of the Program. Tenant must remove any equipment at the end of Agreement term. District is in no manner responsible for damage or theft of Tenant's play equipment. Tenant must maintain and repair any damage to the Premises to at least as good a condition as the Premises existed as of the Commencement Date of this Agreement.

10. Inspection of Premises. District agrees to provide Tenant with a set of keys for the Premises. Tenant shall permit District and/or its agents to enter the Premises at any reasonable time for the purpose of inspecting the Premises and/or exhibiting the Premises to prospective lessees, occupants, purchasers or mortgagees.

11. Termination.

11.1. Termination For Convenience

- 11.1.1. District may terminate this Agreement by written notification sixty (60) days prior to the effective date of the termination.
- 11.1.2. Tenant may terminate this Agreement by written notification sixty (60) days prior to the effective date of the termination. Tenant acknowledges that this sixty (60) day notice period is acceptable so that District can attempt to find another tenant.
- 11.1.3. Neither party shall be required to provide just cause for termination in the written notification.

11.2. Termination for Cause. Either party may terminate this Agreement immediately for cause. Cause shall include, without limitation:

- 11.2.1. Material violation of this Agreement by Tenant or District; or
- 11.2.2. Any act by Tenant exposing District to liability to others for personal injury or property damage; or
- 11.2.3. Tenant is adjudged a bankrupt, Tenant makes a general assignment for the benefit of creditors or a receiver is appointed on account of Tenant's insolvency.

11.2.4. If District terminates for cause, Tenant's rights in the Premises shall terminate upon Tenant's receipt of notice of termination from District. Upon receipt of District's notice of termination, Tenant shall surrender and vacate the Premises in the condition required under this Agreement, and District may re-enter and take possession of the Premises and all the remaining improvements or property and eject Tenant or any of Tenant's subtenants, assignees or other person or persons claiming any right under or through Tenant or eject some and not others or eject none. This Agreement may also be terminated by a judgment specifically providing for termination. Any termination under this Section shall not release Tenant from the payment of any sum then due District or from any claim for damages or rent previously accrued or then accruing against Tenant.

11.3. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District and/or Tenant.

11.4. Upon termination of this Agreement, Tenant shall be responsible to restore the Property to its condition prior to the commencement of this Agreement with no damage thereto, reasonable wear and tear excepted.

12. Indemnification. To the fullest extent permitted by California law, Tenant shall defend, indemnify, and hold harmless District, its agents, representatives, officers, consultants, employees, trustees, and volunteers (the "indemnified parties") from any and all losses, liabilities, claims, suits, and actions of any kind, nature, and description, including, but not limited to, attorneys' fees and costs, directly or indirectly arising out of, on account of, connected with, or resulting from, the operation, condition, use or occupancy of the Premises, all improvements thereon, and all areas appurtenant thereto; and in case any action or proceeding be brought against District, Tenant shall defend the same at Tenant's sole expense. This Agreement is made on the express condition that District shall not be liable for, or suffer loss by reason of, injury to person or property, from whatever cause in any way connected with the condition, use or occupancy of the Premises specifically including, without limitation, any liability for injury to the person or property of the Tenant, its agents, officers, employees, licensees and invitees. Tenant shall keep the School Site(s) clear of all liens, encumbrances and/or clouds on District's title to any portion of the School Site(s) .

13. Insurance.

13.1. Insurance is to be placed with insurers with a current A.M. Best Insurance rating of no less than A-minus: VII and subject to the approval of District. Tenant shall furnish District with the original certificates and amendatory endorsements effecting coverage required.

13.2. Tenant acknowledges that the insurance to be maintained by District on the Premises will not insure any of Tenant's property or improvements made by Tenant.

13.3. Tenant shall, at Tenant's expense, obtain and keep in force during the term of this Agreement a policy of commercial general liability insurance and a comprehensive auto liability policy insuring District and Tenant against claims and liabilities arising out of the operation, condition, use, or occupancy of the Premises and all areas appurtenant thereto, including parking areas. Tenant's

comprehensive auto liability policy shall insure all vehicle(s), whether hired, owned or non-owned. Tenant's commercial general insurance shall be at least as broad as the Insurance Service Office (ISO) CG 00-01 form and in an amount of not less than One Million dollars (\$1,000,000) for bodily injury or death and property damage as a result of any one occurrence and a Two Million dollar (\$1,000,000) general aggregate policy limit. In addition, Tenant shall obtain a products/completed operations aggregate policy in the amount of One Million dollars (\$1,000,000). The insurance carrier, deductibles and/or self insured retentions shall be approved by District, which approval shall not be unreasonably withheld. Prior to the Commencement Date Tenant shall deliver to District a certificate of insurance evidencing the existence of the policies required hereunder and copies of endorsements stating that such policies shall:

- 13.3.1. Not be canceled or altered without thirty (30) days prior written notice to District;
- 13.3.2. State the coverage is primary and any coverage by District is in excess thereto;
- 13.3.3. Contain a cross liability endorsement; and,
- 13.3.4. Include a separate endorsement naming District as an additional insured.

At least thirty (30) days prior to the expiration of each certificate, and every subsequent certificate, Tenant shall deliver to District a new certificate of insurance consistent with all of the terms and conditions required in connection with the original certificate of insurance as described above.

13.4. During the term of this Agreement, District shall maintain at its cost a policy of standard fire and casualty insurance limited to the value of the buildings and improvements located on the School Site(s) as of the Commencement Date. In the event of loss or damage to the School Site(s) , the buildings, the leased Premises or any contents, each of the parties hereto, and all persons claiming under each of the parties, shall look first to any insurance in its favor before making any claim against the other party, and to the extent possible without adding additional costs, each party shall obtain for each policy of insurance provisions permitting waiver of any claim against the other party for loss or damage within the scope of the insurance and each party, to the extent permitted, for itself and its insurers, waives all such insurance claims against the other party.

13.5. During the term of this Agreement, Tenant shall comply with all provisions of law applicable to Tenant with respect to obtaining and maintaining workers' compensation insurance. Prior to the commencement and any renewal of this Agreement and Tenant's occupancy of the Property, Tenant shall provide District, as evidence of this required coverage, a certificate in a form satisfactory to District on or before the commencement or renewal date, providing that insurance coverage shall not be canceled or reduced without thirty (30) days prior written notice to District

14. Signs. Tenant shall at Tenant's cost have the right and entitlement to place Tenant's signs on the Premises, and otherwise to advertise its services, provided Tenant obtains the approval and consent of District. The approval and consent shall not be unreasonably withheld. Any signs shall be at Tenant's cost and in compliance with the local ordinances

pertaining thereto. In connection with the placement of such signs, District agrees to cooperate with Tenant in obtaining any governmental permits which may be necessary. Throughout the Term of this Agreement Tenant shall, at its sole cost and expense, maintain the signage and all appurtenances in good condition and repair. At the termination of this Agreement, Tenant shall remove any signs which it has placed on the School Site(s) in which the Premises are located, and shall repair any damage caused by the installation or removal of those signs.

15. Surrender of Agreement Not Merger. The voluntary or other surrender of this Agreement by Tenant, or a mutual cancellation thereof, shall not work a merger and shall, at the option of District, terminate all or any existing subleases or subtenancies, or operate as an assignment to District of any or all subleases or subtenancies.

16. Notice. Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served and received if given in writing and personally delivered or either deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service or facsimile transmission, addressed as follows:

District:

Tadashi Nakadegawa, Facilities Director
Department of Facilities Planning and Management
Oakland Unified School District
955 High Street
Oakland, CA 94604

Tenant:

Adventure Time Extended Day Care Corp.
Neil R. Tuller
305 Hillside Avenue
Piedmont, CA 94611

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

17. Subcontract, Assignment and Sublease. Neither party shall assign its rights, duties or privileges under this Agreement, nor shall either party attempt to confer any of its rights, duties or privileges under this Agreement on any third party, without the written consent of the other party. Tenant shall not sublease any portion of the Premises without the prior written consent of the District.

18. Joint and Several Liability. If Tenant is more than one person or entity, each such person or entity shall be jointly and severally liable for the obligations of Tenant hereunder.

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

20. Entire Agreement of Parties. This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations and agreements,

whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.

21. California Law. This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in county in which the District's administrative offices are located.

22. Compliance with All Laws.

- 22.1. Tenant shall at Tenant' expense comply with all requirements of all governmental authorities, in force either now or in the future, affecting the Premises, and shall faithfully observe in Tenant's use of the Premises all laws, regulations and ordinances of these authorities, in force either now or in the future including, without limitation, all applicable federal, state and local laws, regulations, and ordinances pertaining to air and water quality, hazardous material, waste disposal, air emission and other environmental matters (including the California Environmental Quality Act ("CEQA") and its implementing regulations in its use of the Premises), and all District policies, rules and regulations, including those indicated herein in **Exhibit "C,"** attached hereto and made a part of this Agreement. Specifically, Tenant shall comply with the restriction on chemical usage indicated in **Exhibit "C."**
- 22.2. The judgment of a court of competent jurisdiction, or Tenant' admission in an action or a proceeding against Tenant, whether District be a party to it or not, that Tenant has violated any law or regulation or ordinance in Tenant's use of the Premises shall be considered conclusive evidence of that fact as between District and Tenant. If Tenant fails to comply with any such law, regulation or ordinance, District reserves the right to take necessary remedial measures at Tenant's expense, for which Tenant agrees to reimburse District on demand.
- 22.3. Tenant shall not cause or permit any Hazardous Material to be generated, brought onto, used, stored, or disposed of in or about the Premises and any improvements by Tenant or its agents, employees, contractors, subtenants, or invitees, except for limited quantities of standard office, classroom and janitorial supplies (which shall be used and stored in strict compliance with Environmental Laws). Tenant shall comply with all Environmental Laws. As used herein, the term "Hazardous Materials" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California or the United States Government. The term "Hazardous Materials" includes, without limitation, petroleum products, asbestos, PCB's, and any material or substance which is (i) defined as hazardous or extremely hazardous pursuant to Title 22 of the California Code of Regulations, Division 4.5, Chapter 11, Article 4, section 66261.30 et seq. (ii) defined as a "hazardous waste" pursuant to section (14) of the federal Resource Conservation and Recovery Act, 42 U.S.C. 6901 et. seq. (42 U.S.C. 6903), or (iii) defined as a "hazardous substance" pursuant to section 10 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et. seq. (42 U.S.C. 9601). As used herein, the term "Hazardous Materials Law" shall mean any statute, law, ordinance, or regulation of any governmental body or agency (including the U.S. Environmental Protection Agency, the California Regional Water Quality

Control Board, and the California Department of Health Services) which regulates the use, storage, release or disposal of any Hazardous Material.

23. Cooperation with Other Occupants of the Property. It is understood and recognized by Tenant that the School Site(s) , of which the Premises is a part, will be used by other parties, including District, and Tenant shall cooperate with the other parties in reaching amicable arrangements concerning such matters as use of the parking areas, playgrounds, policing of common areas, custodial services, and security measures.

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

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

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

27. Counterparts. This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.

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

29. Severability. Should any provision of this Agreement be determined to be invalid, illegal or unenforceable in any respect, such provision shall be severed and the remaining provisions shall continue as valid, legal and enforceable.

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

ACCEPTED AND AGREED on the date indicated below:

OAKLAND UNIFIED SCHOOL DISTRICT



Jody London, Board of Education

Date 1/26/12



Edgar Rakestraw, Jr., Secretary, Board of Education

Date 1/26/12

**TULLER CORPORATION
DBA ADVENTURE TIME EXTENDED DAY CARE**

Neil R. Tuller
By: Neil R. Tuller
Its: Executive Administrator

1/13/2012
Date

APPROVED AS TO FORM

Jacqueline Minor
Jacqueline Minor, OUSD General Counsel

1.13.12
Date

LEGISLATIVE FILE

File ID Number 12-0308
Introduction Date 1-25-12
Enactment Number 12-0198
Enactment Date 1-25-12
B

Exhibit "A"
Description of Premises and Sites

The Premises that are being lease to Tenant are the following rooms and areas as described below and as indicated on the attached Site maps:

Site: Chabot Elementary School

- Multipurpose and Library Rooms totaling 4000 sq. ft. for the hours of 3:00 p.m. until 5:00 p.m., Monday through Friday.
- Adventure Time portable classroom totaling 960 sq. ft. for the hours of 7:00 a.m. until 9:00 a.m., and 2:00 p.m. until 6:00 p.m., Monday through Friday.

Site: Crocker Highlands Elementary School

- Multipurpose Room totaling 2000 sq. ft., for the hours of 3:00 p.m. until 5:00 p.m., Monday through Friday.
- Adventure Time portable classroom totaling 480 sq. ft. for the hours of 7:00 a.m. until 6:00 p.m., Monday through Friday.

Site: Glenview Elementary School

- Multipurpose Room totaling 2000 sq. feet. for the hours of 3:00 p.m. until 5:00 p.m., Monday through Friday.
- Cafeteria totaling 2000 sq. feet, for the hours of 2:00 pm. until 6:00 p.m., Monday through Friday.

Site: Hillcrest Elementary School

- Auditorium 2000 sq. ft. for the hours of 7:00 a.m. until 9:00 a.m., and 2:00 p.m. until 6:00 p.m., Monday through Friday.

Site: Joaquin Miller Elementary School

- Auditorium 2000 sq. ft. for the hours of 3:00 p.m. until 5:00 p.m., Monday through Friday.
- Adventure Time portable classroom totaling 480 sq. ft. for the hours of 7:00 a.m. until 6:00 p.m., Monday through Friday.

Site: Kaiser Elementary School

- Auditorium 2000 sq. ft. for the hours of 7:00 a.m. until 9:00 a.m., and 2:00 p.m. until 6:00 p.m., Monday through Friday.

Site: Montclair Elementary School

- Auditorium totaling 2000 sq. ft. for the hours of 3:00 p.m. until 5:00 p.m., Monday through Friday.

- Adventure Time portable classroom totaling 480 sq. ft. for the hours of 7:00 a.m. until 9:00 a.m., and 2:00 p.m. until 6:00 p.m., Monday through Friday.

Site: Thornhill Elementary School

- Auditorium Room totaling 2000 sq. ft. for the hours of 3:00 p.m. until 5:00 p.m., Monday through Friday.
- Adventure Time portable classroom totaling 480 sq. ft. for the hours of 7:00 a.m. until 9:00 a.m., and 2:00 p.m. until 6:00 p.m.

Tenant shall not have use of the areas indicated as "N.I.C." as the District and/or other tenants shall be using those areas of the School Site.

[ATTACH SITES MAP OR AERIAL OR DRAWINGS AND SPECIFICALLY INDICATE PORTION OF SITE(S) THAT IS PART OF "PREMISES" UNDER THE JOINT USE AGREEMENT.]

EXHIBIT "B"

Description of Tenant's Activities

The "Activities" for which Tenant is permitted to use the Premise are limited to the following activities only. Any additional activities shall only be permitted with the prior express written approval and consent of District.

No residential services.

No food preparation or distribution.

EXHIBIT "C"

Integrated Pest Management Program (Administrative Regulation 3514.2)

OAKLAND UNIFIED SCHOOL DISTRICT
Administrative Regulation

AR 3514.2
Business and Noninstructional Operations

Integrated Pest Management

The Superintendent or Deputy Superintendent of Business Services shall develop and implement an integrated pest management program that incorporates effective least toxic pest management practices.

Integrated pest management is a strategy that focuses on long-term prevention or suppression of pest problems through a combination of techniques such as monitoring for pest presence and establishing treatment threshold levels, using nonchemical practices to make the habitat less conducive to pest development, improving sanitation, and employing mechanical and physical controls. (Food and Agricultural Code 13181)

Procedures

In the control and/or management of pests at district facilities, the Superintendent or Deputy Superintendent of Business Services shall:

1. Carefully monitor and identify the pest and the site of infestation. Strategies for managing the pest shall be influenced by the pest species and whether that species poses a threat to people, property or the environment.
2. Consider a full range of possible alternatives. Such alternatives include not taking any action or controlling the pest by physical, mechanical, chemical, cultural or biological means.
3. Select nonchemical pest management methods over chemical methods, whenever they are effective to provide the desired control. Cost or staffing considerations alone will not be adequate justification for use of chemical control agents.
4. Use the least toxic material when it is determined that a chemical method of pest management must be used. The least toxic material shall be chosen and applied in accordance with law.
5. Limit pesticide purchases to amounts needed for the year. Pesticides shall be stored at a secure location that is not accessible to students and unauthorized staff, and they shall be stored and disposed of in accordance with state regulations and label directions registered with the Environmental Protection Agency.

(cf. 3514.1 - Hazardous Substances)

6. Ensure that persons applying pesticides follow label precautions and are trained in the principles and practices of integrated pest management.

(cf. 4231 - Staff Development)

Notification

EXHIBIT "D"
Integrated Pest Management Program
(Administrative Regulation 3514.2)

The Superintendent or Deputy Superintendent of Business Services shall annually notify staff and parents/guardians of students enrolled at a school site, in writing, regarding pesticide products expected to be applied at the school facility in the upcoming year. The notification shall include at least the following: (Education Code 17612)

1. The Internet address used to access information on pesticides and pesticide use reduction developed by the Department of Pesticide Regulation pursuant to Food and Agricultural Code 13184.
2. The name of each pesticide product expected to be applied in the upcoming year and the active ingredient(s) in it.
3. An opportunity for interested persons to register to receive notification of individual pesticide application at the school site. The Superintendent or Deputy Superintendent of Business Services shall notify such registered persons of individual pesticide applications at least 72 hours prior to the application.
4. Other information deemed necessary by the Superintendent or Deputy Superintendent of Business Services.

(cf. 4112.9/4212.9/4312.9 - Employee Notifications)

(cf. 5145.6 - Parental Notifications)

If a pesticide product not included in the annual notification is subsequently intended for use at the school site, the Superintendent or Deputy Superintendent of Business Services shall provide written notification of its intended use to staff and parents/guardians of students enrolled at the school, at least 72 hours prior to the application. (Education Code 17612)

Posting of Warning Signs

The Superintendent or Deputy Superintendent of Business Services shall post a warning sign at each area of the school site where pesticides will be applied, at least 24 hours prior to the application and until 72 hours after the application. The warning sign shall display the following: (Education Code 17612)

1. The term "Warning/Pesticide Treated Area"
2. The product name, manufacturer's name, and the Environmental Protection Agency's product registration number
3. Intended areas and dates of application
4. Reason for the pesticide application

Notification During Emergency Conditions

Whenever the Superintendent or Deputy Superintendent of Business Services deems that the immediate use of a pesticide is necessary to protect the health and safety of students, staff, or other persons, or the school site, he/she shall make every effort to provide the required notifications prior to the application of a pesticide. In such a case, the warning sign shall be posted immediately upon application and shall remain posted until 72 hours after the application. (Education Code 17609, 17612)

(cf. 3514 -Environmental Safety)

Records

Each school site shall maintain records of all pesticide use at the school for four years, and shall make the information available to the public, upon request, in accordance with the California Public Records Act. Such records may be maintained by retaining a copy of the warning sign posted for each pesticide application with a recording of the amount of the pesticide used. (Education Code 17611)

(cf. 3580 - District Records)

Legal Reference:

EDUCATION CODE

17608-17613 Healthy Schools Act of 2000

17366 Legislative intent (fitness of buildings for occupancy)

48980.3 Notification of pesticides

FOOD AND AGRICULTURAL CODE

11401-12408 Pest control operations and agricultural chemicals

13180-13188 Healthy Schools Act of 2000

GOVERNMENT CODE

3543.2 Scope of representation; right to negotiate safety conditions

6250-6277 California Public Records Act

CODE OF REGULATIONS, TITLE 8

340-340.3 Employer's obligation to provide safety information

5142 Heating, ventilating and air conditioning systems; minimum ventilation

5143 Mechanical ventilating systems; inspection and maintenance

UNITED STATES CODE, TITLE 7

136-136y Insecticide, Fungicide and Rodenticide Act

CODE OF FEDERAL REGULATIONS, TITLE 40

763.93 Management plans

763.94 Record keeping

Management Resources:

CDE PUBLICATIONS

Indoor Air Quality, A Guide for Educators, 1995

U.S. ENVIRONMENTAL PROTECTION AGENCY

Pest Control in the School Environment: Adopting Integrated Pest Management, 1993

WEB SITES

CDE: <http://www.cde.ca.gov>

California Department of Pesticide Regulation: <http://www.cdpr.ca.gov>

U.S. EPA: <http://www.epa.gov>

8/25/04