

Board Office Use: <b>Legislative File Info.</b>	
File ID Number	22-1646
Introduction Date	6/29/22
Enactment Number	22-1311
Enactment Date	6/29/2022 os



# Board Cover Memorandum

**To** Board of Education

**From** Kyla Johnson-Trammell, Superintendent  
Sondra Aguilera, Chief Academic Officer  
Christie Herrera, Executive Director

**Meeting Date** June 29, 2022

**Subject** Use Agreement between The Oakland Unified School District and Young Men’s Christian Association of the East Bay (YMCA of the East Bay)

**Ask of the Board** Approval by the Board of Education of Use Agreement between The District and Young Men’s Christian Association of the East Bay.

**Background** Approval by the Board of Education, Authorizing Young Men’s Christian Association of the East Bay program to use classrooms CR-1, C-9, LW, Portable 2, Yard space and Restrooms at Burbank Preschool and Diagnostic Center, 3550 64<sup>th</sup>ave, Oakland, CA, 94605, for the period July 1, 2022 through June 30, 2025

**Discussion** Young Men’s Christian Association of the East Bay program (YMCA of the East bay) will operate a federal Head Start, Early Head Start and state funded childcare program for children of the Oakland community. Services for the period of July 1, 2022 though June 30, 2025

**Fiscal Impact** Tenant will pay \$4,266.00 per month (\$51,192.00 per year) to Oakland Unified School District.

**Attachment(s)**

- Use Agreement
- Exhibit A,B and C
- Certificate of Insurance

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**USE AGREEMENT  
PORTION OF BURBANK PRESCHOOL AND DIAGNOSTIC CENTER**

This Use Agreement (“Agreement”) is made May 25, 2022 (“Effective Date”), by and between the Oakland Unified School District, a California public school district (“District”), and Young Men’s Christian Association of the East Bay, a California non-profit corporation (“YMCA of the East Bay” or “Tenant”). District and Tenant may be individually referred to herein as a “Party,” or may be collectively referred to herein as the “Parties.”

RECITALS

WHEREAS, pursuant to Education Code section 17527 et seq., District 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...”; and

WHEREAS, Tenant seeks space for operation of a federal Head Start, Early Head Start, and state-funded childcare program for children of the Oakland community (“Program”), as said Program is described in further detail in Exhibit “A,” attached hereto and hereby made a part of this Agreement; and

WHEREAS, District has available space on its property located at 3550 64th Avenue, Oakland, California, 94605, commonly known as Burbank Preschool and Diagnostic Center, as depicted in Exhibit “B,” attached hereto and hereby made a part of this Agreement (“Property”); and

WHEREAS, District desires to allow Tenant to use a certain portion of the Property as more specifically described and depicted in Exhibit “C,” attached hereto and hereby made a part of this Agreement (“Premises”) for Tenant’s operation of its Program; and

WHEREAS, pursuant to Education Code section 17529, District has determined that this Agreement and Tenant’s joint occupancy and use of the Premises for its Program, as set forth herein, will not (1) interfere with the educational programs or activities of any school or class conducted on the Property; (2) unduly disrupt the residents in the surrounding neighborhood; or (3) jeopardize the safety of the students at the Property.

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

AGREEMENT

1. **Title to Property.** The Parties acknowledge that title to the Property and Premises is held by District.
2. **Use of Property.** District agrees to allow use of the Premises by Tenant for the operation of Tenant's Program. Tenant shall not use, nor permit the use of, Premises or Property for any purpose other than operation of Tenant's Program as expressly specified in this Agreement.
  - a. Tenant shall have non-exclusive use of the Premises described and shown on Exhibit "C" at such times as set forth herein to administer and operate the Program, subject to modifications expressly agreed in writing by the Parties. Access to restroom facilities shall also be provided.
  - b. Tenant's hours of operation on the Premises are as follows: 7:30 a.m. to 5:00 p.m., Monday through Friday, not including District holidays, unless the Parties otherwise agree in advance in writing.
  - c. Tenant shall vacate the Premises during school fire drills.
  - d. Tenant shall establish and maintain a safety program that satisfies all federal, state, local, and District requirements, policies, and regulations, including but not limited to District requirements for conduct, behavior, and safety.
  - e. Tenant shall comply with all regulations of any state or local agency having jurisdiction over childcare programs.
  - f. Tenant shall comply with all childcare guidelines adopted by the District's Board of Education, as amended from time to time.
  - g. Failure to comply with any of the conditions and requirements described herein shall constitute a default and shall be grounds for termination of this Agreement.
3. **Prohibited Uses.** Tenant shall not use the Premises or Property, or permit the use of the Premises or Property, for the following prohibited uses or types of activities:
  - a. Any use or activity that involves the possession, service, consumption, and/or sale of alcoholic beverages, illicit drugs, intoxicants, narcotics, tobacco products, and/or any other restricted substances;
  - b. Any use or activity that involves gambling, the conducting of games of chance, or any sale by auction upon the Premises or Property;
  - c. Any use or activity that is inconsistent with the use of the Premises for childcare services, the use of the Property for school purposes, or which otherwise interferes with school or District activities or the regular conduct of schoolwork;
  - d. Any use or activity that is discriminatory against any group or individual protected under state or federal antidiscrimination laws or District policy;
  - e. Any use or activity that includes fighting, quarrelling, abusive language, or excessive noise, which may be offensive or disturbing to other uses, activities, or the neighborhood;
  - f. Any use or activity that involves the commission of any crime or which is prohibited by or in violation of any applicable federal, state, or local law, rule, regulation,

requirement, or ordinance, including District's Board Policies and Administrative Regulations;

- g. Any use or activity that would unduly disrupt the residents in the surrounding neighborhood;
- h. Any use or activity that would jeopardize the safety of students or children of Tenant's Program;
- i. Any use or activity in or about the Premises or Property that may cause any increase in the existing rate of insurance upon the Premises or Property or cause the cancellation of any insurance policy covering the Premises or Property;
- j. Any use or activity that would cause or permit any Hazardous Material to be generated, brought onto, used, stored, or disposed of in or about the Premises or Property;
- k. Any use or activity that is inimical or contrary to public morals, good manners, taste, and/or welfare, or which is morally objectionable as unsuitable for a public educational facility;
- l. Any use or activity that involves the possession, use, or storage of explosive materials, including fireworks, or related items that may be prohibited by the standard form of fire insurance policies or which otherwise is prohibited by the fire marshal; and/or
- m. Any use for overnight living accommodations.

Additionally, weapons, including, without limitation, firearms, pellet guns, BB guns, sling shots, and knives, are prohibited on the Premises and Property. No animals are allowed on the Premises or Property, except for certified service animals or unless otherwise required by law. Tenant shall comply with the District-wide policy prohibiting the use of tobacco products, including e-cigarettes, on the Premises and Property at all times. Tenant agrees to respond immediately to concerns expressed by neighbors or District relating to the operation of the Program, Premises, or use of the Premises. Tenant shall not commit or suffer to be committed any waste on the Premises or Property, nor shall Tenant allow the Premises or Property to be used for any unlawful purpose. Tenant shall not place, or permit to be placed, any harmful substances, whether solid, liquid, or gaseous, in the plumbing, sewer, or storm water drainage system of the Premises or Property. No waste materials or refuse shall be dumped upon or permitted to remain upon any part of the Property or Premises except in trash containers designated for that purpose.

- 4. **Term.** The term of this Agreement shall commence on July 1, 2022 ("Commencement Date"), and shall remain in effect for three (3) years, ending on June 30, 2025 at 11:59 p.m. ("Term"), if not sooner terminated pursuant to the terms of this Agreement. Tenant agrees to yield and peaceably deliver possession of the Premises to District on the date of expiration of the Term of the Agreement or earlier termination of this Agreement, whatsoever the reason for such termination.
- 5. **Renewal.** This Agreement may be renewed for one (1) additional five (5) year term ("Renewal Term") upon the mutual written agreement of the Parties. If either Party wishes to renew this Agreement for the Renewal Term, it shall notify the other Party in writing at

least ninety (90) days prior to the expiration of the Term. Prior to the Renewal Term, the District shall make the findings required by Education Code section 17529.

**6. Termination.**

**a. Termination for Convenience.**

- i. District shall have the right to terminate this Agreement, without liability on the part of District except as otherwise expressly provided herein, by giving Tenant written notification at least ninety (90) days prior to the effective date of termination.
- ii. Tenant shall have the right to terminate this Agreement, without liability on the part of Tenant except as otherwise expressly provided herein, by giving District written notification at least ninety (90) days prior to the effective date of termination.
- iii. Neither Party shall be required to provide just cause for termination for convenience in the written notification.

**b. Termination for Cause.** Either Party may terminate the Agreement immediately after the expiration of any applicable cure period for cause. Cause shall include, without limitation, the following and the Parties shall have the cure periods provided below:

- i. Material violation of the Agreement by either Party if such violation shall continue for ten (10) days after written notice is given by either Party to the other Party of such violation; or
- ii. If, in the reasonable judgment of District, Tenant's acts or omissions: (i) jeopardize the safety of District students or represent an immediate threat to the health, welfare, or safety of District's students, staff, or the public; (ii) violate applicable laws, codes, rules, regulations, or ordinances; (iii) subject or expose District and/or its Board of Education ("Board") to liability to others for personal injury or property damages; (iv) interfere with the educational programs or activities conducted on the Property; or (v) unduly disrupt the residents of the surrounding neighborhood, then District shall have the right, in its sole discretion, to terminate this Agreement immediately, unless, at District's sole option, Tenant cures such default within twenty-four (24) hours of notice of termination; or
- iii. Tenant is adjudged bankrupt, Tenant makes a general assignment for the benefit of creditors, or a receiver is appointed on account of Tenant's insolvency.

**c. Restoration of Premises.** Upon expiration or earlier termination of this Agreement, Tenant shall be responsible for restoring the Premises, and any other portions of the Property that were affected by Tenant's occupancy of the Premises, to the condition that existed on the date of Tenant's first occupancy with no damage thereon, reasonable wear and tear excepted, free and clear of all liens, claims, and encumbrances.

**d. No Limitation of Rights.** The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District or Tenant.

7. **Rent.** For and in consideration of the use of the Premises for the Term of this Agreement, Tenant agrees to pay District monthly payments of **Four Thousand Two Hundred Sixty-Six Dollars (\$4,266.00)** for a total of **Fifty-One Thousand One Hundred Ninety-Two Dollars (\$51,192.00)** per year ("Rent"). The first Rent payment shall be due on the Commencement Date. Rent shall be thereafter due on or before the first day of each month of each and every year of the Term of the Agreement and any Renewal Term thereafter.
  - a. Interest. Each monthly rental payment shall bear interest if not paid promptly on the date it becomes due as specified in this section at the rate of ten percent (10%) or the maximum allowed by law per annum from the date it became due until it is paid by Tenant to District.
  - b. Place of Payment. All Rent that becomes due and payable under this Agreement shall be paid to District at the District's Office located at 1000 Broadway, Suite 300, Oakland, California 94607, or any other place or places that District may designate by written notice to Tenant.
  - c. Renewal Term Rent. For the Renewal Term, if any, Rent shall be assessed at the then-current fair market rent for the Premises as determined by District, and shall be subject to an annual adjustment of no more than three percent (3%). District shall notify Tenant of the monthly amount of the Renewal Term Rent to be charged at least one hundred twenty (120) days before the expiration of the Term.
  
8. **Custodial Services, Maintenance, and Repairs.**
  - a. District agrees to provide, at its cost, custodial services of the Premises, which shall only consist of trash removal, sweeping, and bathroom cleaning, and once-weekly wet mopping, vacuuming, and dusting. District agrees that it shall keep the exterior of the Premises free of graffiti for the Term of this Agreement and any Renewal Term thereto.
  - b. District shall have no other maintenance or repair obligations with respect to the Premises. Tenant hereby expressly waives the provisions of Civil Code sections 1932(1), 1941, and 1942, including all rights to make repairs at the expense of District.
  - c. Notwithstanding the foregoing, Tenant shall be responsible for the general care and maintenance of the classrooms and restrooms during the time of Tenant's use. Tenant shall maintain the Premises in a safe condition in conformance with all laws, rules, and regulations applicable to the use and operation of the Premises by the Tenant or District. Tenant shall cause all garbage, recyclables, and other debris emanating from the Premises to be removed to such reasonable locations and spaces as may be specified by District from time to time during hours and subject to such reasonable controls as may be established by District. Tenant shall be responsible for the repair and/or replacement of the facilities, fixtures, and equipment caused by Tenant's use of the Premises.
  
9. **Utilities and Security.** Unless otherwise stated herein this Agreement, District shall be responsible for payment of utilities for the Premises, to include water, gas, electricity,

sewage fees, and trash pickup. District shall be responsible for security for the Property. Tenant shall be responsible for locking all windows and doors of the Premises when not in use.

**10. Condition of Premises.** The Premises are provided to Tenant on an “as is” basis. District shall not be required to make or construct any alterations, including but not limited to structural changes, additions, or improvements, to the Premises. By entry into and taking possession of the Premises pursuant to this Agreement, Tenant shall accept the Premises as being in good and sanitary order, condition, and repair, and Tenant accepts the Premises in the condition existing as of the commencement date of this Agreement. Tenant acknowledges that neither District nor District’s agents have made any representations or warranty as to the suitability of the Premises for the conduct of Tenant’s Program. Any statement, agreements, warranties, or representations not expressly contained herein shall in no way bind District, and Tenant expressly waives all claims for damages by reason of any statement, representation, warranty, promise, or agreement, if any, not contained in this Agreement.

**11. Furniture and Equipment.**

- a. District Furniture and Equipment. District may, at its option, remove any of District’s furniture and equipment from the Premises. Tenant shall exercise reasonable care for District property left on the Premises during the period of Tenant’s occupancy.
- b. Tenant Furniture and Equipment. Tenant shall be permitted to move furniture and/or equipment, as necessary for its Program, onto the Premises. Coordinating with the District, Tenant shall remove such furniture and equipment at the termination of this Agreement.

**12. Tenant Improvements or Alterations.**

- a. Tenant shall not construct or cause to be constructed on the Premises any improvements or alterations of any kind without the prior written approval of District. Any alterations or improvements shall at once become a part of the Premises and property of the District, except as otherwise agreed by the Parties in writing. Any alterations shall be made at no expense to the District.
- b. Tenant shall, at its own expense, obtain all necessary environmental and governmental approvals and permits, including, without limitation, any necessary approvals from the City of Oakland and any local authority, including any site, 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.
- c. All contractors and subcontractors of Tenant, if any, shall be duly licensed in the State of California by the Contractor’s State License Board and properly registered as a public works contractor by the Department of Industrial Relations as required by law, and shall pay all workers prevailing wage in compliance with Labor Code sections 1720 et seq., and Title 8 of the California Code of Regulations, as required.



- d. Tenant shall be solely responsible for maintaining the Premises and improvements installed thereon during the Term of the Agreement, including any Renewal Term, and while otherwise occupying the Premises, and for compliance with all applicable laws, ordinances, rules, and regulations.

**13. Title to and Removal of Tenant's Equipment.**

- a. Title to Tenant's equipment, personal property, and/or chattel ("Tenant's Equipment") on the Premises that is not affixed to the Premises shall be held solely by Tenant. All of Tenant's Equipment shall remain the personal property of Tenant and shall not be treated as real property or become a part of the Premises. On or before the expiration of this Agreement, or within thirty (30) days after any earlier termination hereof, Tenant shall remove Tenant's Equipment at its sole expense. Tenant shall repair any damage to the Premises caused by said removal, and Tenant shall restore the Premises to good condition, reasonable wear and tear excepted.
- b. In the event that Tenant fails to timely remove Tenant's Equipment, District may, upon fifteen (15) days written notice, without liability on the part of District to Tenant or any person or entity claiming under Tenant, either (1) accept ownership of Tenant's Equipment with no cost to District; or (2) remove and/or dispose of Tenant's Equipment at Tenant's sole cost. In the event that the District chooses to accept ownership of Tenant's Equipment, Tenant shall execute any necessary documents to effectuate the change in ownership of Tenant's Equipment to District. If Tenant fails to execute any such necessary documents, Tenant hereby authorizes District's Superintendent, or designee, to execute those documents on Tenant's behalf. In the event that District removes and/or disposes of Tenant's Equipment, Tenant shall pay all costs for the removal and/or disposal of Tenant's Equipment within thirty (30) days of receipt of an invoice.

**14. Destruction.** If the Premises or Property is damaged or destroyed so as, in District's sole judgment, to hinder Tenant's normal operations, Rent shall abate in proportion to the loss of use from the date such damage or destruction occurs until Tenant is able to commence normal operations.

**15. Licenses and Permits; Program Staffing and Background Verification.**

- a. Tenant hereby warrants and represents that it is duly authorized and properly licensed by any applicable federal, state, or local agency, to administer and operate its Program, and holds a current license for Tenant's Program on the Premises. Tenant shall be solely responsible for obtaining and maintaining for the Term of this Agreement all necessary permits, licenses, and approvals from any and all applicable federal, state, local or other regulatory agencies related to the operation of its Program or otherwise connected to Tenant's use of the Premises, and shall comply at all times with any and all legal requirements for providing its Program on the Premises, as permitted herein. At District's request, Tenant shall provide copies of relevant license(s), permit(s), accreditation(s), and/or certification(s) to District.



- b. Tenant shall be solely responsible for the administration and operation of its Program, including the hiring of all employees. Prior to the commencement of its Program on the Premises, Tenant shall complete a Fingerprinting/Criminal Background Verification Certificate and shall be responsible for ensuring compliance with all applicable fingerprinting and criminal background investigation requirements described in Education Code section 45125.1, tuberculosis testing requirements, and such other applicable federal, state, or local governmental entity or regulatory agency's requirements. Tenant shall provide to District written verification of compliance with the aforementioned fingerprinting, criminal background investigation, and tuberculosis testing requirements prior to each individual's commencement of employment or participation in any Tenant activity. Tenant shall not allow any person for whom District has not received satisfactory written verification of compliance to enter the Premises or Property for any purposes related to or arising out of the Agreement at any time that District pupils may be present or otherwise have contact with District pupils.

**16. Calendar.** Each year during the Term of this Agreement, Tenant shall provide the District with a one-year Program calendar, which shall indicate the dates that the Program will be conducted and the dates that the Program will be closed. Tenant to deliver to the District a new calendar a minimum of thirty (30) days before the start of each academic year. Tenant shall notify the District a minimum of thirty (30) days in advance of any change in the calendar, except in the case of emergencies. In the case of an emergency closure of the Program, Tenant shall provide the District with as much notice of such closure as is reasonable possible. For purposes of this section, emergency shall be defined in accordance with Education Code section 46392.

**17. Hold Harmless; Indemnification.** To the fullest extent permitted by California law, Tenant shall defend, indemnify, and hold harmless District, its Board, members of its Board, agents, representatives, officers, consultants, employees, trustees, and volunteers (collectively, "Indemnified Parties"), from and against any and all losses, liabilities, claims, suits, damages, expenses, costs, recourses, and actions of any kind, nature, and description, including, without limitation, attorneys' fees and costs, directly or indirectly arising out of, connected with, or resulting from the performance of this Agreement, Tenant's Program, or from any activity, work, or thing done, permitted, or suffered by Tenant, its agents, contractors, employees, representatives, officers, servants, tenants, or volunteers in conjunction with the performance of this Agreement or operation of Tenant's Program, unless caused wholly by the sole negligence or willful misconduct of District; and in case any action or proceeding by brought against District, Tenant, upon notice from District, shall defend the same at Tenant's expense by counsel approved in writing by District.

**18. Insurance.**

- a. Commercial General Liability Insurance. Tenant shall, during the Term of this Agreement, maintain in force, a commercial general insurance policy, which shall

include contractual, products and completed operations, corporal punishment and sexual misconduct and harassment coverage, and bodily injury and property damage liability insurance with combined single limits of not less than One Million Dollars (\$1,000,000) per occurrence / Two Million Dollars (\$2,000,000) aggregate, with District, its Board, employees, and agents, at Tenant's expense, named as additional insureds under such policy.

- b. Workers' Compensation Insurance. 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.
- c. Tenant's Equipment (Personal Property) Insurance. Tenant acknowledges that the insurance to be maintained by District on the Premises shall not insure any of Tenant's Equipment, property, or any improvements made by Tenant. Accordingly, Tenant shall, at its own expense, maintain in full force and effect an insurance policy on all of its fixtures, equipment, improvements made by Tenant, if any, and personal property in, about, or on the Premises. Said policy is to be for "All Risk" coverage insurance to the extent of at least ninety percent (90%) of the insurable value of Tenant's property.
- d. Tenant agrees to provide District a certificate of insurance evidencing insurance coverage in a form satisfactory to District upon execution of this Agreement, upon each policy renewal, and upon request of District during the Term of this Agreement. For each insurance policy, the coverage shall be primary as to the District and shall name the District as an additional insured with the additional insured endorsement provided to the District within fifteen (15) days of the Effective Date of this Agreement (and within fifteen (15) days of each new policy year thereafter during the Term of this Agreement). Endorsement of the District as an additional insured shall not affect the District's rights to any claim, demand, suit, or judgment made, brought, or recovered against Tenant. The policy shall protect the District and the Vendor in the same manner as though each were separately issued. Nothing in said policy shall operate to increase the insurer's liability as set forth in the policy beyond the amount or amounts shown or to which the Insurer would have been liable if only one interest were named as an insured.
- e. Each insurance policy required by the Agreement shall (i) not be canceled, reduced, limited in scope of coverage, or non-renewed until after thirty (30) days' written notice has been given to District; and (ii) contain a clause waiving all rights of subrogation against District, its Board, members of the Board, and elective or appointive officers or employees, when acting within the scope of their employment or appointment.
- f. The Parties agree that any insurance maintained by District will apply in excess of, and not contribute with, insurance provided by the policies required by this Agreement.
- g. Tenant agrees that if the premium on District's basic fire insurance policy covering the Premises is increased as a result of Tenant's use of the Premises, Tenant shall reimburse District for the additional premium amount within thirty (30) days of receipt of notice from District.

**19. Cooperation with Other Occupants of the Property, District, and Regulatory Agencies.** It is understood and recognized by Tenant that the Property, 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 matters including, without limitation, use of yard space and security measures.

Tenant shall cooperate with any and all federal, state, or local governmental entities or regulatory agencies in connection with Tenant’s operation of its Program or use of the Premises or Property, including, without limitation, the City of Oakland, the County of Alameda, the California Department of Fair Employment and Housing, the California Department of Industrial Relations, and the California Department of Justice.

**20. 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 deposited in the United States mail, postage prepaid, return receipt required, or sent by overnight delivery service or facsimile transmission, addressed as follows:

OAKLAND UNIFIED SCHOOL DISTRICT ECE Administrative Office Attn: Christie Herrera, Executive Director of Early Learning 1025 4th Avenue Oakland, CA 94606 Phone: (510) 879-8410 Email: <a href="mailto:christie.herrera@ousd.org">christie.herrera@ousd.org</a>	YMCA OF THE EAST BAY Attn: Fran Gallati, Chief Executive Officer 2111 Martin Luther King Jr Way Berkeley, CA 94704 Phone: (510) 255-6682 Email: <a href="mailto:fgallati@ymcaeastbay.org">fgallati@ymcaeastbay.org</a>
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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 five (5) days after deposit in the United States mail.

**21. Assignment.** Tenant shall not assign its rights, duties, or privileges under this Agreement, nor shall Tenant other attempt to confer any of its rights, duties, or privileges under this Agreement on any third party, without the prior written consent of District. Any such attempt without District’s prior written consent shall be void.

**22. Independent 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. Tenant shall be solely responsible for its own Workers’ Compensation Insurance and other required insurance policies, taxes, and other similar charges or obligations. Tenant shall be liable for its own actions and inactions, including its negligence or gross negligence, and shall be liable for the acts, omissions, or errors of its employees, agents, officers, trustees, or representatives.

- 23. Time is of the Essence.** Time is hereby declared to be of the essence for this Agreement.
- 24. Entire Agreement of Parties.** This Agreement constitutes the entire agreement between the Parties concerning the subject matter of this Agreement, and supersedes all prior discussions, negotiations, memoranda of understand, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.
- 25. 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 Alameda County, California.
- 26. Waiver.** The waiver by either Party of any breach of any term, covenant, or condition contained herein 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.
- 27. 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.
- 28. Counterparts.** This Agreement and all amendments may be executed in counterparts and transmitted by facsimile, and all counterparts together, whether original or facsimile, shall be construed as one document.
- 29. 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 the intention of the Parties hereto.
- 30. Severability.** Should any provision of this Agreement be deemed 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.
- 31. Incorporation of Recitals and Exhibits.** The Recitals and each Exhibit attached hereto are hereby incorporated herein by reference.
- 32. Non-Discrimination.** Tenant and its employees shall not discriminate against any person because of race, color, religion, ancestry, age, sex, sexual orientation, gender identification, national origin, or physical handicap. Tenant shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, age, sex, sexual orientation, gender identification, national origin, or physical handicap. Tenant covenants to meet all requirements of District pertaining to non-discrimination in

employment. If Tenant is found in violation of the non-discrimination provision of the State of California Fair Employment Practices Act or similar provisions of federal or state law or executive order in the conduct of its activities under this Agreement by the State of California Department of Fair Employment and Housing or the equivalent federal agency or officer, Tenant shall thereby be found in default of this Agreement.

33. **Inspection.** District's employees and agents shall have the right at all reasonable times upon reasonable prior written notice to Tenant to inspect the Premises to determine if Tenant is in compliance with the provisions of this Agreement.
34. **Taxes and Assessments.** It is understood and agreed that all 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 during the Term of this Agreement become due and payable upon the Premises or upon fixtures, equipment, or other property installed or constructed thereof, or which Tenant is otherwise required to pay hereunder, shall be the full responsibility of Tenant, and Tenant shall pay all sums prior to delinquency. Tenant is responsible for any interest and penalties that may accrue thereon in the event of Tenant's failure to pay such amounts, along with 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. In the event of nonpayment by Tenant, District shall have all rights and remedies with respect thereto as District has for the nonpayment of the monthly rent. This provision shall survive the expiration or earlier termination of the Agreement.
35. **Authority.** Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute this Agreement. Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations hereunder have been duly authorized, and this Agreement is valid and is an agreement binding on such Party and is enforceable in accordance with its terms.
36. **Reservation of Rights.** The Premises are accepted as is and where is by Tenant subject to any and all existing easements and encumbrances in, over, upon, through, across, and along the Premises or any part thereof. District reserves the right to grant franchises, easements, rights of way, and permits in, over, upon, through, across, and along any and all portions of the Premises. Notwithstanding the foregoing, no rights reserves by District in this section shall be so exercised as to interfere unreasonably with the use and operation of the Premises by Tenant as permitted under the terms of this Agreement.
37. **Construction-Related Accessibility Standards.** Pursuant to Civil Code section 1938, District states that the Premises provided hereunder has not undergone inspection by a Certified Access Specialist ("CASp").

- 38. Coronavirus/COVID-19.** Tenant agrees to operate in strict compliance with any shelter-in-place (or similar) order or curfew (or similar) (collectively, "Orders") issued by state or local authorities and with any social distancing, hygiene, and sanitation (or similar) requirements. District reserves the right to request documentation of compliance with any applicable Order and Tenant shall provide such documentation to the satisfaction of District within five (5) calendar days. Unless the Alameda County Public Health Department (or designee) details otherwise in writing, Tenant shall comply with District's interpretation of any applicable Order.
- 39. Contract Contingent on Board Approval.** District shall not be bound by the terms of this Agreement until it has been formally approved by the District's Board of Education.

**SIGNATURES ON NEXT PAGE – REMAINDER OF PAGE INTENTIONALLY BLANK**

IN WITNESS WHEREOF the Parties hereto have executed this Agreement as of the date first set forth above.

**Young Men's Christian Association of the East Bay**

Name: Fran Gallati Signature:   
Position: President/CEO Date: 6/22/2022

**Oakland Unified School District**

Name: Gary Yee Signature:   
Position: President Date: 6/30/2022

- Board President
- Superintendent
- Chief/Deputy Chief/Executive Director

Name: Kyla Johnson-Trammell Signature:   
Position: Secretary, Board of Education Date: 6/30/2022

***Approved as to form by OUSD Office of the General Counsel.***





## EXHIBIT A

FOR YOUTH DEVELOPMENT  
FOR HEALTHY LIVING  
FOR SOCIAL RESPONSIBILITY

### YMCA OF THE EAST BAY-EARLY CHILDHOOD IMPACT WELCOME TO OUR PROGRAM!

The Early Childhood Impact program provides high quality early learning programs to children and families with low income in four counties (Alameda, Contra Costa, Yolo and Sacramento). The program holds a sizable grant with the Office of Head Start, and 6 contracts with the California Department of Education to provide full-day, full-year, comprehensive services to over 1,500 children and their families, at full capacity. Our services are equity focused and we strive to make care and support available in communities and neighborhoods where it is needed most. We are strengthened by community-based partnerships in all of the geographical areas where we are located.

#### **WE ARE MORE THAN AN EARLY LEARNING PROGRAM:**

The comprehensive support we provide promotes school readiness and family engagement, with attention to each individual family's needs including:

- Full day/full year care for working families
- Research-based curriculum and developmental child assessment
- Health/Safety/Nutrition
- Mental Health/Trauma Informed Care
- Parenting Curriculum/Parent Training/Community Resource and Referral/Family Goal Setting and Achievement
- Services for children with disabilities/special needs
- Workforce Development/College Coursework-Degree Programs/Career Development/Teacher Apprenticeships
- Parent/Family Leadership Development

#### **WORKFORCE DEVELOPMENT CREATES LIFE CHANGING OPPORTUNITIES:**

The YMCA operates a unique and innovative Workforce Development and early learning teacher apprentice program that trains program parents and community members with low income to work in the classroom. In addition to on-the-job work experience, the Workforce Development program contracts with colleges and universities to provide college coursework and degree programs at no cost to students.

**PARTNERS MAKE US STRONGER:**

YMCA programs partner with Berkeley Unified School District, Emeryville Unified School District, Oakland Unified School District, Hayward Unified School District, Kidango, Inc and Contra Costa County Community Services Bureau to meet the needs of children and families in the shared communities that we serve.

**STRATEGIC GOALS LEAD TO POSITIVE OUTCOMES:**

Staff, parents, and governing body members select program and school readiness goals, to concentrate program efforts and initiatives in meaningful ways.

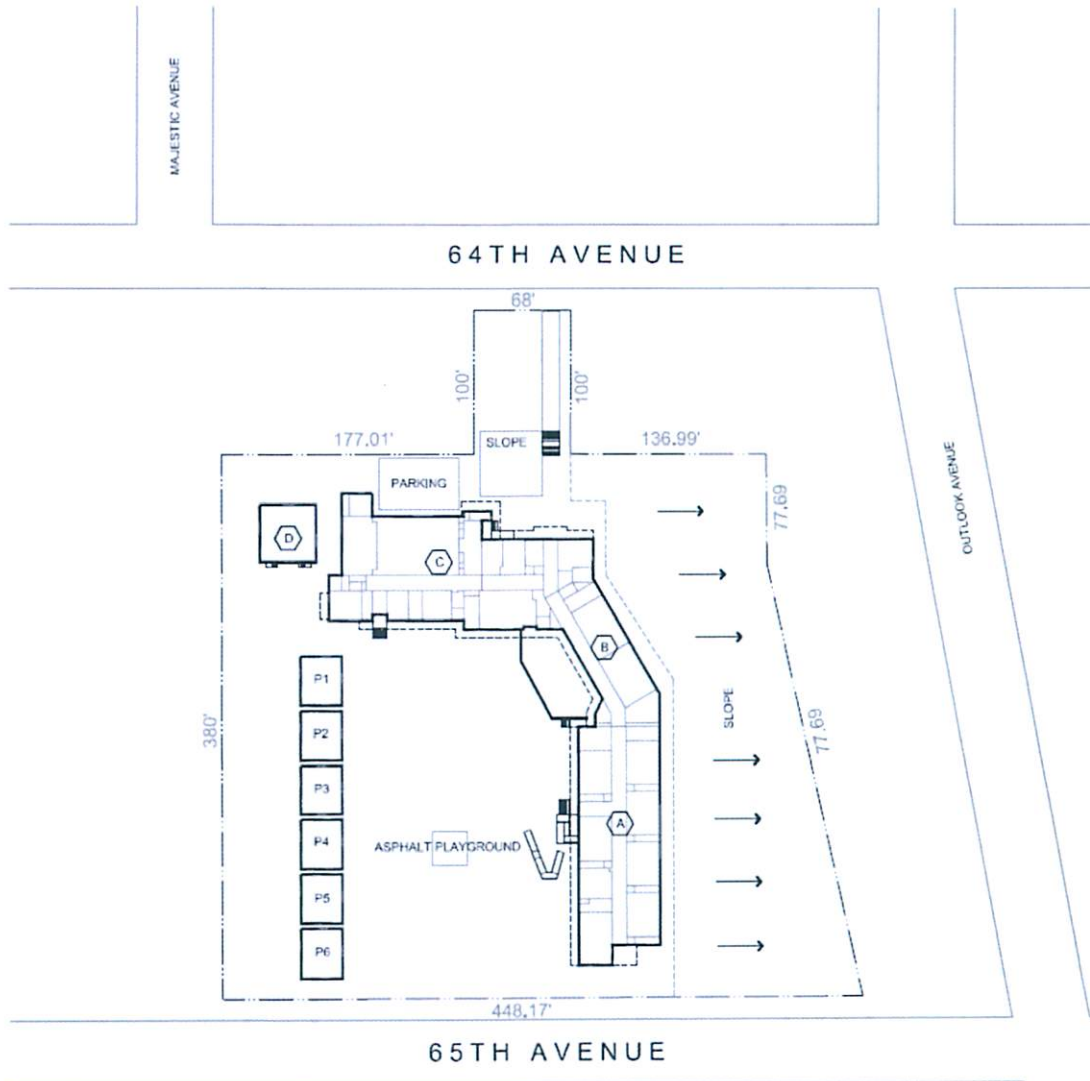
**2021-2022 Program Goals**

1. Recruit and retain highly qualified, professional teaching staff.
2. Improve health outcomes for enrolled children and their families with a focus on mental health and wellness.
3. Increase family engagement with a focus on leadership and parent involvement.

**2021-2022 School Readiness Goals**

1. Domain 1. Approaches to Learning - Children will approach the world with curiosity, creativity, and flexibility and will be able to use specific strategies for self-regulation and problem solving within different contexts.
2. Domain 2. Social and Emotional Development - Children will improve their sense of self with the ability to express, recognize, and manage emotions of self and others, as well as develop and sustain meaningful relationships with adults and peers.
3. Domain 3. Language and Literacy - Children will demonstrate the ability to listen, understand, and use language, as well as demonstrate age appropriate pre-reading skills.
4. Domain 4. Cognition - Children will demonstrate increased knowledge and cognition, as well as an understanding of mathematics and scientific reasoning.
5. Domain 5. Perceptual, Motor, and Physical Development - Children will demonstrate an increased knowledge of their sensory and motor skills, as well as understand positive health, safety and nutrition practices.

**EXHIBIT "B"**  
**Depiction of Property**

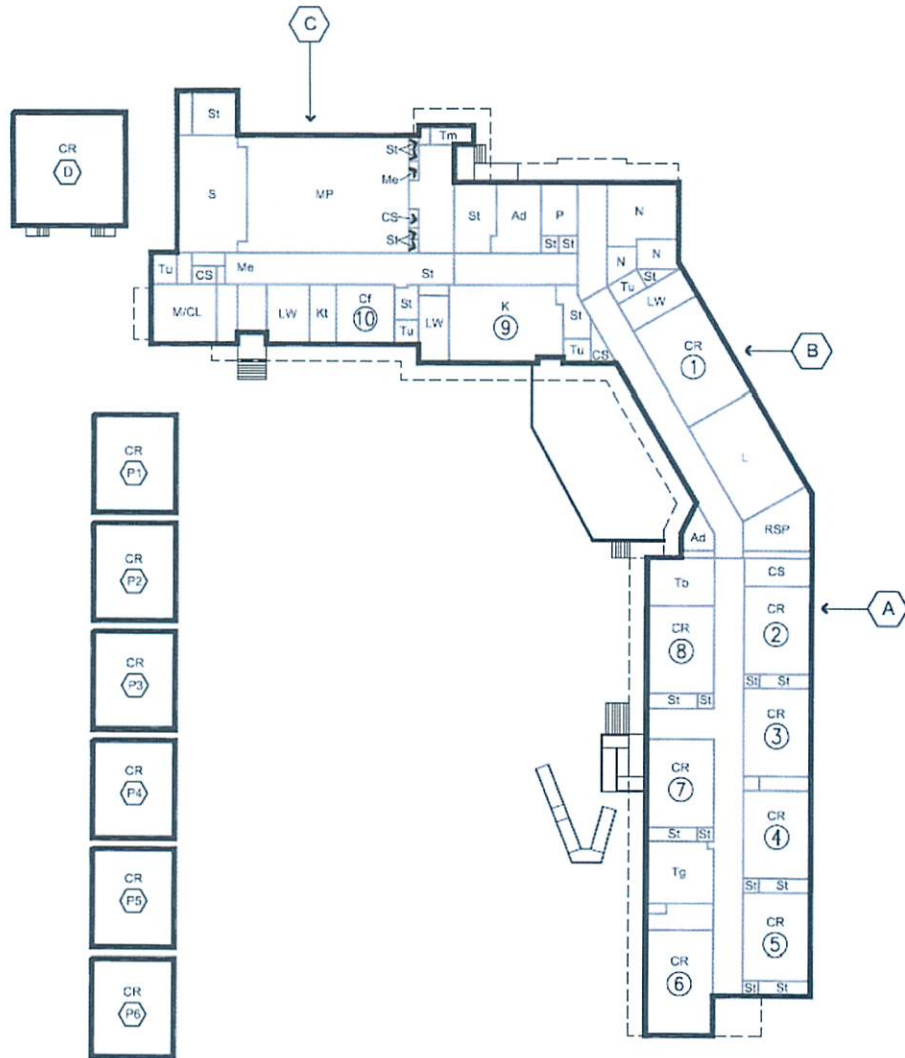


**SITE PLAN**  
**104 - BURBANK ELEMENTARY SCHOOL**  
3550 64TH AVENUE, OAKLAND, CA 94605-1802



Date: 1/18/2013

Scale: 1"=100'-0"



BLDG A-D & PORTABLES P1-P6 - 1ST FLOOR PLAN



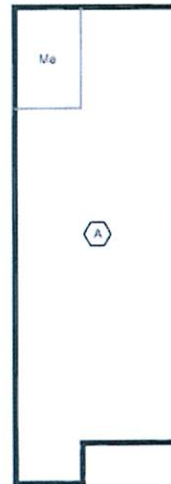
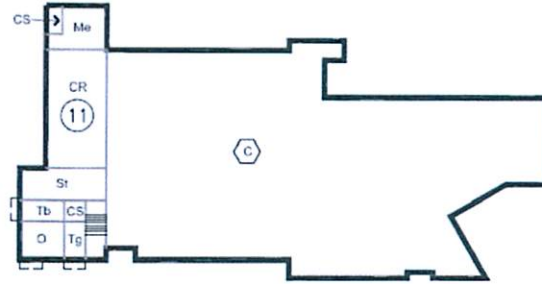
BLDG A-D & PORT P1-P6 - 1ST FLOOR PLAN

104 - BURBANK ELEMENTARY SCHOOL  
3550 64TH AVENUE, OAKLAND, CA 94605-1802



Date: 1/18/2013

Scale: 1/4"=5'-0"



BLDG A & C - BASEMENT PLAN



**BLDG A & C - BASEMENT FLOOR PLAN**  
**104 - BURBANK ELEMENTARY SCHOOL**  
3550 64TH AVENUE, OAKLAND, CA 94605-1802



Date: 1/18/2013

Scale: 1"=50'-0"

EXHIBIT "C"

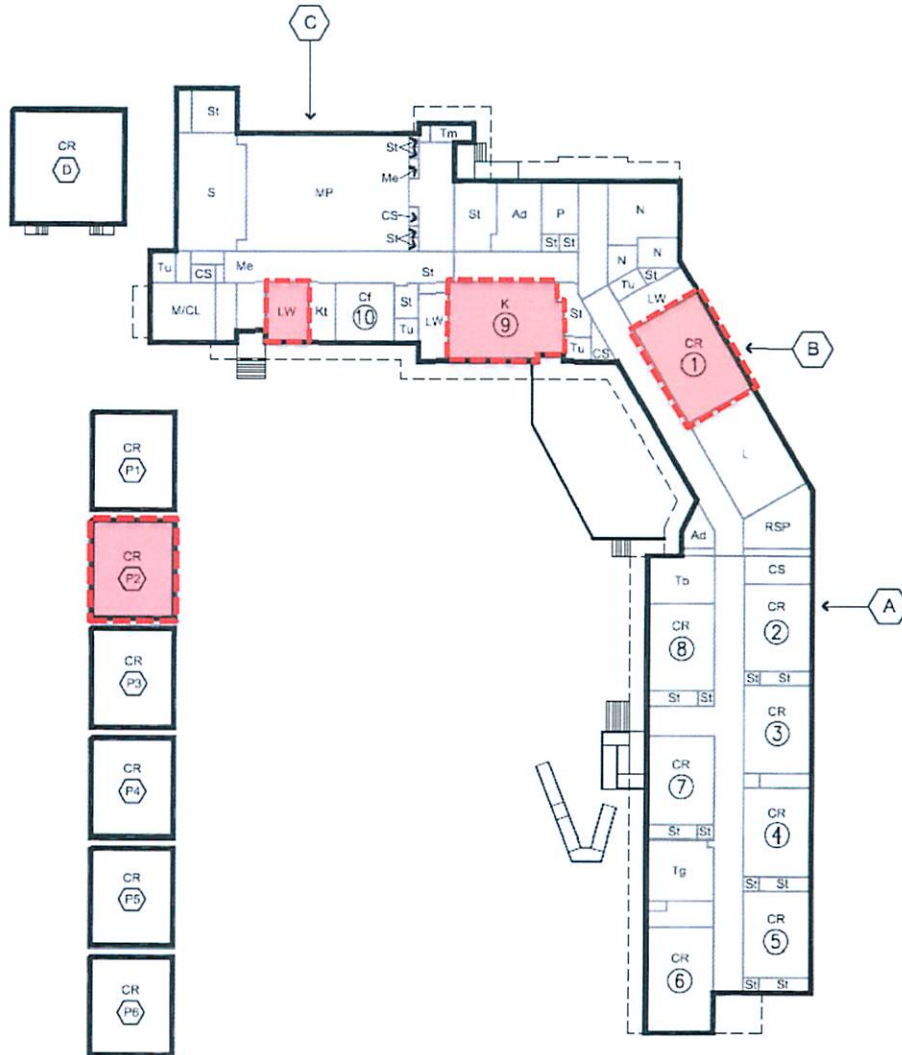
Description of Premises

YMCA shall be permitted to use the following portions of the Premises during the Term of this Agreement, as expressly permitted by the terms of this Agreement:

- Classroom CR-1
- Classroom C-9 (marked as K-9 on the Depiction of the Premises)
- LW
- Portable 2 (marked as P2 on the Depiction of the Premises)
- Yard space
- Restrooms



### Depiction of Premises



BLDG A-D & PORTABLES P1-P6 - 1ST FLOOR PLAN



BLDG A-D & PORT P1-P6 - 1ST FLOOR PLAN  
104 - BURBANK ELEMENTARY SCHOOL  
3550 64TH AVENUE, OAKLAND, CA 94605-1802



Date: 1/18/2013

Scale: 1"=50'-0"





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

6/23/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Arthur J. Gallagher & Co. Insurance Brokers of California, Inc., # 0726293 1255 Battery Street #450 San Francisco CA 94111	<b>CONTACT NAME:</b> Veronica DeFalco	
	<b>PHONE (A/C. No. Ext):</b> 415-536-8467	<b>FAX (A/C. No.):</b>
<b>E-MAIL ADDRESS:</b> veronica_defalco@ajg.com		
<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
<b>INSURER A:</b> NOVA Casualty Company		42552
<b>INSURER B:</b> Cypress Insurance Company (CA)		10855
<b>INSURER C:</b>		
<b>INSURER D:</b>		
<b>INSURER E:</b>		
<b>INSURER F:</b>		

**COVERAGES** **CERTIFICATE NUMBER:** 1976748270 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y		CFY-ML-10000016-04	7/1/2021	7/1/2022	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 5,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 Abuse - Aggregate \$ 2,000,000
A	<input checked="" type="checkbox"/> <b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			CFY-AU-10000013-04	7/1/2021	7/1/2022	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ Comp.Deduct-\$100 \$ Coll \$1000
A	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			CFY-UM-10000013-04	7/1/2021	7/1/2022	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
B	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y/N If yes, describe under DESCRIPTION OF OPERATIONS below		Y	YMWC202098	7/1/2021	7/1/2022	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	Social Services Professional Abuse & Molestation (also NOVA)			CFY-ML-10000016-04	7/1/2021	7/1/2022	Per Occ/Agg \$1M/\$3M Per Occ/Agg \$1M/\$2M

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**  
 Oakland Unified School District is included as additional insured as respects General Liability per attached endorsement where required by written contract.

**CERTIFICATE HOLDER****CANCELLATION**

Oakland Unified School District  
 1000 Broadway, Ste. 640-Laurel Conf. Room  
 Oakland CA 94607-4099

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**SOCIAL SERVICES - GENERAL LIABILITY EXTRA ENDORSEMENT**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**A. SECTION I – COVERAGES, COVERAGE A - BODILY INJURY AND PROPERTY DAMAGE LIABILITY, Paragraph 2. Exclusions is amended as follows:**

**1. EXPECTED OR INTENDED INJURY EXTENSION**

Paragraph **a. Expected Or Intended Injury** is deleted and replaced by the following:

- a.** “Bodily injury” or “property damage” expected or intended from the standpoint of the insured. This exclusion does not apply to “bodily injury” or “property damage” resulting from the use of reasonable force to protect persons or property.

**2. NON OWNED AIRCRAFT CHARTERED WITH CREW EXTENSION**

Paragraph **g. Aircraft, Auto Or Watercraft** is amended to add an exception provision to the exclusion as follows:

- a.** This exclusion does not apply to aircraft chartered with crew to any insured.  
**b.** This exception provision does not apply if the chartered aircraft is owned by any insured.  
**c.** This insurance is excess over any other valid and collectible insurance available to the insured whether primary, excess, or contingent.

**3. NON OWNED WATERCRAFT EXTENSION**

Subparagraph **(2)** of **g. Aircraft, Auto Or Watercraft** is deleted and replaced by the following:

**(2)** A watercraft you do not own that is:

- (a)** Less than 60 feet long; and  
**(b)** Not being used to carry persons or property for a charge;

This provision applies to any person who, with your consent, either uses or is responsible for the use of a watercraft.

This insurance is excess over any other valid and collectible insurance available to the insured for aircraft, auto or watercraft whether primary, excess, or contingent.

**4. PROPERTY SOLD OR ABANDONED BY YOU**

Subparagraph **(2)** of **j. Damage To Property** is deleted and replaced by the following:

**(2)** Premises you sell, give away or abandon, if the “property damage” arises out of any part of those premises, and occurred from hazards that were known by you or should have reasonably been known by you at the time the property was sold, given away or abandoned.

**5. DAMAGE TO PREMISES RENTED TO YOU**

**a.** The last Paragraph of **2. Exclusions** is deleted and replaced by the following:

Exclusions **c.** through **n.** do not apply to damage to premises while rented to you, or temporarily occupied by you with the permission of the owner, when the damage is caused by fire, lightning, explosion, smoke, water or leaks from automatic fire protective systems. A separate limit of insurance applies to this coverage as described in **SECTION III – LIMITS OF INSURANCE.**

**b.** Paragraph **6.** of **SECTION III – LIMITS OF INSURANCE** is deleted and replaced by the following:

**6.** Subject to Paragraph **5.** above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage **A** for damages because of “property damage” to any one premises while rented to you, or temporarily occupied by you with permission of the owner, caused by fire, lightning, explosion, smoke, water or leaks from automatic fire protective systems. The Damage To Premises Rented To You limit will apply to all damage proximately caused by the same “occurrence”, whether such damage results from fire, lightning, explosion, smoke, water or leaks from automatic fire protective systems, or any combination of any of these.

The Damage To Premises Rented To You Limit will be the higher of:

- (1)** \$1,000,000; or  
**(2)** The amount shown on the Declarations for Damage To Premises Rented To You.

**6. INVITEE PROPERTY DAMAGE LEGAL LIABILITY**

**a.** The following is added to subparagraph **(4)** of **j. Damage To Property**:

However, this exclusion does not apply to “property damage” to your “invitee’s” personal property in your care, custody or control caused by fire, lightning, explosion, smoke, water, leaks from automatic fire protective systems; or vandalism or malicious mischief:

(a) On premises you own or rent or on ways next to premises you own or rent; and

(b) Arising out of your operations.

For the purposes of this endorsement, personal property does not include any of the following:

(c) Accounts, bills, currency, food stamps or other evidences of debt; deeds, money, notes, or securities;

(d) Contraband, or property in the course of illegal transportation or trade; or

(e) Blueprints, documents, drawings, manuscripts, records or valuable papers.

b. The following is added to **SECTION III – LIMITS OF INSURANCE**:

Subject to Paragraph 5. above, the most we will pay under Coverage A for the sum of all damages sustained by all “invitees” because of “property damage” to personal property of such “invitees” in your care, custody or control is \$15,000.

7. Paragraph 2. **Exclusions** is amended to add the following exclusion:

**Willful Violation Of A Penal Code Or Statute**

“Bodily injury”, “incidental medical malpractice liability” or “property damage” arising out of the willful violation of a penal code, statute or regulation relating to the sale or distribution of pharmaceuticals by or with the knowledge or consent of the insured.

**B. SECTION I – COVERAGES, COVERAGE B – PERSONAL AND ADVERTISING INJURY LIABILITY**, Paragraph 2. **Exclusions** is amended as follows:

1. Subparagraph a. **Knowing Violation Of Rights Of Another** is amended to add the following:

This exclusion does not apply to “personal and advertising injury” caused by malicious prosecution.

2. Subparagraph e. **Contractual Liability** is deleted and replaced by the following:

e. Advertising injury for which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

This provision does not apply if **COVERAGE B - PERSONAL AND ADVERTISING INJURY LIABILITY** is excluded by endorsement.

**C. SUPPLEMENTARY PAYMENTS – COVERAGES A AND B**, Paragraph 1. is amended as follows:

1. The limit in subparagraph b. is increased to \$2,500.

2. The limit in subparagraph d. is increased to \$500 a day.

**D. ADDITIONAL INSURED**

1. **SECTION II - WHO IS AN INSURED** is amended to include, as an additional insured, any person(s) or organization(s) for whom a written contract or written agreement between you and such person(s) or organization(s) exists and requires such person(s) or organizations(s) to be added as an additional insured to your Policy, but only for liability arising out of “bodily injury,” “property damage” or “personal and advertising injury”.

a. This endorsement applies only if the written contract or written agreement is:

(1) Currently in effect or becomes effective during the term of this Policy; and

(2) Executed prior to the “bodily injury”, “property damage”, or “personal and advertising injury”.

b. The insurance afforded to such additional insured only:

(1) Applies to the extent permitted by law; and

(2) Will not be broader than that which you are required by the written contract or written agreement to provide for such additional insured.

2. The insurance provided to the additional insured by this endorsement applies as follows:

a. The person(s) or organization(s) is an additional insured but only for liability caused in whole or in part by your acts or omissions or the acts or omissions of those acting on your behalf:

(1) In connection with your premises owned by or rented to you; or

(2) In the performance of your ongoing operations.

b. If the additional insured is an architect, engineer or surveyor, this insurance does not apply to “bodily injury”, “property damage” or “personal and advertising injury” arising out of the rendering of or failure to render any professional services including:

(1) The preparing, approving, or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications; or

(2) Supervisory, inspection or engineering services.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured if the "occurrence" which caused the "bodily injury" or "property damage" or the offense which caused the "personal and advertising injury" involved the rendering of or the failure to render any professional services by or for you.

- c. If the additional insured is a lessor of equipment, this insurance only applies to liability caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such additional insured and does not apply to any "occurrence" which takes place after the equipment lease expires.
- d. If the additional insured is a state or governmental agency or political subdivision and has issued a permit in connection with premises you own, rent or control, this insurance applies only with respect to the following hazards for which the state or political subdivision has issued such permit:
  - (1) The existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, street banners or decoration and similar exposures;
  - (2) The construction, erection or removal of elevators; or
  - (3) The ownership, maintenance, or use of any elevators covered by this insurance.
- e. If the additional insured is a state or governmental agency or political subdivision that has issued a permit or authorization with respect to operations performed by you or on your behalf, then this insurance does not apply to:
  - (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the federal government, state or municipality; or
  - (2) "Bodily injury" or "property damage" included within the "products-completed operations hazard".
- f. If the additional insured is a manager or lessor of insured premises, that person or organization is an additional insured only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you.
 

This insurance does not apply to:

  - (1) Any "occurrence" that takes place after you cease to be a tenant in that premises; or
  - (2) Structural alterations, new construction or demolition operations performed by or on behalf of the manager or lessor of insured premises.
- g. If the additional insured is grantor of franchise, that person(s) or organization(s) is only an additional insured with respect to liability as grantor of a franchise to you.
- h. If the additional insured is an owner or other interest from whom land has been leased, that person(s) or organization(s) is only an additional insured with respect to liability arising out of the ownership, maintenance or use of that part of the land leased to you.
 

This insurance does not apply to:

  - (1) Any "occurrence" that takes place after you cease to lease that land; or
  - (2) Structural alterations, new construction or demolition operations performed by or on behalf of the owner or other interest from whom land has been leased.
- i. If the additional insured is a mortgagee, assignee, or receiver, that person(s) or organization(s) is only an additional insured with respect to their liability as such and arising out of the ownership, maintenance or use of the premises by you.
 

This insurance does not apply to structural alterations, new construction or demolition operations performed by or for that mortgagee, assignee or receiver.
- j. If the additional insured is a controlling interest, that person(s) or organization(s) is an additional insured but only for their liability arising out of:
  - (1) Their financial control of you; or
  - (2) Premises they own, maintain or control while you lease or occupy those premises.
  - (3) Their requirements for certain performance placed upon you, as a non-profit organization, in consideration for funding or financial contributions you receive from them; or

As respects Paragraph j.(2) above, this insurance does not apply to:

  - (4) Structural alterations, new construction or demolition operations performed by or on behalf of the person or organization; or
  - (5) Any "occurrence" which takes place after you cease to be a tenant in that premises.

- k. If the additional insured is a vendor, that person(s) or organization(s) is only an additional insured with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business, but only if this Policy provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

(1) This insurance afforded to the vendor does not apply to:

- (a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
- (b) Any express warranty unauthorized by you;
- (c) Any physical or chemical change in the product made intentionally by the vendor;
- (d) Repackaging, except when unpacked under the instructions of the manufacturer for the sole purpose of inspection, demonstration, testing or the substitution of parts and then repackaged in the original container;
- (e) Any failure by the vendor to make inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of "your products";
- (f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of "your products";
- (g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or
- (h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:
  - (i) The exceptions contained in subparagraphs **k.(d)** or **k.(f)**; or
  - (ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of "your products".

(2) This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

- l. If the additional insured is a member or volunteer this insurance only applies with respect to their liability for your activities or activities they perform on your behalf.

- m. If the additional insured is a trustee or member of the Board of Governors this insurance only applies with respect to their duties as such.

3. With respect to the insurance afforded to an additional insured as provided in Paragraphs **D.1.** and **D.2.** above, the most we will pay on behalf of the additional insured is the amount of insurance:

- a. Required by the contract or agreement; or
- b. Available under the applicable Limits of Insurance shown in the Declarations; whichever is less.

4. With respect to the insurance afforded to an additional insured as provided in Paragraphs **D.1.** and **D.2.** above, this insurance shall not increase the applicable Limits of Insurance shown in the Declarations.

5. If an Additional Insured endorsement is attached to this Policy that specifically names a person or organization as an insured, then the above subsection **D. ADDITIONAL INSURED**s does not apply to such person(s) or organization(s).

6. Paragraph 4. **Other Insurance** of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS** is amended to include:

For the purposes of the coverage provided by this endorsement, regardless of whether other insurance is available to an additional insured on a primary basis, this insurance will be primary and noncontributory if a written contract between you and the additional insured specifically requires that this insurance be primary and noncontributory.

**E. SECTION II - WHO IS AN INSURED** is amended as follows:

**1. BROADENED NAMED INSURED**

Paragraph 3. is deleted and replaced by the following:

- 3. Any business entity organized under the laws of the United States of America (including any state thereof, its territories or possessions), or Canada (including any province thereof) will qualify as a

Named Insured if there is no similar insurance available to that business entity, provided that one or more Named Insureds shown in the Declarations have, at the inception of the policy period, an ownership interest in such business entity of more than 50%. However, if a Named Insured has an ownership interest in a business entity of more than 50%, the business entity will not be a Named Insured if such business entity is an insured under any other liability policy or would be an insured under such policy but for its termination or the exhaustion of its Limit of Insurance.

**2. CO-EMPLOYEE COVERAGE AND CO-VOLUNTEER WORKERS**

Subparagraphs (a), (b) and (c) under Paragraph 2.a.(1) do not apply to “bodily injury” for which insurance is provided as follows:

- a. Your “employees” are insureds with respect to “bodily injury” to a co-“employee” in the course of the co-“employee’s” employment by you, or to your “volunteer workers” while performing duties related to the conduct of your business, provided that this coverage for your “employees” does not apply to acts outside the scope of their employment by you or while performing duties unrelated to the conduct of your business.
- b. Your “volunteer workers” are insureds with respect to “bodily injury” to a co-“volunteer worker” while performing duties related to the conduct of your business, or to your “employees” in the course of the “employees” employment by you, provided that this coverage for your “volunteer workers” does not apply while performing duties unrelated to the conduct of your business.

**3. INCIDENTAL MEDICAL MALPRACTICE – EMPLOYED NURSES, EMT’S AND PARAMEDICS**

a. Paragraph 2.a.(1)(d) does not apply to any registered nurse, licensed practical nurse, emergency medical technician or paramedic employed by you, but only:

- (1) While performing the services described in the definition of “incidental medical malpractice injury”; and
- (2) When acting within the scope of their employment by you.

Any “employees” rendering “Good Samaritan Services” will be deemed to be acting within the scope of their employment by you.

- b. For the purposes of determining the applicable Limits of Insurance, any act or omission, together with all related acts or omissions in the furnishing of services for an “incidental medical malpractice injury” to any one person, will be considered one “occurrence”.
- c. This provision as provided in Paragraph 3.a. and 3.b. does not apply if:
  - (1) You are in the business or occupation of providing any of the services described in “incidental medical malpractice injury”; or
  - (2) An endorsement is attached to this Policy that specifically provides liability coverage for registered or licensed practical nurses.
- d. The insurance provided by Paragraph 3.a. and 3.b. shall be excess over any other valid and collectible insurance available to the insured, whether primary, excess, contingent or on any other basis, except for insurance purchased specifically by you to be excess of this Policy.

**4. LIABILITY FOR CONDUCT OF UNNAMED PARTNERSHIP OR JOINT VENTURE**

a. The last Paragraph of **SECTION II – WHO IS AN INSURED** is deleted and replaced by the following: No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture, limited liability company or trust that is not shown as a Named Insured in the Declarations. This subparagraph does not apply to your liability with respect to your conduct of the business of any current or past partnership or joint venture that is not shown as a Named Insured in the Declarations.

b. **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**, Paragraph 4.b. **Excess Insurance** is amended to add the following:

This insurance is excess over any valid and collectible other insurance, whether primary, excess, contingent or on any other basis, which is available to you for your liability with respect to your conduct of the business of any current or past partnership or joint venture that is not shown as a Named Insured in the Declarations and which is issued to such partnership or joint venture.

**F. SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS** is amended as follows:

**1. KNOWLEDGE AND NOTICE OF OCCURRENCE, OFFENSE, CLAIM OR SUIT**

The notification requirements of Paragraphs 2.a. and 2.b. **Duties In The Event Of Occurrence, Offense, Claim Or Suit** apply only when the “occurrence”, offense, claim or “suit” is known to:

- a. You, if you are an individual;
- b. A partner or member, if you are a partnership or joint venture;

- c. An officer or director, if you are an entity other than a partnership, joint venture or limited liability company;
- d. A member or manager, if you are a limited liability company; or
- e. An insurance manager, risk manager or other "employee" you designate prior to loss to give notice to us.

Knowledge of an "occurrence", offense, claim, or "suit" by your agent, servant or "employee" shall not in and of itself constitute knowledge by you unless an individual in one of the positions listed above has actual knowledge.

**2. FAILURE TO DISCLOSE HAZARDS**

The following is added to Paragraph **6. Representations**:

If you unintentionally failed to disclose all hazards or prior "occurrences" existing at the inception of this Policy, but reported such error or omission to us as soon as practicable after discovery, we will not deny coverage under this Coverage Part because of such failure.

This provision does not affect our right to collect any additional premium or exercise our right of cancellation or non-renewal.

**3. SPECIAL EVENT PREMIUM RATING**

The following is added:

**Special Event Premium Rating**

a. The rating for this endorsement includes the following special events:

- (1) All indoor special events with less than 2,500 attendees that are less than 24 hours in duration; and
- (2) All outdoor special events with less than 2,500 attendees that are less than 24 hours in duration.

b. The following special events shall be separately rated for additional premium:

- (1) Any special event that exceeds the number or attendees or duration as shown in **3.a.(1)** or **3.a.(2)** above;
- (2) Any parade, fair or carnival; or
- (3) Any athletic, sporting or motor vehicle event including walks, runs, tournaments, demonstrations, rallies or competitive activities.

**4. WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US**

The following is added to Paragraph **8. Transfer Of Rights of Recovery Against Others To Us**:

We waive any right of recovery we may have against any person or organization when such waiver is required by a written contract that you have agreed to prior to any "occurrence", "suit" or the offense which caused the "bodily injury", "property damage" or "personal and advertising injury", provided that the "occurrence", "suit" or the offense which caused the "bodily injury", "property damage" or "personal and advertising injury" arises out of operations contemplated by such contract. The waiver applies only to the person or organization designated in such contract.

**G. SECTION V – DEFINITIONS** is amended as follows:

**1. BODILY INJURY**

The definition of "bodily injury" in Paragraph **3.** is deleted and replaced by the following:

"Bodily injury" means bodily injury, "incidental medical malpractice injury", mental anguish, mental injury, shock, fright, disability, humiliation, sickness or disease sustained by a person, including death resulting from any of these at any time.

**2. PERSONAL AND ADVERTISING INJURY**

If **COVERAGE B – PERSONAL AND ADVERTISING INJURY LIABILITY** is not otherwise excluded from this Policy, the definition in Paragraph **14.b.** is deleted and replaced by the following:

- b. Malicious prosecution or abuse of process;

The following is added:

"Personal and advertising injury" also means "discrimination" or humiliation that results in injury to a natural person or their reputation, but only if such discrimination or humiliation is:

- (a) Not done intentionally by or at the direction of, or with the knowledge or consent of:
  - i. Any insured; or
  - ii. Any executive officer, director, stockholder, partner or member of any insured organization;
- (b) Not directly or indirectly related to the employment, former or prospective employment, termination of employment, or application for employment, of any person or persons by any insured;
- (c) Not prohibited by or held in violation of law, public policy, legislation, court decision or administrative



ruling;

(d) Not arising out of any "advertisement" by the insured.

**3. INSURED CONTRACT**

a. Subparagraph a. of the definition of "insured contract" is deleted and replaced by the following:

a. A contract for a lease of premises.

b. Subparagraph f. of the definition of "insured contract" is deleted and replaced by the following:

f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" "property damage" or "personal and advertising injury" to a third party or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

**4. PRODUCTS-COMPLETED OPERATIONS HAZARD**

The definition of "products-completed operations hazard" in Paragraph 16. is amended to add the following:

Includes all "bodily injury" and "property damage" arising out of your "designated products" on premises you own or rent; on premises used by you for a special event related to your business; or on connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad, next to any such premises you own or rent, or use for a special event.

For the purpose of this definition, "designated products" means apparel, buttons, CD's, DVD's, posters, stickers, tapes and other similar products used to promote a special event related to your business.

**The following definitions are added:**

5. "Discrimination" means:

a. Unfair treatment of a natural person or organization including but not limited to discrimination based upon race, color, ethnic or national origin, religion, age, gender, marital status, sexual orientation or preference, pregnancy, physical disability or impairment, or mental disability or impairment; or

b. Any act or conduct that would be considered "discrimination" under any applicable federal, state, or local statute, ordinance or law.

6. "Good Samaritan services" means those medical services rendered or provided in an emergency and for which no remuneration is requested or paid.

7. "Incidental medical malpractice injury" means "bodily injury", mental anguish, sickness or disease sustained by a person, including death resulting from any of these at any time, arising out of the rendering of, or failure to render, the following services:

a. Medical, surgical, dental, laboratory, x-ray or nursing service or treatment, advice or instruction, or the related furnishing of food or beverages;

b. The furnishing or dispensing of drugs or medical, dental, or surgical supplies or appliances; or

c. First aid.

8. "Invitee" means any of your clients, customers, guests, members, patrons, supporters, and "volunteer workers"; however, it does not include any person who is your "employee", "temporary worker" or independent contractor.

All other terms and conditions of the policy remain unchanged.