


OAKLAND UNIFIED SCHOOL DISTRICT
Office of the Board of Education
March 28, 2012

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Enactment Number: 12-0920
Enactment Date: 3-28-12
By: 

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 Lease Agreement between Oakland Unified School District and Emery Unified School District for the latter to lease classrooms and facilities at the District's Santa Fe Elementary School site located at 915 54th Street, Oakland, California 94608.

ACTION REQUESTED

Approval by the Board of Education of the Lease Agreement ("Agreement") between the Oakland Unified School District and Emery Unified School District for the latter to lease classrooms and facilities at Santa Fe Elementary School site located at 915 54th Street, Oakland, California 94608.

BACKGROUND

The Emery Unified School District ("Tenant") requires space for its students for the sole purposes of operating its educational program in accordance with California Ed Code ("Program" or "Activities").

The Oakland Unified School District ("District") has available classrooms and facilities at the District's Santa Fe Elementary School site located at 915 54th Street, Oakland, California 94608.

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.

The term of this Agreement shall be for three (3) years. The commencement date shall be July 1, 2012, and unless sooner terminated under any provision hereof, this Agreement shall end on June 30, 2015.

Tenant will use its custodial staff to provide custodial services to the recommended level identified by the District's Custodial Services Director; the recommended number of FTE, which includes custodial supplies, shall be comparable to that of other District school sites with the same or similar square footage. Tenant may supplement their custodial services with parent volunteers, or with prior written approval of the District, a third party vendor, provided there is no reduction in the number of agreed upon custodians provided by EUSD.

FISCAL IMPACT

Tenant shall to pay District the sum of Five Hundred Thousand Dollars (\$500,000.00) per year in Rent.

RECOMMENDATION

Approval by the Board of Education of the Lease Agreement ("Agreement") between the Oakland Unified School District and Emery Unified School District for the latter to lease classrooms and facilities at Santa Fe Elementary School site located at 915 54th Street, Oakland, California 94608.

Attachment:

Lease Agreement between Oakland Unified School District and Emery Unified School District

**LEASE AGREEMENT BETWEEN EMERY UNIFIED SCHOOL
DISTRICT (EUSD) AND OAKLAND UNIFIED SCHOOL DISTRICT
FOR USE OF SCHOOL SITE FOR PURPOSE OF OPERATING
EUSD EDUCATIONAL PROGRAM**

THIS LEASE AGREEMENT ("Lease" or "Agreement") is made this 28th day of March, 2012, by and between the OAKLAND UNIFIED SCHOOL DISTRICT, a California public school district of California ("District") and Emery Unified School District, a California public school district of California ("EUSD"), referred to collectively as the "Parties".

RECITALS

WHEREAS, EUSD requires space for its students for the sole purposes of operating its educational program in accordance with California Ed Code ("Program" or "Activities"), and as further defined herein; and

WHEREAS, District has available classrooms and facilities at the District's Santa Fe Elementary School site located at 915 54th Street Oakland, California 94608, ("School Site") as further identified in **Exhibit "A"** attached hereto and incorporated herein; and

WHEREAS, District intends to allow EUSD to use the School Site while providing services for EUSD'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, pursuant to section 17529 of the Education Code, has determined by approving this Agreement, that leasing the School Site to EUSD will not (1) interfere with the educational programs or activities of any school or class which might otherwise be conducted on the School Site, (2) unduly disrupt the residents in the surrounding neighborhood, or (3) jeopardize the safety of any children at the School Site;

WHEREAS, EUSD agrees that District's fee interest shall at all times be and remain unsubordinated to any leasehold mortgage which may be imposed upon EUSD'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 EUSD agree as follows:

AGREEMENT

Use of Property. EUSD shall have use of the School Site which shall be used by EUSD only for purposes consistent with the operation of a public school (Please refer to **Exhibit "B"**, attached hereto and incorporated herein.

1. Condition of School Site.

- 1.1. The School Site is leased to EUSD on an "AS IS" basis. District shall not be required to make or construct any alterations including structural changes, additions or improvements to the School Site. By entry and taking possession of the School Site pursuant to this Agreement, EUSD accepts the School Site in "AS IS" condition.
- 1.2. EUSD acknowledges that neither District nor District's agents have made any representation or warranty as to the suitability of the School Site to the conduct of EUSD's business. Any agreements, warranties or representations not expressly contained herein shall in no way bind either District or EUSD, and District and EUSD expressly waive all claims for damages by reason of any statement, representation, warranty, promise or agreement, if any, not contained in this Agreement.
- 1.3. **Title to School Site.** The Parties acknowledge that title to the School Site is held by District.

2. Term.

- 2.1. The term of this Agreement shall be for three (3) years. The commencement date shall be July 1, 2012, ("Commencement Date") and unless sooner terminated under any provision hereof, this Agreement shall end on June 30, 2015 ("Term").
- 2.2. **Renewal of Agreement**
 - 2.2.1. If the Parties wish to further renew this Agreement after the first three (3) years, the Parties shall execute a separate writing signed by both Parties that complies with all of the following provisions:
 - 2.2.1.1. Specifically authorizes further tenancy by EUSD and specifies the terms of that tenancy, and
 - 2.2.1.2. Is approved by each Party's governing body prior to the end of the Term.
 - 2.3. On the last day of the Term hereof EUSD shall surrender to District the School Site and Improvements in good order, condition and repair, reasonable wear and tear excepted, free and clear of all liens, claims and encumbrances. If the School Site is not so surrendered at the termination of this Agreement, EUSD shall indemnify District against loss or liability resulting from delay by EUSD in so surrendering the School Site including, without limitation, any claims made by any succeeding tenant or loss to District due to lost opportunities.

3. Rent.

- 3.1. For and in consideration of the use of the School Site for the Term of this Agreement, EUSD agrees to pay District the sum of \$500,000.00 per year ("Rent").

- 3.2. Rent for the first year shall be due upon commencement of this Agreement. Thereafter, Rent shall be due on the first of July of each successive year, without deduction, setoff, prior notice or demand.
- 3.3. Rent includes the utility charges for the School Site. Utilities include water, irrigation, gas, electricity, telephone, security and fire alarm monitoring, data and communication lines and service, trash pick-up, and sewage fees. With respect to internet connectivity, if feasible, the EUSD may assume use of the pre-existing T-1 line and transfer billing for the use of such line over to the EUSD. The EUSD shall obtain its own internet service and telephone provider and shall assume sole responsibility for upkeep and maintenance of all telephone systems, data lines, and related equipment, software and hardware. Grounds maintenance for the Site shall be provided by the District and the cost thereof is included in the Rent.
- 3.3.1. **Custodial Services.** District and EUSD agree that EUSD will use its custodial staff to provide custodial services to the recommended level identified by the District's Custodial Services Director; the recommended number of FTE, which includes custodial supplies, shall be comparable to that of other District school sites with the same or similar square footage. EUSD may supplement their custodial services with parent volunteers, or with prior written approval of the District, a third party vendor, provided there is no reduction in the number of agreed upon custodians provided by EUSD. Nothing in this section is intended to preclude EUSD from holding parent led Work Days whereby parent volunteers assist with clean up of the School Site.
- 3.4. EUSD acknowledges that late payment by EUSD 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 EUSD by 4:00 p.m. within ten (10) business days after such amount is due, EUSD 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 EUSD. Acceptance of such late charge by District shall in no event constitute a waiver of EUSD's default with respect to such overdue amount, nor prevent District from exercising any of its other rights and remedies granted hereunder.
- 3.5. 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 EUSD is required to pay hereunder, together with all interest and penalties that may accrue thereon in the event of EUSD'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 EUSD or failure on EUSD'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 EUSD, District shall have all of the rights and remedies with respect thereto as District has for the nonpayment of the Rent. The provisions of this Section shall survive the expiration or earlier termination of this Agreement.

- 3.6. 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 EUSD under this Agreement.

4. Maintenance and Repairs.

- 4.1. District shall maintain the School Site in a good condition consistent with the condition of the School Site existing at the time of delivery, including all custodial duties and pest abatement. EUSD acknowledges and accepts that the School Site is leased in "AS IS" condition. District shall keep and maintain the buildings on the School Site in the condition existing at the time EUSD takes possession of the School Site excepting normal wear, tear and damage by casualty.

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 EUSD, 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 EUSD takes possession of the School Site; 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 EUSD's rent during the "repair" period, if the resulting structural damage prohibits EUSD 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 EUSD may elect to remain in possession of the School Site and pay the stipulated rent unless changed through mutual agreement of the Parties or EUSD may elect to terminate this Agreement.

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" if EUSD intends to have any improvements, alterations, work, or other services performed on the School Site that are not part of the maintenance or repair services indicated herein, EUSD shall request that work by way of a Work Order form, obtained by

contacting the District's Buildings and Grounds Department, Work Control Desk at (510) 879-8400.

After-hours Emergencies:

For after-hours emergencies contact Buildings & Grounds at (510) 448-6991 or Custodial Services at (510) 448-6991. For all non-emergencies contact the Work Control Desk at (510) 879-8400.

Environmental Concerns:

To report an environmental concern, please complete an Environmental Assessment Form and fax to the Risk Management Office at (510) 879-1837.

4.1.1. 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 EUSD-requested improvements.

4.1.2. The District shall prepare and provide to EUSD an estimate for that work. If EUSD accepts that estimate, the District shall perform that work as indicated in the estimate and EUSD shall pay for that work as indicated in the estimate, which shall be due and owing within 30 days of completion of the work to EUSD's satisfaction, unless otherwise agreed to in writing by the Parties.

5. Title to and Removal of EUSD's Improvements / Facilities.

- 5.1. EUSD shall not construct or cause to be constructed on the School Site any improvements ("EUSD's Improvements") without express prior written consent from District. EUSD's Improvements must be deemed by EUSD as necessary to the operation of its Activities.
- 5.2. EUSD 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.
- 5.3. Any modifications to School Site must be approved in writing in advance by District. EUSD's Contractor must also be approved in advance by District. Any contractor and/or subcontractor used by EUSD, shall be duly licensed in the State of California. EUSD shall be solely responsible for maintaining EUSD'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.

- 5.4. Under all circumstances, EUSD must seek and receive approval from the Division of the State Architect for all of EUSD's Improvements.
- 5.5. Title to removable furniture, equipment and/or other personal property placed by EUSD onto the School Site, but not affixed thereto, shall be held solely by EUSD. These items shall remain the personal property of EUSD and shall not be treated as real property or become a part of the School Site(s) unless District accepts or EUSD abandons any of this personal property at the end of the Term.
- 5.6. On or before the expiration of this Agreement, or within thirty (30) days after any earlier termination of this Agreement, EUSD shall remove EUSD's Improvements, at its sole expense. EUSD shall repair any damage to the School Site, caused by removal of EUSD's Improvements and restore the School Site to good condition, less ordinary wear and tear. In the event that EUSD fails to timely remove EUSD's Improvements, District, upon fifteen (15) days written notice, may either (1) accept ownership of EUSD's Improvements with no cost to District, or (2) remove EUSD's Improvements at EUSD's sole cost. In the event that District chooses to accept ownership of EUSD's Improvements, EUSD shall execute any necessary documents to effectuate the change in ownership of EUSD's Improvements. In the event that District removes EUSD's Improvements, EUSD shall pay all invoices for the removal of EUSD's Improvements within thirty (30) days of receipt of such invoices.

6. Signage. EUSD may install signage at the Site including one sign at the EUSD's main entrance stating the EUSD name and other pertinent information, a sign indicating the main office of the EUSD, and other directional signs as appropriate. The signage shall not require any Improvement to the Site in order to erect such signage. Such signage shall be in compliance with any District standards previously made available to EUSD and EUSD's receipt of any applicable permits and approvals required under any municipal or other governmental laws, ordinances, rules or regulations; provided, that in the event of any conflict between the District's standards and any applicable municipal or governmental permit and/or approval, the terms and conditions of the municipal or governmental permit and/or approval shall prevail. EUSD may place additional signs on the property with prior District approval. At the termination of this Agreement, EUSD shall remove any signs which it has placed on the School Site and shall repair any damage caused by the installation or removal of those signs.

7. Fingerprinting and Criminal Background Verification. The EUSD shall be responsible for ensuring compliance with all applicable fingerprinting and criminal background investigation requirements described in Education Code section 45125.1. Verification of compliance with the aforementioned fingerprinting and criminal background investigation requirements shall be provided in writing to the District prior to each individual's commencement of employment or participation in any activity of the EUSD on the School Site and prior to permitting contact with District pupils.

8. Drug-Free Workplace. EUSD's employees shall comply with the District's policy of maintaining a drug free workplace. Neither EUSD nor EUSD's employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code § 812, including, but not limited to, marijuana, heroin, cocaine, and amphetamines, at the Site. If EUSD or any employee of EUSD is convicted or pleads nolo

contendere to a criminal drug statute violation occurring at the Site, EUSD within five (5) days thereafter shall notify the District. Violation of this provision shall constitute a material breach of this Agreement.

9. Use of the School Site.

- 9.1. EUSD shall use the School Site only for purposes consistent with the operation of a public school.
- 9.2. EUSD shall not use the School Site for any use other than that specified in this Section without the prior written consent of District. EUSD agrees to maintain the School Site and to conduct the Program in a manner that meets all federal, state and local regulations relating to the School Site 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 School Site, the use of the School Site, and/or the Program. The execution of this Agreement shall be subject to the EUSD obtaining any and all permits or approvals which may be required in order for EUSD to operate the Program on the School Site. EUSD shall not use or permit the School Site 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. EUSD shall indemnify, defend, and hold District harmless against any loss, expense, damage, attorneys' fees or liability arising out of failure of EUSD to comply with any applicable law, regulation, rule or ordinance. EUSD shall not commit or suffer to be committed, any waste upon the School Site, or allow any sale by auction upon the School Site, or allow the School Site 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 School Site. No waste materials or refuse shall be dumped upon or permitted to remain upon any part of the School Site 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 School Site. EUSD shall comply with District-wide policy prohibiting the use of tobacco products on the School Site at all times. EUSD shall not use or permit the use of the School Site 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. EUSD agrees to immediately respond to concerns expressed by neighbors or District relating to the operation of the School Site.
- 9.3. If required, EUSD shall obtain a use permit from the City in which the School Site is located for EUSD's use throughout the term of this Agreement. EUSD shall require all licensees and invitees, to use the School Site only in conformance with the permitted use and with applicable governmental laws, regulations, rules and ordinances.
- 9.4. EUSD represents that it is qualified to administer and operate the Program. EUSD shall be solely responsible for the administration and operation of the Program, including the hiring of all employees. EUSD 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 EUSD's activities on the School Site.

- 9.5. EUSD's use of the School Site shall be exclusively limited to its Activities during the operation of the Program. EUSD must remove any equipment at the end of Agreement term. District is in no manner responsible for damage or theft of EUSD's play equipment. EUSD must maintain and repair any damage to the School Site to at least as good a condition as the School Site existed as of the Commencement Date of this Agreement.
- 9.6. Although the EUSD shall have the exclusive use of the School Site, District with the prior consent of EUSD, may agree to make the School Site available to members of the community in accordance with the provisions of the Civic Center Act (Education Code section 38131 et seq.) If EUSD authorizes access to the School Site pursuant to the Civic Center Act, EUSD assumes the risk of loss or damage to property as a result of that access.
- 9.7. For purposes of compliance with the Civic Center Act with respect to the School Site only, the governing body of EUSD shall hold the same powers and obligations applicable to School District Boards of Trustees under Education Code sections 38130-38139 and shall also follow District Board Policy and Administrative Regulations in making use of the facilities accessible to members of the community.

10. Inspection of School Site. District agrees to provide EUSD with a set of keys for the School Site. The District and its authorized representatives shall have the right, after forty-eight (48) hours prior written notice to the EUSD, to enter the School Site during normal business hours for the purpose of inspection and audit ("Inspection"); or to perform Deferred Maintenance in or on the Site. Nothing in this section shall prevent the District from entering the School Site to address an emergency nor shall this provision restrict the District's authority to enter the School Site without advanced notice to perform its general oversight responsibilities pursuant to applicable law. An "emergency" shall be defined to include circumstances that risk the health and safety of students, personnel or other persons on the School Site, or circumstances that risk further imminent damage or destruction to the School Site, or otherwise jeopardizes the operation of the Site including, but not limited to, the safety and sanitary condition of the School Site.

11. Termination.

11.1. Termination For Convenience

11.1.1. EUSD may terminate this Agreement without cause by written notification to District sixty (60) days prior to June 30th of any year of the term of this Agreement.

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

The failure of EUSD to pay any rent or other sums due under this Agreement within ten (10) business days of the date such payment is due and payable hereunder;

11.2.1. The failure of EUSD to observe or perform any of its covenants or obligations hereunder. The District shall provide EUSD with written notice of default and EUSD shall have ten (10) business days to provide a response to the District either evidencing compliance with the terms of this Agreement or

a plan to cure the default and a reasonable timeline acceptable by the District within which EUSD will diligently prosecute the same to completion. In no event shall such default continue for more than ninety (90) days after written notice thereof by the District to EUSD without prior written agreement by the District;

11.2.2. EUSD's abandonment of the School Site for a period of thirty (30) consecutive days, it being agreed that the fact that any of EUSD's property remains in the EUSDs School Site shall not be evidence that EUSD has not vacated or abandoned the EUSDs School Site; provided, however, any normal school holidays including summer and inter-term breaks shall not constitute abandonment of the EUSDs School Site;

11.2.3. The making by EUSD of any general assignment or general arrangement for the benefit of creditors; the filing by or against EUSD of a petition to have EUSD adjudged bankrupt or a petition for reorganization or arrangement under any law relation to bankruptcy (unless the same is dismissed within sixty (60) days); the appointment of a trustee or received to take possession of substantially all of the EUSD's assets located at the EUSDs School Site, or of EUSD's interest in this Agreement, where possession is not restored to EUSD within thirty (30) days; or the attachment, execution or other judicial seizure of substantially all of EUSD's assets located at the EUSDs School Site or of EUSD's interest in this Agreement, where such seizure is not discharged within thirty (30) days;

11.2.4. Any act by a party exposing the other party to liability to others for personal injury or property damage.

In the event of an uncured default by EUSD, the District shall be entitled to terminate EUSD's right to possession of the School Site by written notice. Upon receipt of District's notice of termination, EUSD shall surrender and vacate the School Site in the condition required under this Agreement, and District may re-enter and take possession of the School Site and all the remaining improvements or property and eject EUSD or any of EUSD's assignees or other person or persons claiming any right under or through EUSD 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 EUSD from the payment of any sum then due District or from any claim for damages or rent previously accrued or then accruing against EUSD.

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

12. Indemnification.

12.1 EUSD shall, to the fullest extent permitted by law, indemnify, defend, and hold harmless the District, its officers, directors, and employees, attorneys, agents, representatives, volunteers, successors and assigns (collectively hereinafter District and District Personnel) from and against any and all actions, suits, claims, demands, losses, costs, penalties, obligations, errors, omissions, or liabilities, including legal costs, attorney's fees, and expert witness fees, whether

or not suit is actually filed, and/or any judgment rendered against District and/or District Personnel, that may be asserted or claimed by any person, firm or entity arising out of the EUSD's use of the School Site or from the conduct of its business or from any activity, work, or other things done, permitted or suffered by the EUSD in or about the School Site after the District delivers possession of the School Site to EUSD. This indemnity and hold harmless provision shall exclude actions brought by third persons against the District arising out of the negligence or intentional acts, errors or omissions of the District and/or District Personnel.

- 12.2 The District shall, to the fullest extent permitted by law, indemnify, defend, and hold harmless the EUSD, its officers, directors, and employees, attorneys, agents, representatives, volunteers, successors and assigns (collectively hereinafter EUSD and EUSD Personnel) from and against any and all actions, suits, claims, demands, losses, costs, penalties, obligations, errors, omissions, or liabilities, including legal costs, attorney's fees, and expert witness fees, whether or not suit is actually filed, and/or any judgment rendered against the EUSD and/or EUSD Personnel, that may be asserted or claimed by any person, firm or entity arising out of the District's prior or current use or maintenance of the School Site or from the prior or current conduct of its business or from any activity, work, or other things done, permitted or suffered by the District in or about the School Site after District delivers possession of the School Site to EUSD. This indemnity and hold harmless provision shall exclude actions brought by third persons against EUSD arising out of the negligence or intentional acts, errors or omissions of EUSD and/or EUSD Personnel.

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. EUSD shall furnish District with the original certificates and amendatory endorsements effecting coverage required.
- 13.2. EUSD acknowledges that the insurance to be maintained by District on the School Site will not insure any of EUSD's property or improvements made by EUSD.
- 13.3. EUSD shall, at EUSD'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 EUSD against claims and liabilities arising out of the operation, condition, use, or occupancy of the School Site and all areas appurtenant thereto, including parking areas. EUSD's comprehensive auto liability policy shall insure all vehicle(s), whether hired, owned or non-owned. EUSD'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, EUSD

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 EUSD 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, EUSD 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 as of the Commencement Date. In the event of loss or damage to the School Site, the buildings, the leased School Site or any contents, 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, EUSD shall comply with all provisions of law applicable to EUSD with respect to obtaining and maintaining workers' compensation insurance. Prior to the commencement and any renewal of this Agreement and EUSD's occupancy of the Property, EUSD 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. 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

EUSD:

Dr. Debra Lindo, Superintendent
Emery Unified School District
4727 San Pablo Avenue
Emeryville, CA 94608

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.

15. 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. EUSD shall not sublease any portion of the School Site without the prior written consent of the District, which will not be unreasonably withheld. EUSD intends to sublease the Child Development Center at Santa Fe Elementary to our Head Start program. We also intend to explore expanding our relationship with Berkeley City College and the offering of some Community College classes at the site. This may involve the subleasing of classroom space to Berkeley City College.

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

17. 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.

18. 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.

19. 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.

20. Compliance with All Laws.

20.1. EUSD shall at EUSD' expense comply with all requirements of all governmental authorities, in force either now or in the future, affecting the School Site, and shall faithfully observe in EUSD's use of the School Site 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 School Site), and all District policies, rules and regulations, including those indicated herein in **Exhibit "B,"** attached hereto and made a part of this Agreement. Specifically, EUSD shall comply with the restriction on chemical usage indicated in **Exhibit "B."**

- 20.2. The judgment of a court of competent jurisdiction, or EUSD' admission in an action or a proceeding against EUSD, whether District be a party to it or not, that EUSD has violated any law or regulation or ordinance in EUSD's use of the School Site shall be considered conclusive evidence of that fact as between District and EUSD. If EUSD fails to comply with any such law, regulation or ordinance, District reserves the right to take necessary remedial measures at EUSD's expense, for which EUSD agrees to reimburse District on demand.
- 20.3. EUSD shall not cause or permit any Hazardous Material to be generated, brought onto, used, stored, or disposed of in or about the School Site and any improvements by EUSD or its agents, employees, contractors, subtenant, 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). EUSD 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.

21. 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.

22. 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.

23. 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.

24. 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.


25. 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.

26. 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.

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

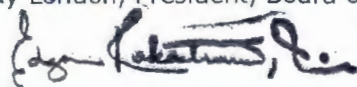
ACCEPTED AND AGREED on the date indicated below:

OAKLAND UNIFIED SCHOOL DISTRICT



Jody London, President, Board of Education

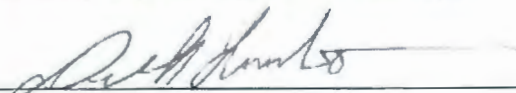
Date 4/20/12



Edgar Rakestraw, Jr., Secretary, Board of Education

Date 4/20/12

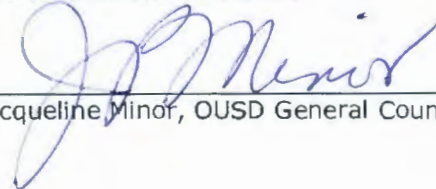
EMERY UNIFIED SCHOOL DISTRICT



By:
Its:

Date 4-17-12

APPROVED AS TO FORM



Jacqueline Minor, OUSD General Counsel

Date 4/4/12

File ID Number: 12-0805
Introduction Date: 3-28-12
Enactment Number: 12-0920
Enactment Date: 3-28-12
By: RY

Exhibit "A"
Description of School Site

The School Site that is being leased to EUSD is the following and as indicated on the attached Site maps:

Site: Santa Fe Elementary School
915 54th Street
Oakland, California 94608

[ATTACH SITES MAP OR AERIAL OR DRAWINGS AND SPECIFICALLY INDICATE SCHOOL SITE.]



54th St

53rd St

Data SIO, NOAA, U.S. Navy, NGA, GEBCO

© 2012 Google

Streaming 100%

188 ft

528-57-W

EXHIBIT "B"

Description of EUSD's Activities

EUSD will conduct programs and activities consistent with its public school district functions and operations.

EUSD acknowledges that it hopes to, and will make good faith efforts to, offer adult education classes on the School Site. This will involve making space available to our educational partner, Berkeley City College, to provide Community College courses at the site.

EUSD will also provide space at the site for the YMCA of the Central Bay Area Head Start program which will continue their existing partnership work with EUSD.

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

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.

EXHIBIT "C"

Integrated Pest Management Program
(Administrative Regulation 3514.2)

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

EXHIBIT "C"

Integrated Pest Management Program
(Administrative Regulation 3514.2)

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