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

To: Board of Education

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

Subject: Approval of the Joint-Use Lease Agreement between Ala Costa Center for
Developmentally Disabled and Oakland Unified School District for Real
Property and Improvements at Marshall Elementary School located at 3400
Malcolm Avenue, Oakland, CA 94605

ACTION REQUESTED

Approval by the Board of Education of the Joint-Use Lease Agreement between the Ala Costa Center for Developmentally Disabled and Oakland Unified School District for Real Property and Improvements at Marshall Elementary School in order that Ala Costa Center provide after school services to developmentally disabled children, including OUSD students at the Marshall Elementary School site property located at 3400 Malcolm Avenue, Oakland, CA 94605.

BACKGROUND

In August 2002, the District and Ala Costa Center ("Tenant") entered into a lease agreement whereby Tenant placed three (3) portable classroom buildings and one restroom building on the Marshall Elementary School site. Tenant uses the portables to provide after school program services including home work assistance, academic, personal and social development, sports activities and special activities for developmentally disabled children including OUSD students. This Joint-Use Agreement is in extension of these services and in accord with Education Code provisions with regard to the term of shared site tenancies.

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

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

Tenant agrees that District's fee interest shall at all times be and remain unsubordinated to any leasehold mortgage which may be imposed upon Tenant's leasehold interest hereunder

or upon the improvements, and that nothing contained in this Agreement shall be construed as an agreement by District to subject its fee interest to any lien.

FISCAL IMPACT

Tenant will pay the District \$1.00 per month for the 2012 calendar year.

RECOMMENDATION

That the Board of Education approves the Joint-Use Lease Agreement between the Ala Costa Center for Developmentally Disabled and Oakland Unified School District for Real Property and Improvements at Marshall Elementary School in order that Ala Costa provide after school program services to developmentally disabled children, including OUSD students at the Marshall Elementary school site property located at 3400 Malcolm Avenue, Oakland, CA 94605.

ATTACHMENT

Joint-Use Lease Agreement between the Ala Costa Center for Developmentally Disabled and Oakland Unified School District for Real Property and Improvements at Marshall Elementary School

**JOINT USE LEASE AGREEMENT BETWEEN ALA
COSTA CENTER FOR DEVELOPMENTALLY DISABLED
AND OAKLAND UNIFIED SCHOOL DISTRICT
FOR REAL PROPERTY AND IMPROVEMENTS AT
MARSHALL ELEMENTARY SCHOOL PROPERTY
LOCATED AT 3400 MALCOLM AVENUE, OAKLAND, CA**

THIS JOINT USE AGREEMENT AND LEASE is made this ^{9th} ~~1st~~ day of ^{December} ~~November~~, 2011, by and between the OAKLAND UNIFIED SCHOOL DISTRICT, a California public school district of California ("District") and Ala Costa Center for the Developmentally Disabled, a California Non Profit Organization ("Tenant"), referred to collectively as the "Parties" ("Lease" or "Agreement").

RECITALS

WHEREAS, Tenant requires space for the purposes of providing after school services to developmentally disabled children and such other uses related thereto ("Program" or "Activities"), as further defined herein; and

WHEREAS, in August 2002, Tenant and District entered into a Lease Agreement ("2002 Lease Agreement") whereby Tenant placed three (3) portable classroom buildings and one restroom building ("Premises") on the Marshall Elementary School site located at 3400 Malcolm Avenue, Oakland, CA ("School Site"); and

WHEREAS, in or about August 2007, the 2002 Lease Agreement expired and Tenant has remained on the Premises in a month-to-month tenancy; and

WHEREAS, District desires to continue allow Tenant to use the Premises on the School Site while providing services for Tenant's Activities 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 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; and

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

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

AGREEMENT

1. Use of Property. District agrees to allow use of the Premises at the School Site by Tenant to perform Tenant's Activities. Tenant shall have use of the Premises at all times to perform Tenant's Activities only, subject to modification by the Parties, and only to the extent Tenant pays Rent for the portion of the Premises Tenant wishes to use.

2. Condition of Premises.

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

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

3. Title to School Site. The Parties acknowledge that title to the School Site is held by District.

4. Term.

4.1. The term of this Agreement shall be for one (1) year. The commencement date shall be December 1, 2011, ("Commencement Date") and unless sooner terminated under any provision hereof, this Agreement shall end on January 1, 2013 ("Term").

4.2. Renewal of Agreement

4.2.1. Unless terminated by either Party as indicated herein, this Agreement shall automatically renew for one year on the anniversary date of each preceding Term. Under no circumstances shall this renewal exceed four (4) renewals for a total cumulative Term of five (5) years.

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

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

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

4.3. On the last day of the Term hereof, or on sooner termination of this Agreement, except for the portable buildings delivered and installed by Tenant pursuant to the 2002 Lease Agreement, and the contents therein provided by Tenant, Tenant shall surrender to District the Premises and any then existing improvements in good order, condition and repair, reasonable wear and tear excepted, free and clear of all liens, claims and encumbrances. This Agreement shall operate as a conveyance and assignment to District of any improvements identified by District to remain on the School Site. Tenant shall remove from the Premises all of Tenant's personal property, trade fixtures, and any improvements made by Tenant which Tenant and District agreed would be removed by Tenant. All property not so removed shall be deemed abandoned by Tenant. If the Premises are not so surrendered at the termination of this Agreement, Tenant shall indemnify District against loss or liability resulting from delay by Tenant in so surrendering the Premises including, without limitation, any claims made by any

succeeding Tenant or losses to District due to lost opportunities to Agreement to succeeding tenants.

5. Rent.

- 5.1. For and in consideration of the use of the Premises for the Term of this Agreement, Tenant agrees to pay District the sum of One Dollar (\$1.00) per month ("Rent").
- 5.2. Rent for the first month shall be due upon commencement of this Agreement. Thereafter, rent shall be due on the first of each month until the expiration or termination of this Agreement.
- 5.3. Tenant shall pay promptly to District, the monthly Rent on the first day of each month in advance during the term of the Agreement, without deduction, setoff, prior notice or demand.

6. Utilities. In addition to the Rent, Tenant shall pay all actual utility costs as payment for all utilities for the Premises ("Utility Charge"). For purposes of this Agreement, the Utility Charge includes: water, irrigation, gas, electricity, telephone, security and fire alarm monitoring, data and communication lines and service, trash pick-up, and sewage fees.

7. Maintenance and Repairs.

- 7.1. Tenant shall maintain the Premises in a good order, condition and repair. Tenant shall keep the Premises in compliance with applicable local, state and federal requirements during the Term of this Lease.
- 7.2. District shall have no maintenance or repair obligations with respect to the Premises except as expressly provided in this Agreement. Tenant hereby expressly waives the provisions of Subsection 1 of section 1932 and sections 1941 and 1942 of the Civil Code of California and all rights to make repairs at the expense of District as provided in section 1942 of said Civil Code.
- 7.3. Tenant shall provide District thirty (30) days prior written notice for any improvements, alterations, work, or other services Tenant intends to perform on the Premises.

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

- 8.1. Tenant shall not construct or cause to be constructed on the Premises any improvements ("Tenant's Improvements") without express prior written consent from District. Tenant's Improvements must be deemed by Tenant as necessary to the operation of its Activities.
- 8.2. Tenant shall at its own expense obtain all necessary environmental and governmental approvals and permits, including, without limitation, the California Environmental Quality Act ("CEQA"), any necessary approvals from any local authority including any site, 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.
- 8.3. Any modifications to site must be approved in writing in advance by District. Contractor must be approved as well. All contractors and subcontractors of Tenant, if any, shall be duly licensed in the State of California. Tenant shall be solely responsible for maintaining the Premises and Tenant's Improvements installed thereon during the term of this Agreement, including any extensions, and for compliance with all applicable laws or ordinances, rules and regulations.
- 8.4. Under all circumstances, Tenant must seek and receive approval from the Division of the State Architect for all of Tenant's Improvements.
- 8.5. Title to removable furniture, equipment and/or other personal property placed by Tenant onto the Premises, but not affixed thereto, shall be held solely by Tenant. These items shall remain the personal property of Tenant and shall not be treated as real property or become a part of the School Site unless District accepts or Tenant abandons any of this personal property at the end of the Term.
- 8.6. On or before the expiration of this Agreement, or within thirty (30) days after any earlier termination of this Agreement, Tenant shall remove Tenant's Improvements, at its sole expense. Tenant shall repair any damage to the School Site and/or the Premises, caused by removal of Tenant's Improvements and restore the School Site and the Premises to good condition, less ordinary wear and tear. In the event that Tenant fails to timely remove Tenant's Improvements, District, upon fifteen (15) days written notice, may either (1) accept ownership

of Tenant's Improvements with no cost to District, or (2) remove Tenant's Improvements at Tenant's sole cost. In the event that District chooses to accept ownership of Tenant's Improvements, Tenant shall execute any necessary documents to effectuate the change in ownership of Tenant's Improvements. In the event that District removes Tenant's Improvements, Tenant shall pay all invoices for the removal of Tenant's Improvements within thirty (30) days of receipt of such invoices.

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

10. Use of the Premises.

10.1. Tenant shall use the Premises solely for the purpose of the Program. Tenant shall not use the Premises for any use other than that specified in this Section without the prior written consent of District. Tenant agrees to maintain the Premises and to conduct the Program in a manner that meets all federal, state and local regulations relating to the Premises and to the operation of the Program, and to comply with all federal, state and local laws, regulations and ordinances, now or hereafter enacted concerning the Premises, the use of the Premises, and/or the Program. The execution of this Agreement shall be subject to the Tenant obtaining any and all permits or approvals which may be required in order for Tenant to operate the Program on the Premises. Tenant shall not use or permit the Premises to be used in whole or in part during the term of this Agreement for any purpose or use in violation of the laws or ordinances applicable thereto. Tenant shall indemnify, defend, and hold District harmless against any loss, expense, damage, attorneys' fees or liability arising out of failure of Tenant to comply with any applicable law, regulation, rule or ordinance. Tenant shall not commit or suffer to be committed,

any waste upon the Premises, or allow any sale by auction upon the Premises, or allow the Premises to be used for any unlawful purpose, or place any loads upon the floor, walls or ceiling which endanger the structure, or place any harmful liquids in the plumbing, sewer or storm water drainage system of the Premises. No waste materials or refuse shall be dumped upon or permitted to remain upon any part of the Premises except in trash containers designated for that purpose. Any uses which involve the serving and/or sale of alcoholic beverages and the conducting of games of chance are prohibited on the Premises. Tenant shall comply with District-wide policy prohibiting the use of tobacco products on the Premises at all times. Tenant shall not use or permit the use of the Premises or any part thereof for any purpose which is inimical to public morals and welfare or morally objectionable as unsuitable for a public educational facility. Tenant agrees to immediately respond to concerns expressed by neighbors or District relating to the operation of the Premises.

10.2. If required, Tenant and all subtenants shall obtain a use permit from the City in which the School Site is located for Tenant's use throughout the term of this Agreement. Tenant shall require all subtenants, licensees, and invitees, to use the Premises only in conformance with the permitted use and with applicable governmental laws, regulations, rules and ordinances.

10.3. Tenant represents that it is qualified to administer and operate the Program. Tenant shall be solely responsible for the administration and operation of the Program, including the hiring of all employees. Tenant shall be responsible for verifying the qualifications, credentials, certificates, and licenses of its staff, agents, consultants and/or subcontractors who may provide services in conjunction with Tenant's activities on the Premises.

11. Inspection of Premises. Tenant shall permit District and/or its agents to enter the Premises at any reasonable time for the purpose of inspecting the Premises and/or exhibiting the Premises to prospective lessees, occupants, purchasers or mortgagees.

12. Termination.

12.1. Termination For Convenience

12.1.1. District may terminate this Agreement by written notification sixty (60) days prior to the effective date of the termination.

12.1.2. Tenant may terminate this Agreement by written notification one hundred and twenty (120) days prior to the effective date of the termination. Tenant acknowledges that this one hundred and twenty (120) day notice period is acceptable so that District can attempt to find another tenant.

12.1.3. Neither party shall be required to provide just cause for termination in the written notification.

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

12.2.1. Material violation of this Agreement by Tenant or District; or

12.2.2. Any act by Tenant exposing District to liability to others for personal injury or property damage; or

12.2.3. Tenant is adjudged a bankrupt, Tenant makes a general assignment for the benefit of creditors or a receiver is appointed on account of Tenant's insolvency.

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

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

12.4. Upon termination of this Agreement, Tenant shall be responsible to restore the Property to its condition prior to the commencement of this

Agreement with no damage thereto, reasonable wear and tear excepted.

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

14. Insurance.

- 14.1. Insurance is to be placed with insurers with a current A.M. Best Insurance rating of no less than A-minus: VII and subject to the approval of District. Tenant shall furnish District with the original certificates and amendatory endorsements effecting coverage required.
- 14.2. Tenant acknowledges that the insurance to be maintained by District on the Premises will not insure any of Tenant's property or improvements made by Tenant.
- 14.3. Tenant shall, at Tenant's expense, obtain and keep in force during the term of this Agreement a policy of commercial general liability insurance and a comprehensive auto liability policy insuring District and Tenant against claims and liabilities arising out of the operation, condition, use, or occupancy of the Premises and all areas appurtenant thereto, including parking areas. Tenant's comprehensive auto liability policy shall insure all vehicle(s), whether hired, owned or non-owned. Tenant's commercial general insurance shall be at least as broad as the Insurance Service Office (ISO) CG 00-01 form and in an amount of not less than One Million dollars (\$1,000,000) for bodily injury or death and property damage as a result of any one occurrence and a

One Million dollar (\$1,000,000) general aggregate policy limit. In addition, Tenant shall obtain a products/completed operations aggregate policy in the amount of One Million dollars (\$1,000,000). The insurance carrier, deductibles and/or self insured retentions shall be approved by District, which approval shall not be unreasonably withheld. Prior to the Commencement Date Tenant shall deliver to District a certificate of insurance evidencing the existence of the policies required hereunder and copies of endorsements stating that such policies shall:

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

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

14.4. 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 Premises or any contents, each of the parties hereto, and all persons claiming under each of the parties, shall look first to any insurance in its favor before making any claim against the other party, and to the extent possible without adding additional costs, each party shall obtain for each policy of insurance provisions permitting waiver of any claim against the other party for loss or damage within the scope of the insurance and each party, to the extent permitted, for itself and its insurers, waives all such insurance claims against the other party.

14.5. During the term of this Agreement, Tenant shall comply with all provisions of law applicable to Tenant with respect to obtaining and maintaining workers' compensation insurance. Prior to the commencement and any renewal of this Agreement and Tenant's occupancy of the Property, Tenant shall provide District, as evidence of this required coverage, a certificate in a form satisfactory to District on

or before the commencement or renewal date, providing that insurance coverage shall not be canceled or reduced without thirty (30) days prior written notice to District

15.Signs. Tenant shall at Tenant's cost have the right and entitlement to place Tenant's signs on the Premises, and otherwise to advertise its services, provided Tenant obtains the approval and consent of District. The approval and consent shall not be unreasonably withheld. Any signs shall be at Tenant's cost and in compliance with the local ordinances pertaining thereto. In connection with the placement of such signs, District agrees to cooperate with Tenant in obtaining any governmental permits which may be necessary. Throughout the Term of this Agreement Tenant shall, at its sole cost and expense, maintain the signage and all appurtenances in good condition and repair. At the termination of this Agreement, Tenant shall remove any signs which it has placed on the School Site in which the Premises are located, and shall repair any damage caused by the installation or removal of those signs.

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

17.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:

Oakland Unified School District	Ala Costa Center
Office of the Deputy	1300 Rose Street
Superintendent	Berkeley, CA 94707
1025 Second Avenue, First Floor	Attn: Executive Director
Oakland, CA 94606	
Attn: Deputy Superintendent	

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.

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

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

20.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.

21.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.

22.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.

23.Compliance with All Laws.

23.1. Tenant shall at Tenant' expense comply with all requirements of all governmental authorities, in force either now or in the future, affecting the Premises, and shall faithfully observe in Tenant's use of the Premises all laws, regulations and ordinances of these authorities, in force either now or in the future including, without limitation, all applicable federal, state and local laws, regulations, and ordinances pertaining to air and water quality, hazardous material, waste disposal, air emission and other environmental matters (including the California Environmental Quality Act ("CEQA") and its implementing regulations in its use of the Premises), and all District policies, rules and regulations.

23.2. The judgment of a court of competent jurisdiction, or Tenant's admission in an action or a proceeding against Tenant, whether District be a party to it or not, that Tenant has violated any law or regulation or ordinance in Tenant's use of the Premises shall be considered conclusive evidence of that fact as between District and Tenant. If Tenant fails to comply with any such law, regulation or ordinance, District reserves the right to take necessary remedial measures at Tenant's expense, for which Tenant agrees to reimburse District on demand.

23.3. Tenant shall not cause or permit any Hazardous Material to be generated, brought onto, used, stored, or disposed of in or about the Premises and any improvements by Tenant or its agents, employees, contractors, subtenants, or invitees, except for limited quantities of standard office, classroom and janitorial supplies (which shall be used and stored in strict compliance with Environmental Laws). Tenant shall comply with all Environmental Laws. As used herein, the term "Hazardous Materials" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California or the United States Government. The term "Hazardous Materials" includes, without limitation, petroleum products, asbestos, PCB's, and any material or substance which is (i) defined as hazardous or extremely hazardous pursuant to Title 22 of the California Code of Regulations, Division 4.5, Chapter 11, Article 4, section 66261.30 et seq. (ii) defined as a "hazardous waste" pursuant to section (14) of the federal Resource Conservation and Recovery Act, 42 U.S.C. 6901 et. seq. (42 U.S.C. 6903), or (iii) defined as a "hazardous substance" pursuant to section 10 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et. seq. (42 U.S.C. 9601). As used herein, the term "Hazardous Materials Law" shall mean any statute, law, ordinance, or regulation of any governmental body or agency (including the U.S. Environmental Protection Agency, the California Regional Water Quality Control Board, and the California Department of Health Services) which regulates the use, storage, release or disposal of any Hazardous Material.

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

25. 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.

26. 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.

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 and supplements to it may be executed in counterparts, and all counterparts together 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 of the intention of the Parties hereto.

30. 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.

ACCEPTED AND AGREED on the date indicated below:

Dated: _____,
2011

Dated: DECEMBER 29,
2011

Oakland Unified School District

Ala Costa Center

By: _____

By: [Signature]

Print Name: _____

Print Name: RON HALOG

Print Title: _____

Print Title: EXECUTIVE DIRECTOR

OAKLAND UNIFIED SCHOOL DISTRICT

Jody London

Jody London, Board of Education

Date *1/28/12*

Edgar Rakestraw, Jr.

Edgar Rakestraw, Jr., Secretary, Board of Education

Date *1/26/12*

APPROVED AS TO FORM

Jacqueline Minor

Jacqueline Minor, OUSD General Counsel

Date *1.13.12*

LEGISLATIVE FILE

File ID Number *12-0307*
Introduction Date *1-25-12*
Enactment Number *12-0197*
Enactment Date *1-25-12* *Ⓟ*