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**OAKLAND UNIFIED  
SCHOOL DISTRICT**  
Community Schools, Thriving Students

# Memo

**To** Board of Education

**From** Marion McWilliams - General Counsel  
Andrea Epps – Staff Attorney  
David Montes de Oca – Deputy Chief

**Board Meeting Date** June 28, 2017

**Subject** **Joint Use Rental Agreement - Ala Costa Center**

**Action Requested** Approval by the Board of Education of the Joint Use Rental Agreement between the Oakland Unified School District and Ala Costa Center, a Program for students with developmental disabilities, to house an after-school program at Marshall Elementary School located at 3400 Malcolm Avenue, on a month-to-month basis.

**Background and Discussion** In August 2002, the District and Ala Costa Center entered into a lease agreement under which Ala Costa Center acquired title to and placed three portable classroom buildings and one portable restroom building on the Marshall Elementary School site located at 3400 Malcolm Avenue for the operation of an after-school program for students with developmental disabilities.

The Ala Costa Center after-school program has remained housed at the Marshall Campus since August 2002. Under the Joint Use Rental Agreement, the Parties agree to the following terms:

- Month-to-month rental agreement for Ala Costa to continue operation of an after-school program for students with developmental disabilities at the Marshall Campus;
- Ala Costa will pay rent in the amount of \$1.00 per month;
- Ala Costa will pay all utility charges including water, irrigation, gas, electricity, telephone, security and fire alarm monitoring, data and communication lines and service, trash, and sewage fees;
- Termination for convenience by either party with written notice of not less than 120 days; and
- In the event of termination, Ala Costa is responsible for removing portables from the Marshall Campus.

**Recommendation** Approval by the Board of Education of the Month-to-Month Joint Use Rental Agreement between Ala Costa Center and District.

**Fiscal Impact** Revenue of \$1.00 per month for duration of tenancy.

**Attachments** Joint Use Rental Agreement between Ala Costa Center and District

**JOINT USE RENTAL AGREEMENT BETWEEN ALA COSTA CENTER, A PROGRAM FOR THE  
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 RENTAL AGREEMENT (this "**Agreement**") is entered into effective as of 6/29/17, 2017 ("**Effective Date**"), by and between the OAKLAND UNIFIED SCHOOL DISTRICT, a California public school district ("**District**") and Ala Costa Center, A Program for the Developmentally Disabled, a California nonprofit public benefit corporation ("**Tenant**"). District and Tenant are collectively referred to herein as the "**Parties.**"

**RECITALS**

- A. Tenant requires space for the purpose of providing after school services to children with developmental disabilities and other uses related thereto (the "**Program**").
- B. In August 2002, Tenant and District entered into a Lease Agreement ("**2002 Lease Agreement**") pursuant to which Tenant acquired title to and placed three (3) portable classroom buildings and one portable restroom building (collectively, the "**Portables**," and together with the space in which they are located, the "**Premises**") on the Marshall Elementary School site located at 3400 Malcolm Avenue, Oakland, California (the "**School Site**").
- C. In August 2007, the 2002 Lease Agreement expired, and Tenant remained on the Premises in a month-to-month tenancy.
- D. In December 2011, the Parties entered into a Joint Use Lease Agreement (the "**2011 Lease Agreement**") to permit Tenant to use the Premises on the School Site for Tenant's Program for a one-year term ending on January 1, 2013.
- E. The 2011 Lease Agreement provided that unless terminated by either Tenant or District, the 2011 Lease Agreement automatically renewed on its anniversary date for up to a total cumulative term of five (5) years, and as of the Effective Date, the 2011 Lease Agreement and all renewal terms have expired.
- F. The District desires to allow Tenant to continue to use the Premises for Tenant's Program on a short-term basis on the terms and conditions set forth in this Agreement.

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

## AGREEMENT

1. Incorporation of Recitals; Purpose of Agreement. The Parties acknowledge the truth of the foregoing Recitals which are incorporated into this Agreement by this reference. The purpose of this Agreement is to permit Tenant to use the Premises for operation of the Program on a short-term basis in accordance with the terms and conditions set forth in this Agreement.

2. Use of Property. Tenant shall be permitted to use the Premises at the School Site for the Program in accordance with the terms and conditions of this Agreement.

3. Condition of Premises; No Representations. Tenant's use of the Premises and the School Site are 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 or the School Site. Tenant accepts the Premises and the School Site in its "AS IS" condition as of the Effective Date, and acknowledges that neither District nor District's agents or employees have made any representation or warranty as to the suitability of the Premises for the conduct of Tenant's Program. Tenant expressly waives all claims for damages relating in any way to the condition of the Premises or the School Site as of the Effective Date, but does not waive claims for damage during the Term (as defined below) which are solely attributable to District or its employees, officers, directors, or agents' negligent or reckless acts or omissions.

4. Title to Premises and School Site. The Parties acknowledge that title to the School Site is held by District, and that Tenant owns the three (3) Portables that comprise the Premises (the "Portables").

5. Term. The term of this Agreement ("Term") shall commence on the Effective Date and shall continue thereafter on a month-to-month basis until sooner terminated as provided herein or until either Party provides notice of termination by delivery of written notice to the other Party in accordance with Section 6.

6. Termination.

6.1 Termination for Convenience. District may terminate this Agreement and Tenant's right to occupy the Premises and the School Site without cause by delivery of written notice to Tenant not less than one hundred twenty (120) days prior to the termination date stated in District's notice. Tenant may terminate this Agreement by delivery of written notice to District not less than thirty (30) days prior to the termination date stated in Tenant's notice.

6.2 Termination for Cause. In the event of Tenant's violation of any provision of this Agreement, the District may terminate this Agreement and Tenant's right to occupy the Premises and the School Site upon delivery of thirty (30) days' written notice. Notwithstanding

the foregoing, District may terminate this Agreement and Tenant's right to occupy the Premises and the School Site immediately upon the occurrence of any act by Tenant that exposes District to liability for personal injury or property damage, or if 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.

6.3 Surrender of Premises; Removal of Personal Property and Improvements.

6.3.1 Surrender of Premises. By not later than the date specified in the notice of termination delivered pursuant to Section 6.1 or Section 6.2 ("**Termination Date**"), Tenant (i) shall vacate the Premises and the School Site, (ii) except as provided in Section 6.3.2, shall surrender to District any then-existing improvements in good order, condition and repair, reasonable wear and tear excepted, free and clear of all liens, claims and encumbrances, and (iii) shall remove from the Premises at Tenant's expense all of Tenant's Portables, personal property, trade fixtures, and any improvements made by Tenant that Tenant and District have agreed will be removed by Tenant. All property not removed by the Termination Date shall be deemed abandoned by Tenant.

6.3.2 Removal of Portables. Unless otherwise agreed to in writing by District and Tenant, Tenant shall be responsible for removing the Portables from the School Site at Tenant's expense prior to the Termination Date. In the event that the parties agree for the District to accept ownership of the Portables, Tenant shall execute a Bill of Sale and any other necessary documents to effectuate such change in ownership.

6.3.3 Indemnity. If Tenant does not vacate the Premises and the School Site by the Termination Date, Tenant shall indemnify District against all loss or liability resulting from Tenant's delay in vacating the Premises and the School Site, including without limitation, any claims made by any succeeding tenant and any losses incurred by District. This Section shall survive the termination of this Agreement.

7. Rent. Tenant agrees to pay District the sum of One Dollar (\$1.00) per month ("**Rent**") for each month during the Term. Rent for the first month shall be due on the Effective Date. Thereafter, Rent shall be due on the first day of each month during the Term until the Termination Date.

8. Utilities. In addition to the Rent, Tenant shall pay all utility charges for utilities serving the Premises ("**Utility Charges**"). Utility Charges include: water, irrigation, gas, electricity, telephone, security and fire alarm monitoring, data and communication lines and service, trash pick-up, and sewage fees. Tenant shall pay prior to delinquency all Utility Charges for all services that are separately metered and/or billed to Tenant. For Utility Charges that are not separately metered and/or billed to Tenant, Tenant shall pay Tenant's pro rata share of such

charges within thirty (30) days following District's delivery to Tenant of a statement and invoice for such charges.

9. Maintenance and Repairs. Tenant shall maintain the Premises in good condition and repair and in compliance with applicable local, state and federal requirements throughout the Term. 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 the Civil Code. Tenant shall provide District thirty (30) days' prior written notice of any improvements, alterations, or work Tenant intends to perform on the Premises, and District's advance written consent, which District may grant or withhold in District's sole discretion, shall be required prior to the commencement of any such improvements, alterations or work. Tenant acknowledges that District shall have the right to review and approve all proposed modifications to the Premises or the School Site and the contract and the contractor for any such proposed modifications. Tenant agrees to comply with all requirements applicable to any proposed improvements, including without limitation, receipt of approvals from any applicable agency with jurisdiction, including without limitation, the City of Oakland and the Division of the State Architect.

10. Fingerprinting and Criminal Background Verification. Unless District determines that Tenant, its employees, agents, subcontractors, invitees, and 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 written 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.

11. Use of the Premises.

11.1. Tenant shall use the Premises solely for operation of the Program, and shall not use the Premises or the School Site for any other use without the prior written consent of District. Tenant agrees to maintain the Premises and to conduct the Program in accordance with all applicable federal, state and local regulations. Tenant shall obtain and maintain any and all permits or approvals that may be required for Tenant's operation of the Program on the Premises, including without limitation, any use permit or business license required by the City of Oakland.

11.2. Tenant shall not commit or suffer to be committed any waste upon the Premises, or allow any sale 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 any structures, or place any harmful liquids in the plumbing, sewer or storm water drainage system of the Premises or the School Site. No waste materials or refuse shall be dumped upon or be permitted to remain upon any part of the Premises or the School Site except in trash containers designated for that purpose. The serving and/or sale of alcoholic beverages and the conducting of games of chance are prohibited on the Premises and the School Site. Tenant shall comply with District-wide policy prohibiting the use of tobacco products on the Premises and the School Site at all times. Tenant shall not use or permit the use of the Premises or 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. Tenant agrees to immediately respond to concerns expressed by neighbors or District relating to the operation of the Premises.

11.3. 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.

11.4. Tenant represents and warrants 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.

11.5. Tenant shall keep the School Site free and clear of all liens, encumbrances and/or clouds on District's title to any portion of the School Site.

12. 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 and mortgagees.

13. Indemnification. To the fullest extent permitted by California law, Tenant shall defend, indemnify, and hold District, its agents, representatives, officers, consultants, employees, trustees, and volunteers (the "**Indemnified Parties**") harmless from and against 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, all areas appurtenant thereto; and in case any action or proceeding is 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, nor suffer loss by reason of, injury to person or property, from any cause in any way connected with the

condition, use or occupancy of the Premises specifically including, without limitation, any liability for injury to Tenant's property or to Tenant's agents, employees, contractors, invitees, volunteers, customers or clients. These indemnification provisions are further subject to the following requirements: (i) Tenant's indemnification obligations herein shall not include any claim(s) to the extent such claim(s) are attributable to the gross negligence, recklessness or willful misconduct of any of the Indemnified Parties; (ii) the Indemnified Parties must promptly notify Tenant in writing of the claim after having received written notice of said claim; however, an Indemnified Party's failure to give timely notice will not relieve Tenant of its indemnification obligations unless Tenant's defense of the claim is prejudiced by the Indemnified Parties' failure to give timely notice; (iii) the Indemnified Parties shall reasonably cooperate with Tenant's investigation and defense of the claim at Tenant's expense; and (iv) the Indemnified Parties shall not settle the claim or admit to any liability without the prior written consent of Tenant which shall not be unreasonably withheld. After termination of this Agreement, this Section 13 shall survive for a period of: (i) one (1) year in the event the Portables are removed from the Premises prior to termination; or (ii) two (2) years in the event the Portables remain intact and on the Premises after termination.

#### 14. Insurance.

##### 14.1. Tenant's Required Insurance.

14.1.1 Liability and Automobile Insurance. Tenant shall, at Tenant's expense, obtain and keep in force throughout the Term a policy of commercial general liability insurance and a comprehensive auto liability policy, each written on an occurrence basis, and each insuring District and Tenant against claims and liabilities arising out of the operation, condition, use, and 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 with at least a One Million Dollars (\$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 unreasonable withheld.

Prior to the Effective Date, Tenant shall deliver to District certificates of insurance evidencing the existence of the policies required hereunder and copies of endorsements stating that such policies shall: (i) not be canceled or altered without thirty (30) days prior written notice to District; (ii) state the coverage is primary and any coverage by District is in excess thereto; (iii) contain a cross liability endorsement; and (iv) 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 the original certificate of insurance as

described above.

All insurance must be placed with insurers with a current A.M. Best Insurance rating of no less than A-:VII and subject to the approval of District.

14.1.2 Workers' Compensation Insurance. Throughout the Term, Tenant shall comply with all provisions of law applicable to Tenant with respect to obtaining and maintaining workers' compensation insurance. Prior to the Effective Date Tenant shall provide District evidence of this required coverage and an endorsement in a form satisfactory to District that provides that the insurance coverage shall not be canceled or reduced without thirty (30) days' prior written notice to District.

14.2 District's Insurance. Tenant acknowledges that the insurance to be maintained by District will not insure any of Tenant's property or improvements made by Tenant. Throughout the Term, District will 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 Effective Date.

14.3 Primary Coverage; Waiver of Subrogation. In the event of loss or damage to the School Site, the buildings, the Premises or any contents, each of the Parties, and all persons claiming under each of the Parties, shall look first to its own insurance 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 that permit 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.

15. Signs. At Tenant's expense, Tenant shall have the right to place Tenant's signs on the Premises provided that Tenant obtains the advance approval and consent of District which 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, 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 that it has placed on the School Site, and shall repair any damage caused by the installation or removal of such signs.

16. Hazardous Materials. 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 "**Environmental Laws**" means 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.

17. Cooperation with Other Occupants of the Property. Tenant acknowledges that the School Site will be used by other parties, including District, and Tenant shall cooperate with such 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.

18. 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.

19. Miscellaneous.

19.1. Notices. 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, addressed as follows:

Oakland Unified School District  
Office of the General Counsel  
1000 Broadway, Suite 680  
Oakland, CA 94607  
Attn: General Counsel

Ala Costa Center  
1300 Rose Street  
Berkeley, CA 94707  
Attn: Executive Director

Any notice personally given 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.

19.2. 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.

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

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

19.5. Entire Agreement of Parties; Amendments. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior discussions, negotiations and agreements, whether oral or written pertaining thereto. This Agreement may be amended or modified only by a written instrument executed by both Parties.

19.6. 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 without regard to principles of conflicts of laws. The Parties further agree that any action or proceeding brought to enforce this Agreement shall be maintained in courts with jurisdiction in Alameda County, California.

19.7. Compliance with Laws. Tenant shall, at Tenant's expense, comply with all requirements of all governmental authorities affecting the Premises and/or Tenant's Program, and shall faithfully observe in Tenant's use of the Premises all applicable laws, regulations and ordinances including, without limitation, all applicable federal, state and local laws, regulations, and ordinances pertaining to air and water quality, Hazardous Materials, waste disposal, air emission and other environmental matters, including the California Environmental Quality Act ("CEQA") and its implementing regulations, and all District policies, rules and regulations.

19.8. 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.

19.9. 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 any other term, covenant, condition, or a waiver of any subsequent breach of the same or any other term, covenant, or condition herein contained.

19.10. Successor and Assigns. Subject to the limitations on subletting and assignment set forth in this Agreement, this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors, and assigns.

19.11. Counterparts. This Agreement may be executed in counterparts, and all counterparts together shall be construed as one document.

19.12. 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.

19.13. 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.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date first written above.

OAKLAND UNIFIED SCHOOL DISTRICT, a  
California public school district

\_\_\_\_\_  
President, Board of Education

\_\_\_\_\_  
Secretary, Board of Education

ALA COSTA CENTER, A PROGRAM FOR THE  
DEVELOPMENTALLY DISABLED, a California  
nonprofit public benefit corporation

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

Print Name: Michael A. Pereira

Print Title: Executive Director  
m. 6/1/2017

APPROVED AS TO FORM