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**OAKLAND UNIFIED SCHOOL DISTRICT  
Office of the Board of Education  
January 25, 2011**

**To:** Board of Education

**From:** Timothy E. White, Assistant Superintendent of Facilities Planning & Management, Buildings & Grounds and Custodial Services

**Subject:** Approval of the Joint-Use Lease Agreement between the Oakland Unified School District and the Oakland Schools Foundation for the latter to lease space for its administrative offices at Sankofa Academy Elementary School

**ACTION REQUESTED**

Approval by the Board of Education of the Joint-Use Lease Agreement between the District and the Oakland Schools Foundation ("OSF") for the latter to lease space for its administrative offices at Sankofa Academy Elementary School at 581 61<sup>st</sup> Street, Oakland.

**BACKGROUND**

OSF currently uses space for its administrative operations at the Sankofa Academy Elementary School Site. The District desires to allow OSF to continue with the use of space for its administrative operations, but under a formal Joint Use Lease Agreement ("Agreement").

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, ... governmental units, nonprofit organizations, community agencies, ... during normal school hours ..."

The District, pursuant to section 17529 of the Education Code, has determined that leasing the Premises to OSF 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.

OSF agrees that the Agreement may be terminated for convenience by the District, should it be later determined that the space occupied by OSF is needed for educational programs or activities at the site.

**FISCAL IMPACT**

OSF will pay the District \$700.00 per month in Rent.

**RECOMMENDATION**

Approval of the Joint-Use Lease Agreement between the District and OSF

Attachment:

Joint-Use Lease Agreement between the District and Oakland Schools Foundation

**JOINT USE LEASE AGREEMENT BETWEEN OAKLAND SCHOOLS  
FOUNDATION AND OAKLAND UNIFIED SCHOOL DISTRICT  
FOR REAL PROPERTY AND IMPROVEMENTS AT THE SANKOFA  
ACADEMY ELEMENTARY SCHOOL ON THE WASHINGTON  
ELEMENTARY SCHOOL SITE PROPERTY  
LOCATED AT 581 61<sup>ST</sup> STREET, OAKLAND CA 94609**

THIS JOINT USE AGREEMENT ("Agreement") is made this 25<sup>th</sup> day of January 2012, by and between the OAKLAND UNIFIED SCHOOL DISTRICT, a California public school district of California ("District") and the OAKLAND SCHOOLS FOUNDATION, a California Non Profit Organization ("Tenant"), referred to collectively as the "Parties."

**RECITALS**

**WHEREAS**, Tenant requires office space for its Administrative Operations and such other uses related thereto ("Activities"), as further defined herein; and

**WHEREAS**, District is the owner and operator of the school program known as Sankofa Elementary School, which is housed on the school site commonly referred to as Washington Elementary School, located at 581 61<sup>st</sup> Street, Oakland CA 94609 ("School Site"); and

**WHEREAS**, Tenant currently uses space for its administrative operations in the building space at the School Site referred to as Room 10 and Room 12("Premises"); 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 this Agreement may be terminated for convenience by the District should it be later determined that the Premises occupied by Tenant under this Agreement are needed for educational programs or activities at the School Site.

**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. Term.** The term of this Agreement shall be for one (1) year. The commencement date shall be January 25, 2012, ("Commencement Date") and unless sooner terminated under any provision hereof, this Agreement shall end on January 24, 2013 ("Term"). The Agreement may be renewed by mutual agreement of the parties.

## **4. Rent.**

**4.1.** For and in consideration of the use of the Premises for the Term of this Agreement, Tenant agrees to pay District the sum of \$700.00 per month ("Rent"). (Rent is calculated by the District at a standard rate minus the reduced value due to the short term of the lease and the requirement that Tenant move upon notice by the District of termination for convenience as provided below.)

**4.2.** 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.

**4.3.** 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.

**4.4.** Rent shall be made payable to Oakland Unified School District and delivered by mail or hand to:

Oakland Unified School District  
Department of Facilities, Planning and Management  
955 High Street  
Oakland, CA 94601  
Attention: Facilities Director

**5. Utilities.** All Utilities and Custodial services are included in the \$650.00 monthly rate.

## **6. Maintenance and Repairs.**

**6.1.** 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 Agreement.

**6.2.** 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.

**6.3.** 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.

**7. 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.

## **8. Use of the Premises.**

**8.1.** Tenant shall use the Premises solely for the purpose of providing office space for its administrative operations. 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 its activities in a manner that meets all federal, state and local regulations relating to the Premises, and to comply with all federal, state and local laws, regulations and ordinances, now or hereafter enacted concerning the Premises and the use of the Premises.

**9. 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.

## **10. Termination.**

### **10.1. Termination For Convenience**

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

10.1.2. 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.

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

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

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

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

10.2.3. 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.

10.2.4. 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.

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

**10.4.** 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.

**11. 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.

## **12. Insurance.**

- 12.1.** 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.
- 12.2.** 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.
- 12.3.** 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. 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:
- 12.3.1. Not be canceled or altered without thirty (30) days prior written notice to District;
  - 12.3.2. State the coverage is primary and any coverage by District is in excess thereto;
  - 12.3.3. Contain a cross liability endorsement; and,
  - 12.3.4. 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.

- 12.4.** 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.
- 12.5.** 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

**13. 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  
Office of the Deputy Superintendent  
1025 Second Avenue, First Floor  
Oakland, CA 94606  
Attn: Deputy Superintendent

OAKLAND Schools Foundation  
P.O. Box 20238  
Oakland, CA 94620  
Attn: Executive Director

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.

**14. 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.

**15. 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.

**16. 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.

**17. 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.

**18. 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.

**19. Compliance with All Laws.**

**19.1.** Tenant shall at Tenant's 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.

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

**19.3.** 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.

**20.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.

**21.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.

**22.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.



**23.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.

**24.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.

**25.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:

**OAKLAND UNIFIED SCHOOL DISTRICT**

Jody London  
Jody London, President, Board of Education

1/26/12  
Date

Edgar Rakestraw, Jr.  
Edgar Rakestraw, Jr., Secretary, Board of Education

1/24/12  
Date

**OAKLAND SCHOOLS FOUNDATION**

Dan C. Quigley  
By: Dan C. Quigley Its: Executive Director

1/19/12  
Date

**APPROVED AS TO FORM:**

Jacqueline Minor  
Jacqueline Minor, OUSD General Counsel

1/18/12  
Date

**LEGISLATIVE FILE**

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