

<b>Board Office Use: Legislative File Info.</b>	
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Enactment Number	17-1709
Enactment Date	12/13/17 <i>or</i>



# Memo

**To** Board of Education

**From** Dr. Kyla Johnson-Trammell, Superintendent  
Andrea Epps, Office of the General Counsel

**Board Meeting Date** December 13, 2017

**Subject** Joint-Use Lease Agreement Between the District and JCC East Bay for Before and After School Programs at Cleveland Elementary School

**Action Requested** Ratification of Joint-Use Lease Agreement Between the Jewish Community Center of the East Bay Inc. and Oakland Unified School District for Use of Existing Classroom Space for Child Care Purposes at Various District Schools Located Within the Boundaries of Oakland, CA, at Cleveland Elementary School, for the period November 1, 2017 to August 31, 2020. JCC will pay monthly rent in the amount of \$238.70 for non-exclusive use of the school site.

**Background and Discussion** In 2014, the District issued RFP 2014-5-1-JMCEH for on-site before and after school services and programs for Cleveland Elementary School and Joaquin Miller Elementary School. The programs at the Schools are entirely self-supporting. The tuition and program fees for the before and after school programs is paid by families. After a thorough evaluation process, including interviews by Evaluation Committees at both Schools and ranking by Evaluation Committee members, the District issued a notice of intent to award the contract for the provision of before and after school services for Cleveland Elementary School and Joaquin Miller Elementary School to JCC East Bay, dba Kids Club. Both Schools' Evaluation Committees ranked Kids Club as the first choice. After three years of operation, Cleveland Elementary School wishes to continue this partnership with JCC for the provision of before and after school programs for District students.

**Recommendation** Ratification of Joint-Use Lease Agreement Between the Jewish Community Center of the East Bay Inc. and Oakland Unified School District for Use of Existing Classroom Space for Child Care Purposes at Various District Schools Located Within the Boundaries of Oakland, CA, at Cleveland Elementary School, for the period 11/1/17 to 8/31/20.

**Fiscal Impact** JCC will pay monthly rent in the amount of \$238.70 for non-exclusive use of the school site.

**Attachments**

- Joint-Use Lease Agreement Between the Jewish Community Center of the East Bay Inc. and Oakland Unified School District for Use of Existing Classroom Space for Child Care Purposes at Various District Schools Located Within the Boundaries of Oakland, CA

**JOINT-USE LEASE AGREEMENT BETWEEN THE JEWISH COMMUNITY CENTER OF  
THE EAST BAY, INC. AND OAKLAND UNIFIED SCHOOL DISTRICT FOR USE OF  
EXISTING CLASSROOM SPACE FOR CHILD CARE PURPOSES AT VARIOUS DISTRICT  
SCHOOLS LOCATED WITHIN THE BOUNDARIES OF OAKLAND, CA**

THIS JOINT USE AGREEMENT AND LEASE is made this 1st day of November 2017, by and between the OAKLAND UNIFIED SCHOOL DISTRICT, a California public school district of California ("District") and The Jewish Community Center of The East Bay, Inc ("JCC") referred to collectively as the "Parties" ("Lease" or "Agreement").

**RECITALS**

**WHEREAS**, Tenant requires space for before and after school services and programs operated by Tenant at Cleveland Elementary School ("School"), as provided in a Memorandum of Understanding between the District and the JCC; and

**WHEREAS**, District desires to allow Tenant to use the Premises at the School 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 intends to utilize a portion of the School Site(s) as an operating school building during the term of this Agreement; 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; and

**WHEREAS**, The programs at the School is entirely self-supporting. The tuition and program fees for the after school programs are paid by families at no additional cost to the District. Tenant acknowledges that equitable access is an important consideration and that it will work with Site Administrators to allow access to programs in a way that does not exclude students solely based on inability to pay; and

**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(s) by Tenant to perform Tenant's Activities, as more fully described in **Exhibit "A,"** attached hereto and made a part of this Agreement. 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, subject to District's representations and warranties as set forth in the MOU. 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. Except as otherwise set forth in the MOU, 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. Except as otherwise set forth in the MOU, 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.

2.3. The Premises includes an outdoor area which shall be exterior area(s) that are easily accessible and/or adjacent to the Classrooms. Tenant acknowledges that District may from time to time and at its sole discretion, change the area that it provides to Tenant as an outdoor area.

2.4 The Premises that are subject to this Agreement are as follows:

In addition to yard space:  
multipurpose room  
library/media room  
2 classrooms  
office

The foregoing space is shared with another after school program.

**3. Title to School Site(s) / Classroom Buildings.** The Parties acknowledge that title to the School Site(s) is held by District.

### **4. Term.**

4.1. The term of this Agreement shall be November 1, 2017 to August 31, 2020 and may be extended by written agreement of both Parties or terminated as provided in the MOU. Parties further agree that *either* Party may terminate this Agreement upon not less than 60 days notice in writing to the other. It is anticipated, however, that in advance of any such notice the Parties will meet and confer with one another following which reasonable efforts will be made by both Parties to resolve any and all issues which have been identified as a basis for such notice of termination with the mutual goal of preserving this Agreement.

4.2. On the last day of the Term hereof, or on sooner termination of this Agreement, 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 condition shall be similar to that existing as of the Commencement Date of this Agreement excepting normal ordinary wear and tear and any structural improvements made by District subsequent to the Commencement Date. This Agreement shall operate as a conveyance and assignment to District of any improvements identified by District to remain on the School Site(s). 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. Joint Use Fee ("Rent").

5.1 The Joint Use fee ("Rent") will be fixed for the period commencing November 1, 2017 ("Commencement Date") through August 31, 2018, in the amount of \$238.70 per month. Thereafter the Rent shall adjust for each of the remaining yearly periods in accordance with the provisions set forth in Section 5.2 below.

5.2 As of the first anniversary of the Commencement Date, and as of each anniversary thereafter (each a "Rent Adjustment Date"), the Rent shall be subject to an annual increase as a result of an increase of the Consumer Price Index ("CPI"). The basis for computing each CPI increase shall be the CPI for All Urban Consumers, San Francisco-Oakland-San Jose area, All Items (1982-84 = 100), as published by the United States Department of Labor, Bureau of Labor Statistics ("Index"). As of each Rent Adjustment Date, the Rent for the forthcoming Rent Year shall be calculated pursuant to this provision to be equal to the Rent in effect during the immediately preceding twelve month period ("Prior Year") multiplied by a fraction, the numerator of which shall be equal to the Index published for the first calendar month of such Rent Year, and the denominator of which shall be equal to the Base Index; **provided, however, that in no event shall the annually calculated increase in the Rent pursuant to this Section 5.2 for the forthcoming Rent Year be less than 2% of the Rent for the prior Rent Year, and; provided, further that any adjusted Rent for the forthcoming Rent Year under this provision shall not be in excess of 5% of the Rent for the Prior Year.** The "Base Index" shall be the Index for the month during which the Term commences (or, if the Index is not published for such month, then the Index published for the month closest, but prior to the Commencement Date). For the second and each subsequent calculation pursuant to this Section 5.2, the "Base Index" shall be redefined as the Index published for the first calendar month of the Rent Year for which the minimum rent has last been calculated pursuant to this Section 5.2. The Index for the first calendar month of any given Rent Year, if the Index is not published for such month, shall be the Index published for the month closest, but prior to the first calendar month of such Rent Year. If publication of the Index by any governmental or private agency is discontinued or if it is so modified that it does not accurately reflect the changes in consumer prices from one year to another, then the District and Tenant shall use



such other index as is then generally recognized and accepted for similar determination of changes in consumer prices. If the index is revised, it shall be converted in accordance with the conversion factor published by the Bureau of Labor Statistics or any other governmental agency then publishing same.

5.3 As to each month in which Rent is due and payable, Rent shall be due on the first of each month until the expiration or termination of this Agreement.

5.4 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.

5.5 Except as otherwise agreed, Tenant acknowledges that late payment by Tenant 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 Tenant by 4:00 p.m. within ten (10) days after such amount is due, Tenant 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 Tenant. Acceptance of such late charge by District shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent District from exercising any of its other rights and remedies granted hereunder.

5.6 Any amount due to District not paid when due shall bear interest at ten percent (10%) per annum 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 Tenant under this Agreement.

## **6 Maintenance and Repairs.**

6.1 District shall maintain the Premises in a good condition consistent with the condition of the Premises existing at the time of delivery, as warranted, including all custodial duties and pest abatement. Tenant acknowledges and accepts that the Premises are leased in "AS IS" condition, subject to the representations set forth in the MOU. District shall keep and maintain the structural elements of the buildings, as hereinafter defined, on the Premises the condition existing at the time Tenant takes possession of the Premises excepting normal wear, tear and damage by casualty.

6.2 Except as set forth in the MOU, 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 Tenant, 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 Tenant takes possession of the Premises; 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 Tenant's rent during the "repair" period, if the resulting structural damage prohibits Tenant 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 Tenant may elect to remain in possession of the Premises and pay the stipulated rent unless changed through mutual agreement of the parties or Tenant may elect to terminate this Agreement.

6.3 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" excluding, however, those repairs and maintenance items which can be completed without wall or floor removal in which case these repairs shall be the responsibility of Tenant.

6.4 District shall have no maintenance or repair obligations with respect to the Premises except as expressly provided in this Section, and as set forth in the MOU. 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.

6.5 If Tenant wishes to have any improvements, alterations, work, or other services performed on the Premises that are not part of the maintenance or repair services indicated herein, Tenant shall request that work via the attached Work Order form attached hereto and made a part of this Agreement.

6.5.1 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 Tenant-requested improvements.

6.5.2 The District shall prepare and provide to Tenant an estimate for that work. If Tenant accepts that estimate, the District shall perform that work as indicated in the estimate and Tenant shall pay for that work as indicated in the estimate, which shall be due and owing with the next month's Rent, unless otherwise agreed to in writing by the Parties.

## **7 Title to and Removal of Tenant's Improvements / Facilities.**

7.1 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.

7.2 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(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.

7.3 Any modifications to Site(s) 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. Except as otherwise provided in the MOU, 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.

7.4 Under all circumstances, Tenant must seek and receive approval from the Division of the State Architect for all of Tenant's Improvements.

7.5 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(s) unless District accepts or Tenant abandons any of this personal property at the end of the Term.

7.6 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(s) and/or the Premises, caused by removal of Tenant's Improvements and restore the School Site(s) 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.

**8 Inspection of Premises.** District agrees to provide Tenant with a set of keys for the 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.

## **9 Termination.**

### **9.1 Termination For Convenience**

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

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

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

9.2.1 Material violation of this Agreement by Tenant or District; or

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

9.2.3 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.

9.2.4 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.

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

9.4 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.

**10 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(s) clear of all liens, encumbrances and/or clouds on District's title to any portion of the School Site(s).

**Notwithstanding the foregoing, compliance with the indemnity provisions set forth in the MOU shall be deemed full compliance with this provision for all purposes, and no additional requirements are applicable.**

## **11 Insurance.**

11.1 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.

11.2 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.

11.3 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 Five Million dollars (\$5,000,000) for bodily injury, sexual misconduct and harassment, or death and property damage as a result of any one occurrence and a Two Million dollar (\$2,000,000) 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:

- 11.3.1 Not be canceled or altered without thirty (30) days prior written notice to District;
- 11.3.2 State the coverage is primary and any coverage by District is in excess thereto;
- 11.3.3 Contain a cross liability endorsement; and,
- 11.3.4 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.

11.4 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(s) as of the Commencement Date. In the event of loss or damage to the School Site(s), 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.

11.5 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

**Notwithstanding the foregoing, compliance with the insurance provisions set forth in the MOU shall be deemed full compliance with this provision for all purposes, and no additional requirements are applicable.**

**12 Signs.** Tenant shall at Tenant's cost have the right 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(s) in which the Premises are located, and shall repair any damage caused by the installation or removal of those signs.

**13 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.

**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:

For Tenant:

Chief Operating Officer, Samantha Kelman, Jewish Community Center of the East Bay (JCC East Bay), 1414 Walnut Street, Berkeley, CA 94709, 510-848-0237

[samanthak@jcc east bay.org](mailto:samanthak@jcc east bay.org) | [www.jcc east bay.org](http://www.jcc east bay.org)

Chief Financial Officer, Ron Feldman, Jewish Community Center of the East Bay (JCC East Bay), 1414 Walnut Street, Berkeley, CA 94709, 510-848-0237 x 146

[ronf@jcc east bay.org](mailto:ronf@jcc east bay.org) | [www.jcc east bay.org](http://www.jcc east bay.org)

For District:

Cleveland Elementary School, Attn: Mr. Peter Van Tassel, Principal  
Cleveland Elementary School  
745 Cleveland St, Oakland, CA 94606  
(510) 874-3600  
[peter.vantassel@ousd.org](mailto:peter.vantassel@ousd.org)

Marion McWilliams, General Counsel  
[Marion.mcwilliams@ousd.org](mailto:Marion.mcwilliams@ousd.org)

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. Tenant shall not sublease any portion of the Premises without the prior written consent of the District.

**16 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.

**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 Certification Regarding Debarment, Suspension, Ineligibility and Voluntary**

**Exclusion:** OUSD certifies to the best of its knowledge and belief, that it and its principals: Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or CONTRACTOR according to Federal Acquisition Regulation Subpart 9.4, and by signing this contract, CONTRACTOR verifies that this vendor does not appear on the Excluded Parties List. <https://www.sam.gov/portal/public/SAM>.

**20 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.

**21 Compliance with All Laws.**

21.1 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.

**22 Cooperation with Other Occupants of the Property.** It is understood and recognized by Tenant that the School, 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.

**23 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.

**24 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.

**25 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.

**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.

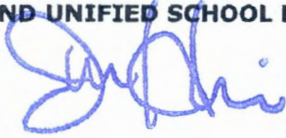
**27 Incorporation of Recitals and Exhibits.** The Recitals and each Exhibit attached hereto are hereby incorporated herein by reference.

**28 Contract Contingent on Governing Board Approval:** OUSD shall not be bound by the terms of this Agreement until it has been formally approved by OUSD's Governing Board, and no payment shall be owed or made to CONTRACTOR absent that formal approval. This Agreement shall be deemed approved when it has been signed by the Board of Education, and/or the Superintendent as its designee.

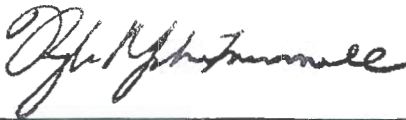


ACCEPTED AND AGREED on the date indicated below:

**OAKLAND UNIFIED SCHOOL DISTRICT**

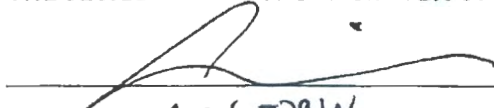


James Harris, President, Board of Education

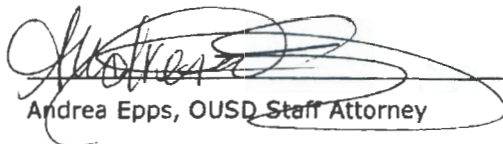


Kyla Johnson-Trammell, Superintendent and Secretary, Board of Education

**THE JEWISH COMMUNITY CENTER OF THE EAST BAY, INC**

By:  Date: 11/20/17  
Its: AMY TOBIN  
CHIEF EXECUTIVE OFFICER

**APPROVED AS TO FORM:**

 Date: 11/21/17  
Andrea Epps, OUSD Staff Attorney

**EXHIBIT "A"**

**Description of Premises and Site(s) / Map**

The "Premises" that are being leased to Tenant are the following rooms and areas as described below and as indicated on the attached Site(s) map:

**CLEVELAND:**

- \_\_\_\_\_ **building(s) totaling \_\_\_\_\_sq/ft**
- \_\_\_\_\_ **restrooms totaling \_\_\_\_\_sq/ft**
- \_\_\_\_\_ **kindergarten rooms w/restrooms totaling \_\_\_\_\_sq/ft**
- \_\_\_\_\_ **portable classrooms totaling \_\_\_\_\_sq/ft**

**For a total area of \_\_\_\_\_square feet.**

- \_\_\_\_\_ parking spaces on the school site for use between 6:00 a.m. to 7:00 p.m., Monday through Friday.

multipurpose room  
library/media room  
2 classrooms  
office

The foregoing space is shared with another after school program.

## EXHIBIT "B"

### **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.
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

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

**EXHIBIT "C"**

**District's Form of Work Order**