Board Office Use: **Legislative File Info.**	
File ID Number	22-2733
Introduction Date	11/30/2022
Enactment Number	22-2050
Enactment Date	11/30/2022 os

OAKLAND UNIFIED SCHOOL DISTRICT
Community Schools, Thriving Students

Board Cover Memorandum

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Jody Talkington, Sr. Director of Strategic Projects

Meeting Date November 30, 2022

Subject Joint Occupancy and Lease Agreement between the District and the City for a Library at the former Piedmont Child Development Center

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Ask of the Board Approval by the Board of Education of a Joint Occupancy and Lease Agreement between the District and the City for the latter to lease the former Piedmont Child Development Center for 50 years in order for the City to construct and operate a library on the site and pay rent of $4,000 per month, with a 10% escalator every five years

Background In June 2019, the Board of Education ("Board") directed the Superintendent to convene a 7-11 Committee to review five properties that have been vacant for 5-10 years. The Former Piedmont Child Development Center ("Site") was a part of the 7-11 Committee process. The 7-11 Committee recommended that the Site not be surplused, but rather be considered for development and used as a public library.

On April 14, 2021, the Board adopted Resolution No. 2021-0201 - Resolution of intent to consider Joint Occupancy Development Proposals for the Piedmont Avenue Elementary School former Child Development Center, by which the Board "declare[d] its intention to receive and consider proposals from qualified development entities for the conversion, rehabilitation, renovation, and/or reconstruction of the District's former Piedmont Child Development Center building located at 86 Echo Ave. Oakland, CA, 94611 . . . into a public library, and joint occupancy of the Property with the District."

Pursuant to Resolution No. 2021-0201, the District issued a Request for Proposals for the joint development of the Site and, subsequently, received the Qualifications and Proposal for Public Library Joint Occupancy Development from the Oakland Public Library on behalf of the City of Oakland. The District and the City then entered into negotiations over the final form of the Joint Occupancy and Lease Agreement.

Discussion

Under the proposed Joint Occupancy and Lease Agreement ("Agreement"), the City would lease the Site from the District for 50 years with two extension options each of which would extend the end of the Agreement by five years (for a total of sixty years if both extensions are exercised). Additionally, the rent (which would commence upon the earlier of (i) the date that the City receives the Occupancy Certificate for the project or (ii) March 4, 2026) would begin a $4,000 per month with a 10% escalator every five years.

One key feature of the Agreement is that either party may terminate it up through November 30, 2024 by providing written notice to the other. This termination option is automatically triggered if the City is unable to secure capital funds (e.g., by placing and having the voters approve tax measure on the November 2024 ballot) by that date. By November 30, 2024, the parties will also need to negotiate, in good faith, and agree to a joint use cooperative agreement for use of the library by the District for educational purposes. It is expected, but not required, that this joint use cooperative agreement will be similar to a similar document that governs the District's use of the 81st Avenue Branch Library (located at 1021 81st Ave and adjacent to EnCompass Academy and ACORN Woodland Elementary School) that the City funded, built, and operates but that sits on District-owned land.

Upon approval by the Board, the Agreement will need to be considered by the City Council, which is expected to do so next month.

Fiscal Impact

Approximately $2.8M in revenue over 50 years (estimated by starting with $4,000/month rent from in March 2026 through February 2073 with 10% escalator every give year).

Attachment(s)

- Joint Occupancy and Lease Agreement between the District and the City for a Library at the former Piedmont Child Development Center

JOINT OCCUPANCY AND LEASE AGREEMENT
(86 Echo Avenue)

This Joint Occupancy and Lease Agreement (86 Echo Avenue) (hereinafter referred to as the "**Agreement**" or "**Lease**") dated for reference purposes as of _____, 2022, by and between the **Oakland Unified School District**, a public school district in the County of Alameda, State of California (hereinafter called "**Landlord**" or "**District**" or "**OUSD**"), and the **City of Oakland**, a municipal corporation (hereinafter called "**Tenant**" or "**City**"). Landlord and Tenant are sometimes hereinafter referred to collectively as the "**Parties**" or each individually as a "**Party**."

RECITALS

WHEREAS, the Oakland Unified School District owns the property located at 86 Echo Avenue, Oakland, CA 94611, which property includes the District's current Piedmont Avenue Elementary School and former Piedmont Child Development Center, all as described and depicted in **Exhibit A** hereto (the "**Property**");

WHEREAS, the District and the City entered into that certain Joint-Use Lease Agreement Between The Oakland Unified School District And The City of Oakland For The City's Use Of Existing Modular Building For A Public Library At Piedmont Elementary School, Oakland, CA, dated September 7, 2017 (the "**Existing Agreement**");

WHEREAS, on April 10, 2019, the District's Governing Board ("Board"), with input and guidance from the public, took action to appoint a District advisory committee consisting of between 7 and 11 members ("**7-11 Committee**") to investigate and advise the Board regarding the potential sale, lease, or rental of certain vacant and underutilized District school sites, including the approximately 6,370 square foot former Piedmont Child Development Center with commercial kitchen and an approximately 15,830 square foot area located on the Property (the "**Premises**");

WHEREAS, the 7-11 Committee completed its analysis and submitted its final "Report to the Board of Education" (the "**Report**") to the Board in January 2020, which Report recommended that the Premises not be declared surplus, but instead be jointly used by the District and another entity as a library and educational space for District students;

WHEREAS, Education Code section 17515, *et seq.*, allows the governing board of a school district to lease to any private person, firm, local governmental agency, or corporation any real property that belongs to the district if the instrument by which the property is lease requires the lessee therein to construct on the demised premises, or provide for the construction thereon of, a building or buildings for the joint use of the district and the private person, firm, or local governmental agency, without having to comply with the surplus property or any other Education Code requirements;

WHEREAS, on April 14, 2021, the District's Board declared its intention to receive and consider proposals from qualified entities for the conversion, rehabilitation, renovation, and/or

re-construction of the Premises into a public library, and joint occupancy of the Premises with the District;

WHEREAS, on May 17, 2021, the District issued a Request for Proposals for Public Library Joint Occupancy Development ("**RFP**") for the Premises and the City submitted a proposal in response to the RFP for the development and operation of a public library, subject to securing the necessary funding by November 30, 2024;

WHEREAS, after considering and receiving proposals not earlier than its Board meeting on August 18, 2021, the District's Board has selected the joint occupancy development proposal submitted by the City;

WHEREAS, on _____, the City Council adopted Ordinance No. _____ C.M.S. authorizing the City to enter into this Agreement; and

WHEREAS, the Parties now desire to (1) enter into this Agreement in order to memorialize their respective obligations with regard to the joint occupancy development project (2) enter into a new joint use cooperative agreement, and (3) extend the Existing Agreement until completion of construction of the new public library and on the terms and conditions set forth herein.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Landlord and Tenant hereby enter into this Agreement upon the following terms and conditions.

AGREEMENT

1. **Lease of Premises**. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises, together with all existing buildings and other improvements and fixtures thereon and thereto (collectively, the "**Existing Improvements**"), depicted on **Exhibit A** attached hereto, upon the terms, agreements, covenants and conditions set forth in this Agreement; provided, however, that Landlord reserves all rights, title, and interest in any and all subsurface natural gas, oil, minerals, and water on or within the Property. Promptly after the Concept Design Approval Date (as defined below), the Parties agree to obtain a survey of the portion of the Property comprising the Premises, which survey will precisely delineate the boundaries of the Premises. Tenant shall pay all the costs of and related to the survey. Once completed, **Exhibit A** hereto shall be replaced with the legal description and depiction of the Premises provided by the survey.

2. **Lease Commencement Date; Term; Timeline**.

A. Term. The term of this Agreement shall be for a period of fifty (50) years ("**Term**") commencing on December 31, 2022 ("**Lease Commencement Date**") and shall terminate on the date that is fifty (50) years after the Lease Commencement Date, unless sooner terminated or modified as herein provided ("**Expiration Date**"). The Tenant may extend this Lease up to two (2)

five (5) year extensions (for a maximum term of sixty (60) years) at fair market value, each of which will be documented as a written amendment hereto executed by the Parties. The Parties shall meet and confer in good faith to mutually agree on the amount of the fair market rental value for each extension.

B. Timeline Milestones. The Project (as defined in Section 8(A) below) will be contingent on the following timeline:

i. Lease Commencement Date: **December 31, 2022** pursuant to Section 2(A) above.

ii. Conceptual Design Submission: No later than **November 1, 2024** pursuant to Section 3(B) below.

iii. Conceptual Design Approval: No later than **November 30, 2024** ("**Conceptual Design Approval Date**"). Any earlier deadline would not allow Tenant sufficient time to complete site plan development for Landlord's review.

iv. Joint Use Cooperative Agreement: The Parties shall negotiate and execute the Echo Avenue Joint Use Cooperative Agreement pursuant to Section 5 below no later than **November 30, 2024**.

v. One-Time Bilateral Termination Option: Either Party may terminate no later than **November 30, 2024** ("**Bilateral Termination Option**") by providing written notice to the other Party.

vi. Conditions Precedent: Tenant anticipates needing until this date to secure capital funds, including a potential Community Facilities District (i.e., Mello-Roos) measure on the November 2024 ballot, and to obtain approval from its City Council for the use of such funds for construction of the Project (as defined below) (collectively, "**Conditions Precedent**"). The Agreement shall automatically terminate if the Conditions Precedent are not satisfied by **November 30, 2024**, unless mutually extended in writing by the Parties.

vii. Survey: The Parties shall obtain a survey promptly after the Conceptual Design Approval Date (November 30, 2024) pursuant to Section 1 above.

viii. Rent Commencement Date: Per Section 4(A) below, the earlier of (A) the date Tenant receives a temporary certificate of occupancy, or certificate of occupancy (or its equivalent) for the Project from the City in its regulatory capacity (each an "**Occupancy Certificate**") , or (B) March 4, 2026.

3. Design and Construction.

A. Design and Construction of Project. Promptly following the Lease Commencement Date, Tenant, at Tenant's sole cost, shall commence all steps needed to design and construct the

Project, subject to the occurrence of any Force Majeure Events (as defined below).

B. Conceptual Design. In order to meet the Conceptual Design Approval Date, Tenant's design and construction obligations shall include the preparation and submission of Tenant's Conceptual Design for the overall Project ("**Conceptual Design**") to the Landlord by the date that is no later than **November 1, 2024** ("**Conceptual Design Submission Date**"), for Landlord's approval. (The OUSD Superintendent or her designee is empowered to review and approve the Conceptual Design on behalf of Landlord; no Board approval or ratification is needed.) Landlord shall review the Conceptual Design, and either approve or request revisions of the Conceptual Design, in accordance with the requirements of Section 3(E) below. The date upon which the Project's Conceptual Design is approved by Landlord shall be referred to herein as the "**Conceptual Design Approval Date**." If Tenant fails to meet the Conceptual Design Submission Date or fails timely to incorporate and submit any revisions requested by the District into the Conceptual Design within sixty (60) days after receipt of the District's requested revisions, and if Tenant fails to cure its default in accordance with Section 20(A)(ii) below, District may terminate this Agreement without penalty. Landlord's design review of the Project's Conceptual Design shall be limited to the Project's ability to meet the joint occupancy criteria provided herein. Once approved by the District, the Conceptual Design for the Project shall be appended to this Agreement as **Exhibit B**.

C. Construction of Improvements. Throughout the Term, and subject to the requirements of this Section 3, Tenant may also construct additional alterations, additions, or improvements on the Property (collectively with the Project-related improvements set forth above, "**Improvements**"). Any and all prime contractors retained by Tenant to demolish Existing Improvements on the Property, construct future Improvements, and/or supervise, coordinate, or oversee such demolition and construction of Existing Improvements or Improvements on the Property, shall be referred to in this Section 3(C) as "**Contractor**." Any subcontractors hired or retained by Contractor to carry out the foregoing work shall be referred to in this Section 3(C) as "**Subcontractors**."

D. Force Majeure. Force Majeure. As used in this Section 3, "**Force Majeure Events**" shall mean and include any of the following events: acts of nature, earthquakes, floods and unusual weather conditions not reasonably expected for the Property and the time of year in question (based upon the 5-year average of the occurrence of such weather conditions, as substantiated by statistical data compiled and published by the National Oceanic and Atmospheric Administration), but only to the extent such weather delays adversely affect the critical path of performance; riots, civil insurrection or war; strikes, lockouts or picketing (legal or illegal); governmental action or governmental delays by public agencies other than Tenant or Landlord (not including the customary processing, review and/or approval times normally associated with obtaining entitlements), and moratoria; fire or other unavoidable casualties or events of destruction; unavailability of, or substantial and material reduction in capacity for, fuel, power, supplies, materials or labor (and unavailability of any reasonable, practicable alternatives); and unusual delays in deliveries; provided, however, that in every such event: (i) Tenant shall promptly commence and thereafter continuously make diligent, good faith, reasonable efforts to overcome

the Force Majeure Event at the earliest possible time; (ii) Tenant shall notify Landlord in writing of the occurrence of each Force Majeure Event within ten (10) business days after Tenant first has knowledge of the occurrence of such Force Majeure Event; (iii) delays caused by a violation of applicable laws, codes, statutes, ordinances or regulations by the Tenant, or delays caused by the negligence of the Tenant, shall not be Force Majeure Events; and (iv) in no event shall Tenant's financial inability to perform its obligations, or the Tenant's bankruptcy or insolvency, constitute or be deemed to be a Force Majeure Event.

E. Landlord Approval. For any and all capital improvements such as the Project, installed by Tenant on the Premises, Tenant must, prior to commencing construction, obtain written approval from Landlord, which must be expressly made by Landlord in writing. (The OUSD Superintendent or her designee is empowered to review and approve any and all Improvements on behalf of Landlord; no Board approval or ratification is needed.) Landlord and Tenant recognize that such approvals may be completed in phases, such that Tenant initially requests conceptual approval and, if approved by Landlord, then proceeds to draw the plans and specifications, which plans and specifications must also be approved by Landlord. Landlord shall respond to Tenant with said approval or disapproval within thirty (30) days after Landlord receives a written request with architectural plans and drawings from Tenant. If revisions are requested from Landlord, such changes shall be incorporated into the plans and specifications and resubmitted to the Landlord for approval within sixty (60) days from the date that such revisions were requested from Landlord. Landlord shall not unreasonably, withhold, condition, or delay its approvals.

F. Financial Assurances. Not less than fifteen (15) days prior to the construction, major repair, renovation or demolition of any Existing Improvements or future Improvements, Tenant shall provide Landlord with information regarding the Contractor's financial condition and evidence to Landlord's reasonable satisfaction that adequate funds to complete the Improvements are committed and available or that completion has been otherwise adequately assured. Tenant agrees to make reasonable efforts to not cease or substantially reduce operations on the Premises for the Term and, except in the case of emergency due to damage or destruction from fire, earthquake or other causes, or due to the failure to renew or substantially replace one or more of the current parcel taxes supporting Oakland's public libraries, shall give Landlord at least a one (1) year notice before ceasing or substantially reducing such operations. The term "substantially reduce operations" shall mean a dramatic reduction of hours of opening to the public; it shall not include reducing opening hours by only one or two days a week, or reducing evening hours. No construction shall commence until Landlord has given Tenant written acceptance of such assurances, which acceptance shall not unreasonably be withheld. (On behalf of Landlord, the OUSD Superintendent or her designee is empowered to review Contractor's financial information and provide written acceptance of such assurances, if proper; no Board approval or ratification is needed.)

G. Written Notice. Tenant shall give Landlord twenty (20) days prior written notice before commencing any work on the Property the cost of which will exceed twenty-five thousand dollars ($25,000) adjusted annually by CPI (as defined below), so that Landlord may promptly post such notices of non-responsibility with respect thereto as Landlord may deem appropriate. Tenant

shall not commence such work on the Property until Landlord has posted notice of non-responsibility or has provided Tenant with written response waiving posting of notice of non-responsibility. (The OUSD Superintendent or her designee is empowered to provide such a written waiver on behalf of Landlord; no Board approval or ratification is needed.) "**CPI**" means the then-current Consumer Price Index for All Urban Consumers, All Items for the San Francisco-Oakland-San Jose Metropolitan Statistical Area or its successor index, published by the United States Department of Labor, Bureau of Labor Statistics.

H. Evidence of Approvals. Not less than fifteen (15) days prior to commencing the construction, major repair, renovation or demolition of any Existing Improvements or future Improvements on the Property, Tenant shall provide Landlord with sufficient evidence that it has obtained all required approvals and permits for the work and that Tenant, Tenant's Contractor(s), and Tenant's Subcontractors have in effect, with premiums paid, casualty and liability insurance (including builder's risk) coverage and workers' compensation in a form and in an amount satisfactory to Landlord. In addition to the insurance coverage referred to in Section 15 below, Tenant shall maintain, at its sole cost and expense, Workers' Compensation Insurance covering all persons employed in connection with the construction or demolition of Existing Improvements or future Improvements, and with respect to whom death or injury claims could be asserted against Landlord, Tenant, or the Premises. Such insurance shall name Landlord as an additional insured, with limits of not less than Five Million Dollars ($5,000,000). All such insurance shall be obtained and kept in force as otherwise provided in Section 15 below.

I. Diligent Completion. Upon commencement of construction of any Improvements, Tenant shall cause the work to be diligently pursued to completion in accordance with the schedule for completion approved by Landlord, subject to unavoidable delays caused by a Force Majeure Event.

J. Compliance with Laws. All work on Existing Improvements and future Improvements shall be performed, at Tenant's sole cost and expense, in a sound and workmanlike manner, in compliance with the applicable laws and building codes, and in conformance with the plans and specifications approved by Landlord, the City, the Division of the State Architect ("**DSA**"), and any other agency having jurisdiction, or any modifications thereto which have been approved in writing by Landlord. Tenant, in its proprietary capacity, shall perform, or cause to be performed, the construction of all Improvements in compliance with the California Environmental Quality Act, the California Labor Code, the Field Act, and all project labor agreements that Landlord may require for the Project. Should the Project require any zoning approvals from the City of Oakland, Tenant, in its proprietary capacity, shall request that the zoning approval process includes extensive community outreach and engagement. Tenant acknowledges that by entering into this Agreement, Landlord is not obligating itself, as a regulatory agency, with regard to any other discretionary action relating to development or operation of the Premises. Discretionary action includes but is not limited to environmental clearances, or any other governmental agency approvals which may be required for the development and operation of the Premises.

K. Bonds. Prior to commencement of any Improvements, Tenant shall apply for and

obtain separate payment and performance bonds for such Improvements, which shall cover 100% faithful performance (during construction and one (1) year after completion, and during any warranty or guarantee period) of and payment of all obligations arising under any and all agreement(s) for construction of the Improvements and/or guaranteeing the payment in full of all claims for labor performed and materials supplied for construction of the Improvements. All bonds shall be provided by a corporate surety authorized and admitted to transact business in California, and shall name Landlord as a co-obligee. Prior to commencing construction of any Improvement(s), Tenant shall provide District with evidence of obtaining sufficient bonding under this Section 3(K).

L. Landlord Right to Inspect. Landlord or Landlord's agent shall have a continuing right at all times during the period that Improvements are being constructed on the Property to enter the Property and to inspect the work provided that such entries and inspections do not unreasonably interfere with the progress of the construction. Prior to entering the Property, Landlord shall make a good faith effort to notify Tenant in writing at least twenty-four (24) hours in advance. Tenant shall require its Contractors, and shall require its Contractors to require those Subcontractors hired by Tenant's Contractors, who construct or oversee the construction of Improvements on the Property to cooperate reasonably with Landlord or its agent in such inspections. In connection with any entry by Landlord or Landlord's agent pursuant to this Section 3(L), Landlord covenants and agrees to defend (by counsel reasonably acceptable to Tenant), indemnify and hold harmless Tenant and its officers, directors, and employees, from and against any and all claims or losses which arise as a result of damage to property or injury to persons caused by the negligence or willful misconduct of Landlord or its agent.

M. As-Built Plans. Within ninety (90) days after completion of construction of any work of Improvement on the Property, Tenant shall deliver to Landlord two (2) full and complete sets of as-built plans for the work so completed.

N. Landlord Cooperation.

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i. If and as required by any municipal, county, state, or Federal authority and provided that Tenant is not in default of any provisions of this Agreement, Landlord will, solely in its capacity as owner of the Property, sign applications for permits, licenses or other authorizations related to the Premises and the construction, reconstruction, repair or alteration of the Improvements, provided that Landlord's consent shall not be deemed construed to be (A) an assumption of any liability in connection with such Improvements, their construction or use or (B) consent to the encumbrance of the Property in connection with such Improvements or permitting activity. Tenant shall indemnify and hold Landlord harmless from and against any damages, demands, claims, losses, liabilities, injuries, penalties, monetary sanctions, fines, liens, judgments, suits, actions, investigations, proceedings, interest, or expenses whatsoever arising out of or related to Tenant's application for, issuance of, or operation under such permits, licenses, or authorizations, and shall otherwise reimburse Landlord for all of Landlord's reasonable expenses incurred in relation to Tenant's approvals.

ii. Landlord will from time to time during the Term execute, acknowledge and deliver any and all instruments required to grant rights-of-way and easements in favor of municipal and other governmental authorities or public utility companies incident to the installation of water lines, fire hydrants, sewers, electricity, telephone, gas, and other public utilities reasonably required for the use and occupancy of the Premises and any alterations, additions and improvements permitted to be made by Tenant under this Lease. Tenant shall reimburse Landlord for any reasonable sum paid by Landlord in respect of the matters specified in this Section 3(N)(ii), including reasonable attorneys' fees.

O. Local Hiring. Tenant shall prioritize the hiring of Oakland residents in contracting for the design and construction of any and all Improvements on the Premises, including the Project. Tenant shall make its reasonable efforts to comply with the local hiring requirements described in the District's Administrative Regulation and Board Policy 7115 ("**Capital Program/Construction Related Local, Small Local and Small Local Resident Business Enterprise Program, and Board Policy**") that are in effect at the time of hire. Tenant shall also comply with all City of Oakland requirements related to local hiring and small/local business participation, to the extent these requirements do not conflict with requirements imposed by the District.

4. Rent. Tenant shall pay to Landlord as rent for the use and occupancy of the Premises, at the times and in the manner provided herein, the following sums of money:

A. Rent Commencement. Tenant's obligation to pay Rent shall commence upon the earlier of (i) the date that Tenant receives the Occupancy Certificate for the Project, or (ii) March 4, 2026 ("**Rent Commencement Date**"), provided (A) that Tenant can continue to lease the existing modular building on the Property pursuant to an extension of the Existing Agreement until construction of the Project is completed, and (B) that any rent paid under this Lease prior to the issuance of the Occupancy Certificate shall constitute Tenant's consideration under both this Lease and the Existing Agreement (i.e., Tenant will not pay double rent).

B. Rent. Tenant shall pay to Landlord Four Thousand Dollars ($4,000) per month ("**Rent**"), with the Rent increasing ten percent (10%) every five (5) years during the Term regardless of the Rent Commencement Date (e.g., Rent would be $4,000 per month for any month 1 through 60 after the Rent Commencement Date in which Rent is due; Rent would be $4,400 for months 61 through 120; Rent would be $4840 for months 121 through 180).

C. Payment. Tenant shall make all Rent payments to Landlord in advance, on a monthly basis, on or before the first day of each and every successive calendar month. If the Agreement terminates on other than the last day of a calendar month, rental payments shall be prorated on the basis of a thirty (30) day month.

D. Late Payment. Tenant acknowledges that late payment by Tenant to Landlord of the Rent and other sums due hereunder will cause Landlord 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 any installment

of Rent or any other sum due from Tenant shall not be received by Landlord by 4:00 p.m. within ten (10) days after such amount shall be due, Tenant shall pay to Landlord, 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 Landlord will incur by reason of late payment by Tenant. Acceptance of such late charge by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of its other rights and remedies granted hereunder.

E. Location for Payment. All Rent (and all other moneys and charges payable by Tenant to Landlord hereunder) shall be paid by Tenant to Landlord in lawful money of the United States of America at Landlord's address for notices hereunder, or to such other person or at such other place as Landlord may from time to time designate by notice in writing to Tenant.

5. Joint Use Cooperative Agreement. The Parties agree to negotiate, in good faith, a joint use cooperative agreement (the "**Echo Avenue Joint Use Cooperative Agreement**") for use of the Premises, particularly the library to be developed on the Premises, by the District for educational purposes. It is expected, but not required, that the Echo Avenue Joint Use Cooperative Agreement for use of the Premises will be similar to the document titled "Joint Use Cooperative Agreement Between The Oakland Unified School District And The City Of Oakland Regarding The 81st Avenue Branch Library Of The Oakland Public Library," dated January 15, 2004 (the "**81st Avenue Joint Use Cooperative Agreement**"), which is a separate agreement between the District and the City regarding the use by the District of another library built by the City on District property. In particular, the Parties expect that the Echo Avenue Joint Use Cooperative Agreement for use of the Premises will include similar expectations as to the use of the Premises by the District and the creation of a Library Coordination Committee. Failure to agree to and execute the Echo Avenue Joint Use Cooperative Agreement for use of the Premises by **November 30, 2024**, shall be a basis for either Party to exercise its termination rights under the Bilateral Termination Option.

6. Taxes and Assessment.

A. Tenant shall pay and discharge, during the entire Term, before delinquency, all taxes, assessments, water charges, including clean water fees, sewer charges, utility rates and fees, levies or other charges, general, special, ordinary, extraordinary and otherwise, of every kind and character which are or may during the Term be levied, charged, assessed or imposed upon or against the Premises or any Improvements which are now or hereafter located thereon, or against any of Tenant's personal property now or hereafter located thereon, or which may be levied, charged, assessed or imposed upon or against the leasehold estate created hereby, including a possessory interest tax (R&T Code Section 107.6).

B. [Intentionally Omitted]

C. Any taxes, assessments, and other charges to be paid by Tenant shall be prorated on the basis of the fiscal year of the taxing authority in question so that, at the Rent

Commencement Date and at the end of the Term, Tenant will pay only such proportion of such taxes, assessments, and other charges as the portion of such fiscal year following the Rent Commencement Date and preceding the end of the Term bears to the entire fiscal year.

D. Tenant shall pay any documentary transfer tax assessed upon the creation of a leasehold interest in the Premises created by this Lease. Notwithstanding anything to the contrary in the foregoing, the Parties acknowledge that the City is exempt from transfer taxes pursuant to California Revenue & Taxation Code Section 11922 and Oakland Municipal Code Section 4.20.020.

E. Nothing in this Lease shall preclude Tenant from claiming any exemption or credit available to it by virtue of its status as a local government or tax-exempt organization, if applicable.

F. Tenant shall have the right, at Tenant's sole expense, to contest the amount or validity, or otherwise seek an exemption or abatement, of any tax or assessment, by appropriate proceedings diligently conducted in good faith, provided that Tenant shall first have notified Landlord of its intent to do so. In any instance where any such action or proceeding is being undertaken by Tenant, Landlord shall cooperate with Tenant to execute any and all documents required in connection therewith and, if required by any law, rule or regulation of the taxing authority, shall join with Tenant in the prosecution of such protest, provided that Tenant reimburses all reasonable costs incurred by Landlord, including reasonable attorneys' fees. If Tenant fails to reimburse such costs with thirty (30) days of receipt of an invoice from Landlord for same, Landlord shall be entitled to deduct the reimbursement amount as additional Rent.

7. Quiet Enjoyment. Landlord covenants that upon performance and observance by Tenant of all of the agreements, covenants and conditions herein contained on the part of Tenant to be performed and observed, Tenant shall peaceably hold and quietly enjoy the Premises during the entire Term without hindrance, molestation, or interruption by Landlord or by anyone lawfully or equitably claiming by, through or under Landlord, except as otherwise provided in this Agreement, the Echo Avenue Joint Use Cooperative Agreement, and any subsequent agreements entered into by the Parties that are intended to more specifically delineate the Parties' joint use of the Premises ("**Subsequent Joint Use Agreements**").

8. Use of Premises.

A. Permitted Use.

i. The Premises shall be used for the conversion, rehabilitation, renovation, replacement, and/or reconstruction of the District's former Piedmont Child Development Center building into a public library ("**Project**"), and joint use of the public library by the District and the public. The Project may include renovation of the main reading room and associated interior space of the Premises, as appropriate for use as a library, and the renovation of the exterior play spaces located on the Premises. Promptly after the Lease Commencement Date, the Parties shall enter into good faith negotiations to enter into the Echo Avenue Joint Use Cooperative Agreement, which will describe further the permitted uses, and each Party's respective rights and obligations

with respect to joint use of the Premises after completion of the Project. However, the permitted uses ultimately agreed to by the Parties shall include use of the Project by the District's students and staff attending or assigned to Piedmont Avenue Elementary School for educational and related purposes, Landlord shall not be required to make payment for any expenses attributable to such use, and Tenant shall be responsible, at its sole cost and expense, to enable such use. The uses set forth in this Section 8(A)(i), the Echo Avenue Joint Use Cooperative Agreement, and Subsequent Joint Use Agreements (if any), shall collectively be referred to herein as the "**Permitted Use**".

ii. Use. Tenant shall use the Premises only for the Permitted Use in accordance with the terms and conditions of this Agreement, the Echo Avenue Joint Use Cooperative Agreement, and any Subsequent Joint Use Agreements. At all times during the Term of this Agreement, Tenant, at Tenant's own cost and expense, shall make all alterations, additions or repairs to the Premises or the Improvements on the Premises required by any valid law, ordinance, statute, order, or regulation now or hereafter made or issued by any federal, state, county, local, or other governmental agency or entity. Tenant shall observe and comply, and require that all of Tenant's subtenants, licensees, and invitees observe and comply, with all valid laws, ordinances, statutes, orders, and regulations now or hereafter made or issued respecting the Premises or the Improvements on the Premises by any federal, state, local or other governmental agency or entity. Tenant shall be responsible for obtaining all required authorizations and approvals for Tenant's use of the Premises, including Tenant's Project on the Premises as provided in this Agreement, and shall comply with any and all conditions imposed upon the issuance of such approvals. Tenant shall keep and maintain all Existing Improvements and future Improvements located on and in the Premises (subject to Tenant's rights and obligations under this Agreement to demolish and remove the Existing Improvements) and all appurtenances thereto, including all grounds, sidewalks, driveways, parking areas, landscaped areas and irrigation systems located on and within the Premises, in good and neat order and repair and shall allow no nuisances to exist or be maintained on the Premises.

B. Prohibited Use. Tenant shall not use or conduct, or allow any of Tenant's subtenants, agents, employees, invitees, or licensees to conduct any activities on or about the Premises in a manner that causes, creates, or results in a public or private nuisance. Tenant shall also not commit or suffer to be committed, any waste upon the Premises, or allow any sale by auction upon the Premises, or allow the Premises to be used for any unlawful or criminal purpose. All use by Tenant, or at Tenant's direction, of the Premises shall prohibit damage, disturbance, or interferences with the Property or the District's operations at the Property, including the District's operation of its educational program at the Piedmont Avenue Elementary School.

C. Landlord's Inspection Right. Upon completion of the Project, Landlord may, during normal business hours after at least 72 hours written notice to Tenant except in the case of an emergency involving impending damage or injury (in which event no notice shall be required), enter upon the Premises for the purpose of inspecting the Existing Improvements or future Improvements located thereon and for such other purposes as may be necessary or proper for the reasonable protection of its interests.

D. Indemnification. Tenant shall indemnify and hold Landlord and the Property of Landlord, including the Premises, free and harmless from any and all damages, demands, claims, losses, liabilities, injuries, penalties, monetary sanctions, fines, liens, judgments, suits, actions, investigations, proceedings, interest, or expenses whatsoever resulting from Tenant's failure to comply with and perform the requirements of this Section.

9. Condition of the Premises.

A. "As-is" Condition. By entry and taking possession of the Premises pursuant to this Agreement, Tenant accepts the Premises in "AS IS" condition. Tenant acknowledges that neither the Landlord nor Landlord's agents have made any representation or warranty as to the suitability of the Premises for Tenant's intended use.

B. Asbestos Notice. According to a report entitled, "Asbestos Survey of Piedmont Avenue CDC, 86 Echo Avenue, Oakland, CA 94611", prepared by Gibco Environmental Services, dated May 23, 2017, a copy of which is attached hereto as part of **Exhibit D**, portions of the buildings on the Premises contain asbestos-containing construction materials ("**ACM**"). While the mere presence of undisturbed and non-friable ACM in a building does not present a health hazard, exposure to airborne asbestos fibers can cause asbestos-related diseases. Asbestos is listed under Proposition 65 as a chemical known to the State of California to cause cancer. Tenant shall be responsible, at its sole cost, for any necessary mitigation, abatement, or removal of ACM from the Premises, and shall indemnify and hold Landlord harmless from any damages, demands, claims, losses, liabilities, injuries, penalties, monetary sanctions, fines, liens, judgments, suits, actions, investigations, proceedings, interest, or reasonable expenses whatsoever which may result from the existence of asbestos on the Premises from and after the Commencement Date. Tenant shall disclose the existence of asbestos on the Premises, if applicable, to all of Tenant's subtenants. Landlord is unaware of any specific required immediate handling restrictions or procedures which might be necessary in any particular situation to avoid exposure to the asbestos in the Premises. Tenant is encouraged to contact local, state or federal public health agencies in order to obtain further information regarding handling procedures and restrictions.

C. Lead Paint. According to a report entitled, "Lead Paint Chip Inspection of Piedmont Avenue CDC, 86 Echo Avenue, Oakland, CA 94611", prepared by Gibco Environmental Services, dated May 23, 2017, copy of which is attached hereto as part of **Exhibit D**, Landlord represents that the Premises may contain lead paint and that in the event of any work performed by Tenant that may disturb any existing lead paint, Tenant shall take all applicable legal requirements and necessary steps to mitigate and abate the presence and possible disturbance of lead paint.

10. Maintenance and Utilities.

A. Maintenance. Tenant shall maintain, repair, replace and otherwise keep the laterals, and conduits that convey water, gas, sewage disposal, electricity and telephone services solely serving the Premises, as well as all meters and sub meters for such utilities, in serviceable condition during the Term, subject to ordinary wear and tear, replacements, repairs, and

alterations, additions and Improvements approved in writing by Landlord as provided herein. Such maintenance, repair and replacements shall be at Tenant's expense. If any utilities are shared by the Parties, the Parties shall meet and confer in good faith to agree upon an equitable allocation of cost of such shared utilities.

B. Utility Expenses. Tenant shall pay when due all of the costs of gas, electricity, water, sewage, trash collection and any other utility services solely serving the Premises, including all costs associated with any meters required for such services. From and after the Lease Commencement Date and continuing during the Term, Tenant shall open an account in its name with the utility providers for all utilities to be used by it on, or in connection with Tenant's use of, the Premises and to pay all connection fees, deposits and other fees and charges required by the applicable utility providers. Notwithstanding the foregoing, Tenant shall not be obligated to install separate utility meters, except in connection with the Permitted Use.

C. No Landlord Representations. Except as otherwise provided in this Section 10, Landlord shall not be obligated to furnish any utilities or services to the Premises, and Landlord does not make any warranty or representation as to the quantity, availability, amount or duration of any such utilities or services. Tenant acknowledges the capacity, condition and locations of all utilities, utility conduits, any utility stubs.

D. No Landlord Repair Obligations. Landlord shall not be obligated to make any repairs, replacements or renewals of any kind, nature or description whatsoever to the Property, the Premises or any Existing Improvements or future Improvements located thereon, and Tenant hereby expressly waives all right to make repairs at Landlord's expense under sections 1941 and 1942 of the California Civil Code, or any amendments thereof.

11. Title to Improvements.

A. Title. Throughout the Term, title to all the Improvements constructed and installed as part of the Project, including all carpets, draperies, partitions, machinery, equipment and fixtures that are used, or intended to be used in connection with the Premises, shall be and remain in Tenant. Title to Improvements that remain in place after the expiration or earlier termination of this Lease shall pass to and vest in Landlord, at Landlord's option, without cost or charge to Landlord, in accordance with Section 26 herein.

B. Documents Conveying Ownership. Tenant, on termination of this Agreement, shall execute and deliver any and all deeds, bills of sale, assignments, and other documents which in Landlord's sole judgment may be necessary or appropriate to transfer, to evidence or to vest in Landlord clear title to any of the property described in Section 11(A) above located on the Premises after the Expiration Date.

C. Documents Related to Ownership. Tenant, in addition, shall deliver to Landlord on termination of this Agreement originals or copies of any plans, reports, then-existing contracts or other documents relating to the ownership of the Premises.

12. Damage and Destruction. No loss or damage by fire or other cause required to be insured against hereunder resulting in either partial or total destruction of any Improvements on the Premises, shall operate to terminate this Agreement, or to relieve or discharge Tenant from the payment of Rent or any other payments owed pursuant to this Agreement as they become due and payable, or from the performance and observance of any of the agreements, covenants and conditions herein contained on the part of Tenant to be performed and observed. Tenant hereby waives the provisions of subsection 2 of section 1932 and subsection 4 of section 1933 of the California Civil Code, as amended from time to time. Notwithstanding the foregoing, Tenant retains the right to terminate this Lease pursuant to Section 21(B) below. In the event of such a termination, Tenant shall retain the right to receive all available insurance proceeds from Tenant's insurance subject to the provisions of Section 15.

13. Assignment and Subletting. Subject to the terms set forth in this Agreement, Tenant may assign, sublease, or convey any interest therein at any time provided the following:

A. No default exists in the performance or observance of any covenant or obligation on the part of Tenant to be performed or observed under this Agreement as of the date of such assignment or sublease;

B. The assignment or sublease is in writing and duly executed and acknowledged by Tenant and the assignee or sublessee;

C. Any assignment provides that the assignee assumes and agrees to perform and observe all the agreements, covenants and conditions imposed on Tenant through this Agreement and any subsequent agreements entered into between Landlord and Tenant pursuant to this Agreement;

D. The assignment shall not impede or interfere with the Landlord's joint use of the Premises;

E. Any proposed assignee provides evidence reasonably satisfactory to Landlord of financial capability to perform the provisions of this Agreement;

F. Landlord agrees in writing to any assignment or sublease, and Landlord approves in writing the assignment agreement or sublease agreement prior to execution of an assignment or sublease agreement; and

G. An executed original of such assignment agreement or sublease agreement is delivered to Landlord.

14. Mortgage of Leasehold and Protection of Lender. On and after the Lease Commencement Date, Tenant shall have the right, without Landlord's consent, to mortgage its interest in the Agreement or any part thereof under any leasehold mortgage. Upon Landlord being notified of

the making of any such leasehold mortgage, Landlord agrees that: (a) as a result of any default by Tenant under the Agreement there shall be no cancellation or termination of the Agreement by Landlord without first providing the leasehold mortgagee an opportunity to satisfy such default within a reasonable time; (b) Landlord shall give any leasehold mortgagee simultaneous notice of any default and the leasehold mortgagee shall have the same period of time provided to Tenant under this Agreement after service of such notice (plus an additional, reasonable period of time) to remedy the default; and Landlord shall accept such performance as if the same had been performed by Tenant; (c) upon written notice from the leasehold mortgagee to Landlord that it is taking possession of the Premises and upon assumption of possession of the Premises prior to completion of foreclosure proceedings, the leasehold mortgagee shall have all rights of Tenant; (d) the leasehold mortgagee shall not be obligated to perform any obligations of Tenant unless and until such leasehold mortgagee actually enters and takes possession of the Premises as a result of foreclosure or the exercise of other remedies of the leasehold mortgagee; (e) if the Agreement is terminated for any reason, the leasehold mortgagee that has cured Tenant's defaults shall have the right to enter into a new lease agreement with Landlord for the Permitted Use and the same terms and conditions of the Agreement for the remaining Term; and (f) Landlord will execute any reasonable agreement acknowledging the above rights of any leasehold mortgagee. In all events, such leasehold mortgage shall be subordinate to Landlord's fee title interest in the Premises.

15. Insurance Requirements.

A. During the entire Term, including during any period of redevelopment or construction of any Improvements on the Premises, Tenant shall at its sole expense obtain and keep in force the following insurance and shall name or have named Landlord as an additional insured under all such policies:

i. Builder's Risk Coverage: During any period of redevelopment or construction of Improvements, Tenant shall maintain coverage against all risks of physical loss and/or damage from any cause (exclusive of earthquake and subject to usual policy exclusions) to all buildings, structures, materials and real property to be improved, located on, or forming a part of the Premises, and will include course of construction (Builder's Risk) up to One Million Dollars ($1,000,000).

ii. Fire Insurance. Tenant shall maintain throughout the Term fire and extended coverage insurance (excluding earthquake insurance), in the form customarily required by the Oakland Unified School District for buildings and improvements of similar character, which insurance shall cover all Improvements and the Premises. The amount of such insurance at all times during the Term shall not be less than ninety percent (90%) of the actual replacement cost of such Improvements. The actual replacement cost of such Improvements shall be determined by mutual agreement of Landlord and Tenant at the time the fire and extended coverage insurance is initially taken out and periodically over time as to increases in value, and in the event the Parties cannot agree as to such actual replacement cost, such disagreement shall be submitted to alternative dispute resolution in the manner provided by Section 27.

iii. General Liability Insurance. Tenant shall maintain throughout the Term general liability insurance with limits of not less than Five Million Dollars ($5,000,000) for injury to or death of any number of persons in one occurrence, and not less than Five Million Dollars ($5,000,000) for damage to property. The general liability insurance policy shall insure against any and all liability of Landlord and Tenant including, without limitation, coverage for contractual liability, broad form property damage, host liquor law liability, personal injury, and non-owned automobile liability with respect to the Premises or arising out of the maintenance, use or occupancy thereof, and with respect to all boilers and other pressure vessels, whether fired or unfired, located in, on, or about the Premises, without exclusion for explosion, collapse and underground damage. The property liability coverage will be "all risk" at replacement cost of the Improvements. The automobile liability will be One Million Dollars ($1,000,000) combined single limit.

B. All insurance policies required by this Agreement shall be noncontributing with any insurance which may be carried by Landlord and shall contain a provision that Landlord, although named as an insured, shall nevertheless be entitled to recover under the policy for any loss, injury or damage to Landlord, its agents and employees, or the property of such persons. All of Tenant's insurers hereunder shall waive any right of subrogation against Landlord to the extent such insurers permit.

C. All insurance provided for in this Section 15, and all renewals thereof, shall be issued by California admitted companies rated at least A-VII by Best's Insurance Reports (Property Liability) or approved by Landlord. All insurance policies shall be subject to approval by Landlord as to form and substance and shall expressly provide that such policies, except for the boiler insurance specified in Section 15(A)(iii) above, shall not be cancelled or altered without thirty (30) days prior written notice to Landlord. The limits and coverage of all insurance policies required under this Agreement shall be adjusted by agreement of Landlord and Tenant by the date that is five (5) years after the Commencement Date, and by every fifth (5th) year of the Term after that date, in conformity with the then prevailing custom of insuring property similar to the Premises in the Oakland Unified School District, and any disagreement regarding such adjustment shall be settled by alternative dispute resolution in the manner provided in Section 27 of this Lease.

D. If any insurance proceeds received by Tenant pursuant to this Agreement are insufficient in amount to cover the cost of repairing, reconstructing, or replacing any Improvements, or for paying for the costs associated with any other damages associated with the injury of persons or property, Tenant shall promptly pay any deficiency if required by other provisions of this Agreement, including those provisions pertaining to indemnification in Section 17 below.

E. Tenant shall provide to Landlord evidence of all insurance policies required by this Agreement, including certificates of same and endorsements naming Landlord as an additional insured, promptly after mutual execution of this Agreement. Tenant shall provide Landlord evidence of insurance renewals or evidence of updated insurance policies required under this Agreement immediately after Tenant obtains such renewals or updates. Failure to maintain and

provide evidence of continued insurance shall be a material default.

16. Mechanics' and Other Liens. From and after the Lease Commencement Date, Tenant shall pay for all labor and services performed for, materials used by or furnished to Tenant or any contractor employed by Tenant with respect to the Premises. Tenant shall promptly discharge or remove by bond or otherwise prior to foreclosure thereof, any and all mechanics', materialmen's and other liens for work or labor done, services performed, materials, appliances, used or furnished to be used in or about the Premises for or in connection with any operations of Tenant, any alterations, Improvements, repairs or additions which Tenant may make or permit or cause to be made, or any work or construction by, for or permitted by Tenant on or about the Premises. Tenant shall indemnify, defend and hold Landlord and the Property harmless and free from the perfection of any liens, claims, demands, encumbrances or judgments created or suffered by reason of any labor or services performed for, materials, used by or furnished to Tenant or any contractor employed by Tenant with respect to the Premises.

17. Indemnity.

A. Tenant shall protect, defend and indemnify Landlord, and its Board, Board members, officers, employees, agents, and representatives, against all loss, cost, expense, and damage resulting from any liens arising out of or related to any taxes, assessments, charges, or other items to be paid by Tenant under this Agreement. Upon Tenant's failure to remove any such lien within thirty (30) days after written demand from Landlord, Tenant shall furnish Landlord a corporate surety bond payable to Landlord, in one hundred and twenty percent (120%) of the amount of the lien, tax, assessment, charge, or item contested, as the case may be, conditioned upon the satisfaction and discharge of such lien or the payment of such tax, assessment, charge, or other item, and all penalties, interest, and costs in connection therewith.

B. i. Except as set forth in Section 17(B)(ii) below, to the fullest extent allowed by law, Tenant covenants and agrees that Landlord, and its Board, Board members, officers, employees, agents, and representatives, shall not at any time or to any extent whatsoever be liable, responsible or in anywise accountable for any loss, injury, death, or damage to persons or property which, at any time may be suffered or sustained by Tenant or by any person at Tenant's direction who may at any time be using, occupying, or visiting the Premises during the Term or be in, on, or about the Premises, from any cause whatsoever, except when such loss, injury, death, or damage shall be caused by or in any way results from, or arises out of, the negligence or willful misconduct of Landlord.

ii. To the fullest extent allowed by law, Landlord covenants and agrees that Tenant, and its City Council, Council members, officers, employees, agents, and representatives, shall not at any time or to any extent whatsoever be liable, responsible or in anywise accountable for any loss, injury, death, or damage to persons or property which, at any time may be suffered or sustained by the Landlord or by any person at Landlord's direction who may at any time be using, occupying, or visiting the Premises when Landlord is using the Premises when the Library is not open to the public in accordance with the Echo Avenue Joint Use Cooperative Agreement or

otherwise during the Term or be in, on, or about the Premises, from any cause whatsoever, except when such loss, injury, death, or damage shall be caused by or in any way results from, or arises out of, the negligence or willful misconduct of Tenant.

C. Tenant shall indemnify, defend (with legal counsel reasonably acceptable to Landlord), hold, and save Landlord, and its Board, Board members, officers, employees, agents, and representatives, free and harmless of, from and against any damages, demands, claims, losses, liabilities, injuries, penalties, monetary sanctions, fines, liens, judgments, suits, actions, investigations, proceedings, interest, or expenses whatsoever (including, without limitation, reasonable attorneys' fees, reasonable expert fees and reasonable costs and, in the event of any release of Hazardous Materials (defined below) caused by Tenant, investigation and remediation costs) arising from any loss, injury, death, or damage to persons or property which, during the Term may be suffered or sustained by Landlord, Tenant, or by any person at Tenant's direction who may at any time be using, occupying, or visiting the Premises or be in, on, or about the Premises during the Term, from any cause whatsoever, except to the extent caused by Landlord's intentional or negligent acts or omissions. Tenant hereby waives all claims against Landlord for damages to the improvements now or hereafter located on the Premises during the Term and to the property of Tenant in, or upon the Premises, and for injuries to persons or property in, or on the Premises, from any cause arising during the Term, except for any such claims arising from negligent or intentional acts or omissions committed by Landlord. Tenant's indemnity obligation set forth in this Section 15(C) shall survive the termination or expiration of this Lease with respect to any claims or liabilities arising out of injury or damage to person or property which occurs during the Term.

18. Hazardous Substances. Landlord and Tenant agree as follows with respect to the existence or use of Hazardous Materials on the Property including any Improvements made by Tenant.

A. Definition. 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, PCBs, and any material or substance which is (i) listed under Section 9 or defined as hazardous or extremely hazardous pursuant to Article 1 of Title 22 of the California Administrative Code, Division 4, Chapter 20, (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.

B. Hazardous Materials. Tenant shall not at any time 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, household, and janitorial cleaning supplies adhesives, and lubricants (which shall be used and stored in strict compliance with Hazardous Materials Laws). Tenant shall comply with all Hazardous Materials Laws.

C. Responsibility of Tenant. From and after the Lease Commencement Date, it shall be the duty of Tenant to ensure that the Premises and any Improvements installed thereon are at all times in strict compliance with all Hazardous Materials Laws and that all activities conducted by Tenant or at Tenant's direction in or about the Premises and Improvements comply in every respect with all applicable Hazardous Materials Laws including, but not limited to, all remediation, notification, record keeping, and maintenance requirements of such Hazardous Materials Laws.

D. Hazardous Materials Indemnification. Tenant shall indemnify, defend upon demand with counsel reasonably acceptable to Landlord, and hold harmless Landlord, and its Board, Board members, officers, employees, agents, and representatives, from and against any damages, demands, claims, losses, liabilities, injuries, penalties, monetary sanctions, fines, liens, judgments, suits, actions, investigations, proceedings, interest, or reasonable expenses whatsoever (including, without limitation, reasonable attorneys' fees, reasonable expert fees and reasonable costs and, investigation and remediation costs), which result from or arise in any manner whatsoever out of the use, storage, treatment, transportation, release, or disposal of Hazardous Materials on or about the Premises and any Improvements by Tenant or Tenant's agents, employees, contractors, or subtenants, during the Term.

E. Tenant Action. If the presence of Hazardous Materials on or about the Premises and any Improvements thereon (from any source whatsoever) during the Term results in contamination or deterioration of water or soil resulting in a level of contamination greater than the levels established as acceptable by any governmental agency having jurisdiction over such contamination, and if the Tenant is responsible therefor, then Tenant shall, at its sole cost and expense, promptly take any and all action necessary to investigate and remediate such contamination if required by law or as a condition to the issuance or continuing effectiveness of any governmental approval which relates to the use of the Premises and any Improvements thereon or any part thereof.

F. Notice. Any time after the Lease Commencement Date during the Term, Landlord and Tenant shall each give written notice to the other as soon as reasonably practicable of (i) any communication received from any governmental authority concerning Hazardous Materials which relates to the Property and any Existing Improvements or future Improvements, and (ii) any contamination of the Property and any Existing Improvements or future Improvements by Hazardous Materials which constitutes a violation of any Hazardous Materials Law. At any time during the Term, Tenant shall, within thirty (30) days after written request therefor received from Landlord, disclose in writing all Hazardous Materials that are being used by Tenant on the Premises and any Improvements, the nature of such use, and the manner of storage and disposal.

G. Survival. The obligations of Tenant under this Section 18 shall survive the expiration

or earlier termination of this Agreement. The rights and obligations of Landlord and Tenant with respect to issues relating to Hazardous Materials are exclusively established by this Section 18. In the event of any inconsistency between any other part of this Agreement and this Section 18, the terms of this Section 18 shall control.

19. Eminent Domain. If all or part of the Premises is taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of Landlord and Tenant will be as follows:

A. If the entire Premises is taken, this Agreement shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.

B. In the event of a partial taking, the Landlord shall reasonably determine, in its sole discretion, whether the portion of the Premises remaining after the partial taking is suitable for the Permitted Use. If Landlord determines that the remaining portion of the Premises is unsuitable for the Permitted Use, this Agreement shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs. If the Landlord determines that the remaining portion of the Premises is suitable for the Permitted Use, this Agreement shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken, in which event the Rent shall be equitably reduced in proportion to the percentage of the Premises taken.

C. All monies awarded in any taking shall belong to Landlord, whether such monies are made as compensation for the diminution in value of the leasehold, the taking of the fee interest, or both; provided, however, Tenant shall be entitled to compensation separately awarded to it, if any, for Tenant's Improvements made and pertaining to the Premises or the loss of goodwill. Landlord shall have no liability to Tenant for any award not provided by the condemning authority.

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D. Landlord has the right to transfer Landlord's interests in the Premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, Tenant shall retain whatever interest it may have in the fair market value of any Improvements placed by it on the Premises in accordance with this Agreement.

E. The exercise of any Landlord right under this Agreement shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon Landlord for inverse condemnation.

20. Tenant's Defaults and Landlord's Remedies.

A. Tenant Events of Default. It shall be an event of default hereunder (each an "**Event of Default**") if:

i. Tenant fails to pay Rent or other monies due under this Lease for more than ten (10) days after Landlord provides written notice to Tenant of the nonpayment;

ii. Tenant fails to perform or comply with the covenants or other obligations of Tenant under this Agreement and such default continues for thirty (30) or more days after written notice of such failure to Tenant, including Tenant's failure to timely submit its Conceptual Design for the overall Project or Tenant's failure to timely incorporate and submit any revisions requested by the District into the overall Conceptual Design as required by Section 3(B) above;

iii. For a default that cannot be cured by the payment of money or cannot reasonably be cured within thirty (30) days, then Landlord shall not have the right to terminate this Lease or Tenant's right to possession under this Lease so long as Tenant promptly commences the curing of any such failure and thereafter proceeds in good faith and with due diligence to remedy and correct such failure within a reasonable period of time;

iv. Tenant abandons the Premises;

v. Tenant admits in writing its inability to pay its debts generally as they become due, files a petition in bankruptcy, insolvency, reorganization, readjustment of debt, dissolution or liquidation under any law or statute of the federal government or any state government or any subdivision of either now or hereafter in effect, makes an assignment for the benefit of its creditors, consents to, or acquiesces in the appointment of a receiver of itself or of the whole or any substantial part of the Premises; or judgment or decree is not vacated, set aside or stayed within sixty (60) days from the date of entry of such order, judgment or decree, or a stay thereof be thereafter set aside;

vi. A court of competent jurisdiction enters an order, judgment or decree approving a petition filed against Tenant under any bankruptcy, insolvency, reorganization, readjustment of debt, dissolution or liquidation law or statute of the Federal government or any state government or any subdivision of either now or hereafter in effect, and such order judgment or decree is not vacated, set aside or stayed within sixty (60) days from the date of entry of such order, judgment or decree, or a stay thereof be thereafter set aside; or

vii. Under the provisions of any other law for the relief or aid of debtors, a court of competent jurisdiction assumes custody or control of Tenant or of the whole or any substantial part of the Premises, and such custody or control is not terminated within sixty (60) days from the date of assumption of such custody or control.

B. Landlord's Remedies. Upon the occurrence of any Event of Default by Tenant hereunder, Landlord shall have the following rights and remedies, in addition to all other rights and remedies of Landlord provided hereunder or by law, and shall have the right to select such remedy or remedies in its sole and exclusive discretion:

i. The right to terminate this Agreement, except as provided in Section

20(A)(ii) above, in which event Tenant shall immediately surrender possession of the Premises, and pay to Landlord all Rent and all other amounts payable by Tenant hereunder to the date of such termination;

ii. Tenant shall remain liable for any damages arising out of its failure to perform any terms, covenants or conditions of this Agreement;

iii. The remedies described in California Civil Code section 1951.2, including, without limitation, the right to recover the worth at the time of award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of such rental loss for the same period that Tenant proves could be reasonably avoided, as computed pursuant to subdivision (b) of section 1951.2 of the California Civil Code;

iv. The remedies described in California Civil Code section 1951.4, including, without limitation, the right to collect, by suit or otherwise, each installment of rent or other sums that become due hereunder, or to enforce, by suit or otherwise, performance or observance of any agreement, covenant or condition hereof on the part of Tenant to be performed or observed; or

v. The right to cause a receiver to be appointed in any action against Tenant to take possession of the Premises or to collect the rents or profits therefrom. Neither appointment of such receiver, nor any other action taken by Landlord shall constitute an election on the part of Landlord to terminate this Agreement unless written notice of termination is given to Tenant.

21. Landlord's Defaults and Tenant's Remedies

A. Landlord Event of Default. Landlord shall be in default of this Agreement if it fails to perform any provision of this Agreement that it is obligated to perform and if the failure to perform is not cured within thirty (30) days after written notice of the default has been given to Landlord. If the default cannot reasonably be cured within thirty (30) days, Landlord shall not be in default of this Agreement if Landlord commences to diligently and in good faith continues to cure the default until completion.

B. Bilateral Termination Option. If Tenant determines, in its sole discretion, that the Project is not feasible for any reason, Tenant may exercise its termination rights under the Bilateral Termination Option without liability by providing written notice to Landlord. Such notice by Tenant shall set forth the effective date of such termination, which shall not be later than November 30, 2024. In addition, this Agreement may terminate automatically pursuant to Section 3(B)(v). After November 30, 2024, Tenant shall have no right to terminate this Agreement unless expressly provided in this Agreement, including pursuant to Sections 12 above and 21(C) below.

C. Tenant's Remedy. If Landlord shall have failed to cure a default by Landlord after expiration of the applicable time for cure of a particular default, Tenant, at its election and sole

discretion, but without obligation therefor, may terminate this Lease by giving Landlord written notice thereof, setting forth in such notice an effective date for termination, in which event this Lease and all interest of Tenant and all parties claiming by, through or under Tenant shall automatically terminate upon the effective date for termination as set forth in such notice, with the same force and effect and to the same extent as if the effective date of such notice had been the date originally fixed as the Expiration Date in Section 2(A) above.

22. Nonwaiver. If any action or proceeding is instituted or if any other steps are taken by Landlord or Tenant, and a compromise part payment or settlement thereof is made, either before or after judgment, the same shall not constitute or operate as a waiver by Landlord or Tenant of any agreement, covenant or condition of this Agreement or of any subsequent breach thereof. No waiver of any default under this Agreement shall constitute or operate as a waiver of any subsequent default hereunder, and no delay, failure or omission in exercising or enforcing any right, privilege, or option under this Agreement shall constitute a waiver, abandonment or relinquishment thereof or prohibit or prevent any election under or enforcement or exercise of any right, privilege, or option hereunder. No waiver of any provision hereof by Landlord or Tenant shall be deemed to have been made unless and until such waiver shall have been reduced to writing and signed by Landlord or Tenant, as the case may be. The receipt by Landlord of Rent with knowledge of any default under this Agreement shall not constitute or operate as a waiver of such default. Payment by Tenant or receipt by Landlord of a lesser amount than the stipulated Rent or other sums due Landlord shall operate only as a payment on account of such Rent or other sums. No endorsement or statement on any check or other remittance or in any communication accompanying or relating to such payment shall operate as a compromise or accord and satisfaction unless the same is approved in writing by Landlord, and Landlord may accept such check, remittance or payment without prejudice to its right to recover the balance of any Rent or other sums due by Tenant and pursue any remedy provided under this Agreement or by law.

23. No Merger.

A. There shall be no merger of the leasehold estate created by this Agreement with any other estate in the Premises or Property, including the fee estate, by reason of the fact that the same person may own or hold the leasehold estate created by this Agreement, or an interest in such leasehold estate, and such other estate in the Premises or Property, including the fee estate, or any interest in such other estate; and no merger shall occur unless and until Landlord and Tenant shall join in a written instrument effecting such merger and shall duly record the same.

B. No termination of this Agreement shall cause a merger of the estates of Landlord and Tenant, unless Landlord so elects, and any such termination shall, at the option of Landlord, either work a termination of any sublease in effect or act as an assignment to Landlord of Tenant's interest in any such sublease.

24. Covenants Run With Land.

A. The agreements, covenants and conditions contained in this Agreement are and

shall be deemed to be covenants running with the land and subject to any reversionary interests and shall be binding upon and shall inure to the benefit of Landlord and Tenant and their respective successors and assigns and all subsequent Landlords and Tenants respectively hereunder.

B. Landlord shall have the right to encumber the Property by bank notes, Deeds of Trust, Promissory Notes or any other legal instruments; provided however that Tenant's leasehold interest under this Lease shall be senior to and not subordinated to any interest asserted by the holder of any such notes, Deeds of Trust, Promissory Notes or instruments. Tenant shall have no obligation to subordinate its rights under this Agreement to the holder of any encumbrance.

C. All references in this Agreement to "Tenant" or "Landlord" shall be deemed to refer to and include successors and assigns of Tenant or Landlord, respectively, without specific mention of such successors or assigns.

25. Notices. Any notices which either of the Parties hereto are required or may desire to send or deliver to give to the other Party, shall be served on the Parties at the addresses set forth below:

Landlord:

Oakland Unified School District
ATTN: Facilities Department
1000 Broadway, Suite 440
Oakland, CA 94607
Phone: (510) 879-8200
Email: tadashi.nakadegawa@ousd.org

Oakland Unified School District
ATTN: Legal Department
1000 Broadway, Suite 440
Oakland, CA 94607
Phone: (510) 879-8200
Email: ousdlegal@ousd.org

Tenant:

Oakland Public Library
125 14th Street
Oakland, CA 94612
Attn: Library Director
Email: JTurbak@oaklandlibrary.org

City of Oakland
Real Estate Asset Management Division
250 Frank H. Ogawa Plaza, Suite 4314
Oakland, CA 94612
Attn: Real Property Asset Manager
Email; BMoriarty@oaklandca.gov

with copy to: Office of the City Attorney
One Frank H. Ogawa Plaza, 6th Floor
Oakland, CA 94612
Attn: Supervising City Attorney for Real Estate
Email: DRossi@oaklandcityattorney.org

For convenience of the Parties, copies of notices may be given by electronic transmission (e-mail) set forth above or such other email address as may be provided from time to time by notice given the manner required hereunder; however, neither Party may give official or binding notice by electronic mail unless the same notice is subsequently sent either by (a) overnight delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) business day after deposit with such courier; (b) sent by personal delivery, in which case notice shall be deemed delivered upon receipt; or (c) deposit with the U.S. Postal Service for delivery by United States Registered or Certified Mail, First Class postage pre-paid, in which case notice shall be deemed delivered three (3) business days after deposit with the U.S. Postal Service. A Party's address may be changed by written notice to the other Party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice.

26. Surrender of the Premises. On the last day of the Agreement, or on sooner termination of this Agreement, Tenant shall surrender to Landlord the Premises in good order, condition and repair, reasonable wear and tear excepted, free and clear of all liens, claims, and encumbrances. Tenant shall also surrender any Improvements constructed on the Premises in good order, condition and repair, as approved and constructed, reasonable wear and tear excepted, free and clear of all liens, claims, and encumbrances. This Agreement shall operate as a conveyance and assignment of any such Improvements to Landlord. Tenant shall remove from the Premises all of Tenant's personal property, trade fixtures, and any Improvements made by Tenant which Landlord reasonably requires in writing Tenant to remove. All property not so removed shall be deemed abandoned by Tenant. If the Premises is not so surrendered at the termination of this Agreement, Tenant shall indemnify Landlord 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 Landlord due to lost opportunities to lease the Premises to succeeding tenants.

27. Dispute Resolution. Whenever, under any provision of this Lease, alternative dispute resolution is required, each Party shall bear its own costs for the services sought under this Section 27, subject to the requirements of Section 33 below

28. Holding Over. This Agreement shall terminate without further notice upon the expiration of the Term, and any holding over by Tenant after the expiration or termination of the Term shall not constitute a renewal hereof or give Tenant any rights hereunder or in or to the Premises, except as otherwise herein provided, it being understood and agreed that this Agreement cannot be renewed, extended or in any manner modified except in writing signed by Landlord and Tenant. Should Tenant hold over after the termination or expiration of this Agreement, or any renewal thereof, such holding over shall be deemed a tenancy for month-to-month only. The tenancy

thereafter shall continue upon the covenants and conditions herein set forth.

29. Default Interest. In the event that Tenant shall fail to pay any amount of Rent, or any other monetary obligations owed to Landlord hereunder within ten (10) days of the date that such amounts are due and payable, Tenant shall pay to Landlord, in addition to such amounts, interest thereon at three percent (3%) above the Fed Fund Rate, announced to the public from time to time, not to exceed the legal rate of interest. Such interest will accrue from the first day of the month in which such monetary obligation was payable until the date on which Landlord receives payment of all past due amounts owing under the terms and provisions of this Agreement.

30. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid, illegal, or unenforceable provisions had not been contained herein.

31. Time of the Essence. Time is of the essence of each and all of the agreements, covenants, and conditions of this Agreement.

32. Consents. Whenever in this Agreement the consent or approval of either Landlord or Tenant is required or permitted, the Party requested to give such consent or approval will act promptly and will not unreasonably withhold, condition, or delay its consent or approval.

33. Attorneys' Fees. In the event of any action or proceeding at law or in equity, including arbitration, between Landlord and Tenant to enforce any provision of this Agreement or to protect or establish any right or remedy of either Party hereunder, the unsuccessful Party to such litigation shall pay to the prevailing Party all costs and expenses, including reasonable attorneys' fees, incurred therein by such prevailing Party, and if such prevailing Party shall recover judgment in any such action or proceeding, such costs, expenses and attorneys' fees shall be included in and as a part of the judgment.

November 20, 2022

34. Integration. This Agreement constitutes the entire agreement between Landlord and Tenant with respect to the subject matter hereof and supersedes all prior offers, memoranda of understandings, and negotiations, oral or written.

35. Amendments. This Lease may only be amended or modified in any respect whatsoever by a writing signed by Landlord and Tenant.

36. Governing Law. This Lease shall be governed by and construed in accordance with the laws of the State of California and venue shall lie only in Alameda County.

37. Memorandum of Agreement. Upon the execution of this Agreement, Landlord and Tenant shall execute, acknowledge and deliver to the other a memorandum of this Agreement, in substantially the form attached hereto as Exhibit C, which shall be recorded in the Office of the

County Recorder of Alameda County, California. Upon expiration or termination of this Agreement, the Parties shall cooperate in preparing, executing, and recording with the County Recorder of Alameda County, California, documentation necessary to release the memorandum of this Agreement from title. On behalf of Landlord, the OUSD Superintendent is empowered to execute and acknowledge all memoranda and other documents called for under this Section 37; no Board approval or ratification is needed.

38. Agreement Publicly Posted. This Agreement, its contents, and all incorporated documents are public documents and will be made available by OUSD to the public online via the Internet.

39. Counterparts and Electronic Signature. This Agreement, and all amendments, addenda, and supplements to this Agreement, may be executed in one or more counterparts, all of which shall constitute one and the same amendment. Any counterpart may be executed by facsimile or other electronic signature (including portable document format) and delivered by electronic transmission (e-mail) by either Party and, notwithstanding any statute or regulations to the contrary (including, but not limited to, Government Code section 16.5 and the regulations promulgated therefrom), the counterpart shall legally bind the signing Party and the receiving Party may rely on the receipt of such document so executed and delivered by e-mail facsimile as if the original had been received. Through its execution of this Agreement, each Party waives the requirements and constraints on electronic signatures found in statute and regulations including, but not limited to, Government Code section 16.5 and the regulations promulgated therefrom.

40. Signature Authority.

A. Each Party has the full power and authority to enter into and perform this Agreement, and the person(s) signing this Agreement on behalf of each Party has been given the proper authority and empowered to enter into this Agreement.

November 20, 2022

B. OUSD shall not be bound by the terms of this Agreement unless and until it has been formally approved by OUSD's Governing Board.

REST OF PAGE INTENTIOALLY LEFT BLANK; SIGNATURE PAGES FOLLOW

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

TENANT:

City of Oakland,
a municipal corporation

By: _____
Edward D. Reiskin
City Administrator

Date: _____

Approved as to Form and Legality:

By: _____
JoAnne Dunec
Deputy City Attorney

REST OF PAGE INTENTIOALLY LEFT BLANK; SIGNATURE PAGE FOLLOWS

LANDLORD:

Oakland Unified School District,
a California public school district

Name: Gary Yee, Signature: _____

Position: President, BOE Date: 12/01/2022

☒ Board President
☐ Superintendent
☐ Chief/Deputy Chief/Executive Director

Name: Kyla Johnson-Trammell Signature: _____

Position: Superintendent & Secretary, BOE Date: 12/01/2022

Approved as to Form and Legality:

By: _____

November 20, 2022

Exhibit A

(Depiction of the Property and the Premises)

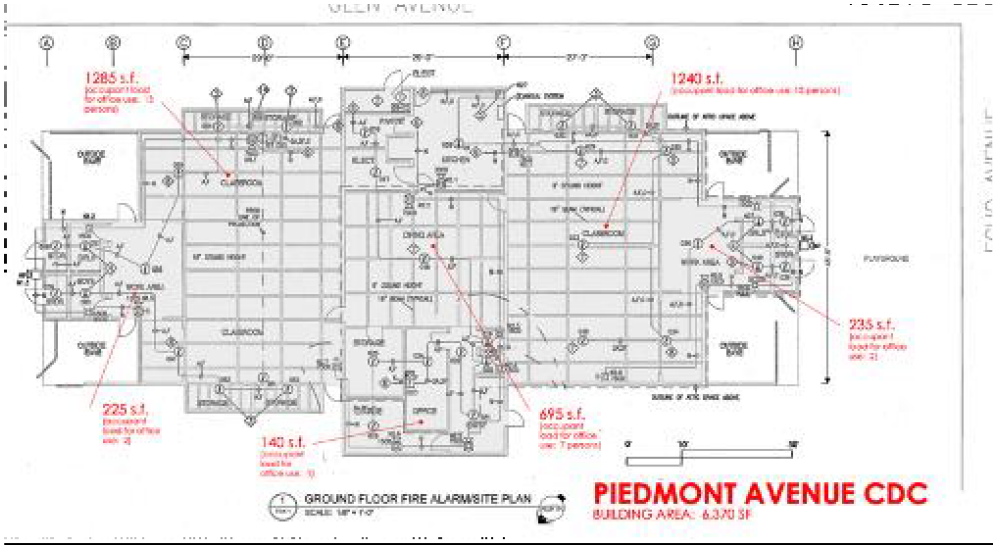

Exhibit B

(Tenant's Conceptual Plan)

Exhibit C

FORM OF MEMORANDUM OF JOINT OCCUPANCY AND LEASE AGREEMENT

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

[Insert Tenant information]

MEMORANDUM OF JOINT OCCUPANCY AND LEASE AGREEMENT

This Memorandum is entered into as of this _____ day of _____, 2022, by and between **Oakland Unified School District**, a public school district in the County of Alameda , State of California ("**Landlord**," or "**OUSD**," or "**District**") and the **City of Oakland**, a municipal corporation ("**Tenant**," or "**City**," and collectively with the District, "**Parties**" or each individually, a "**Party**").

The District is the owner of that certain property located at 86 Echo Avenue, Oakland, CA 94611, which property includes the District's former Piedmont Child Development Center, as more particularly described in Exhibit 1 attached hereto and incorporated herein by this reference ("**Premises**").

The District and the Tenant entered into a Joint Occupancy and Lease Agreement dated _____, pursuant to which the District leased the Premises to the Tenant for a term of fifty (50) years commencing on _____. The terms and conditions of the Joint Occupancy and Lease Agreement are hereby incorporated by reference with the same force and effect as though set forth herein.

The purpose of this Memorandum is to give notice of the existence of such Joint Occupancy and Lease Agreement which, together with this Memorandum, constitutes the agreement between the District and the Tenant concerning Tenant's lease and occupancy of the Premises for purposes as set forth in the Joint Occupancy and Lease Agreement. The Parties' respective obligations as set forth in the Joint Occupancy and Lease Agreement and this Memorandum shall run with the land and shall be binding upon the Parties' successors and assigns.

REST OF PAGE IS INTENTIONALLY LEFT BLANK; SIGNATURE PAGES FOLLOW

In witness whereof, this Memorandum has been executed by the Parties on the date and year first written above.

TENANT:

City of Oakland,
a municipal corporation

By: _____
Edward D. Reiskin
City Administrator

Date: _____

Approved as to Form and Legality:

By: _____
JoAnne Dunec
Deputy City Attorney

REST OF PAGE INTENTIOALLY LEFT BLANK; SIGNATURE PAGE FOLLOWS

Type text here

LANDLORD:

Oakland Unified School District,
a California public school district

Name: Gary Yee Signature: _____

Position: President, BOE Date: 12/01/2022

☒ Board President
☐ Superintendent
☐ Chief/Deputy Chief/Executive Director

Name: Kyla Johnson-Trammell Signature: _____

Position: Superintendent & Secretary, BOE Date: 12/01/2022

Approved as to Form and Legality:

By: _____
November 20, 2022

Exhibit D

Asbestos Report and Lead Report

[Attached]