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Board Cover Memorandum

To Board of Education

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

Meeting Date February 8, 2023

Subject Extension of Joint-Use Lease Agreement Between Oakland Unified School District and City of Oakland for City's Use of Existing Modular Building for a Public Library at Piedmont Elementary School

Ask of the Board Approval by the Board of Education of the First Amendment to the Joint-Use Lease Agreement Between Oakland Unified School District and City of Oakland for City's Use of Existing Modular Building for a Public Library at Piedmont Elementary School

Background On December 13, 2017, the Board of Education (“Board”) approved the Joint-Use Lease Agreement Between Oakland Unified School District and City of Oakland for City's Use of Existing Modular Building for a Public Library at Piedmont Elementary School (“Lease Agreement”), under which the District agreed to lease certain used modular buildings at Piedmont Elementary School to the City of Oakland (“City”) to use as a public library. The monthly rent under the Lease Agreement is \$2,500 per month.

On November 30, 2022, the Board approved a Joint Occupancy and Lease Agreement (“Joint Occupancy and Lease Agreement”) between the District and the City for the latter to construct a library at the former Piedmont Child Development Center. The Joint Occupancy and Lease Agreement included the expectation that the City would be able to continue to lease the existing modular building “pursuant to an extension of the [Lease] Agreement until construction of the [new library] is completed.”

Discussion The proposed First Amendment to the Joint-Use Lease Agreement Between Oakland Unified School District and City of Oakland for City's Use of Existing Modular Building for a Public Library at Piedmont Elementary School (“Amendment”) would extend the Lease Agreement by the shorter of (a) five years or (b) construction of the new library. The rent under the Amendment would remain at \$2,500 per month.

Fiscal Impact Up to \$150,000 in revenue if the Amendment remains in effect for all five years.

Attachment(s)

- First Amendment to the Joint-Use Lease Agreement Between Oakland Unified School District and City of Oakland for City's Use of Existing Modular Building for a Public Library at Piedmont Elementary School
- Joint-Use Lease Agreement Between Oakland Unified School District and City of Oakland for City's Use of Existing Modular Building for a Public Library at Piedmont Elementary School
- Joint Occupancy and Lease Agreement

**FIRST AMENDMENT
TO
JOINT-USE AGREEMENT BETWEEN OAKLAND UNIFIED SCHOOL DISTRICT
AND CITY OF OAKLAND FOR CITY’S USE OF EXISTING MODULAR BUILDING
FOR A PUBLIC LIBRARY AT PIEDMONT ELEMENTARY SCHOOL, OAKLAND, CA**

THIS FIRST AMENDMENT TO JOINT-USE AGREEMENT BETWEEN OAKLAND UNIFIED SCHOOL DISTRICT AND CITY OF OAKLAND FOR CITY’S USE OF EXISTING MODULAR BUILDING FOR A PUBLIC LIBRARY AT PIEDMONT ELEMENTARY SCHOOL, OAKLAND, CA (this “**First Amendment**”) is entered into effective as of February 12, 2023 (the “**Effective Date**”), by and between the Oakland Unified School District, a California public school district (“**District**”) and the City of Oakland, a municipal corporation (the “**City**”). The District and the City are together referred to herein as the “**Parties**”.

RECITALS

This First Amendment is entered into upon the basis of the following facts, understandings, and intentions of the Parties:

A. The District and the City entered into that certain Joint Use Agreement Between Oakland Unified School District And City of Oakland For City’s Use Of Existing Modular Building For A Public Library At Piedmont Elementary School, Oakland, CA, dated September 7, 2017 (the “**Existing Agreement**”).

B. Capitalized terms not otherwise defined herein shall have the same meaning as set forth in the Existing Agreement.

C. Pursuant to Section 4.1 of the Existing Agreement, the Term of the Existing Agreement expires on February 13, 2023.

D. The Parties entered into that certain Joint Occupancy and Lease Agreement (86 Echo Avenue), dated for reference purposes as of December 20, 2022 (the “**Joint Occupancy and Lease Agreement**”).

E. Section 4 of the Joint Occupancy and Lease Agreement contemplates that the Term of the Existing Agreement will be extended.

F. The Parties desire to amend the Existing Agreement on the terms and conditions hereinafter set forth.

G. The Existing Agreement as amended by this First Amendment, shall hereinafter be referred to as the “**Existing Joint-Use Agreement**”.

AGREEMENT

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

1. Rent Commencement Subject to Conditions. Section 4(A) of the Joint Occupancy and Lease Agreement provides the following:

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).

2. Term Extension. In accordance with the foregoing Section 4(A), the Term of the Existing Joint-Use Agreement is hereby extended until the earlier of (a) construction of the Project (as defined in the Joint Occupancy and Lease Agreement) is completed as evidenced by the issuance of the Occupancy Certificate for the Project, or (b) five (5) years.

3. Authority. The persons signing below represent that they have the authority to bind their respective party, and all necessary board of director's, shareholder's, partners', members', city or other approvals have been obtained.

4. Effectiveness and Ratification of Agreement. The Existing Agreement, as modified by this First Amendment, remains in full force and effect and the Parties hereby ratify the same.

5. Counterparts. This First Amendment may be executed in one or more counterparts. All counterparts so executed shall constitute one contract, binding on all parties, even though all parties are not signatory to the same counterpart. The Parties shall be entitled to rely upon electronic copies of a party's signature of this First Amendment.

[Remainder of Page Intentionally Left Blank; Signature Pages Follow]

IN WITNESS WHEREOF, the District and the City have each caused this First Amendment to be duly executed on its behalf as of the Effective Date.

CITY:

CITY OF OAKLAND,
a municipal corporation

By: _____
G. Harold Duffey
Interim City Administrator

Approved as to form and legality:

By: _____
JoAnne Dunec
Deputy City Attorney

[Signatures Continue on Following Page]

DISTRICT:

OAKLAND UNIFIED SCHOOL DISTRICT,
a California public school district

Name: Mike Hutchinson

Signature: 

Position: President, BOE

Date: 2/9/2023

- Board President
- Superintendent
- Chief/Deputy Chief/Executive Director

Name: Kyla Johnson-Trammell

Signature: 

Position: Superintendent and Secretary, BOE

Date: 2/9/2023

Approved as to form and legality:

By: 

Joshua R. Daniels
Chief Governance Officer/General Counsel

Board Office Use: Legislative File Info.	
File ID Number	17-2493
Introduction Date	12/13/2017
Enactment Number	17-813
Enactment Date	12/13/17



OAKLAND UNIFIED SCHOOL DISTRICT

Community Schools, Thriving Students

Memo

To Board of Education

From Marion McWilliams, General Counsel

Board Meeting Date December 13, 2017

Subject **Joint-Use Lease Agreement Between Oakland Unified School District and City of Oakland for City's Use of Existing Modular Building for a Public Library at Piedmont Elementary School**

Action Requested **Approval by the Board of Education of the Joint-Use Lease Agreement Between Oakland Unified School District and City of Oakland for City's Use of Existing Modular Building for a Public Library at Piedmont Elementary School, located at 4314 Piedmont Avenue, Oakland CA**

Background and Discussion

The District is the owner of the real property known as Piedmont Elementary School, 4314 Piedmont Avenue, Oakland CA. The City of Oakland requires space to house a public library.

The District is authorized to enter into agreements to lease vacant classrooms or other space. The term of the Agreement between the District and the City of Oakland will commence upon full execution by both parties and shall expire five years after the date of full execution.

Recommendation **Approval by the Board of Education of the Joint-Use Lease Agreement Between Oakland Unified School District and City of Oakland for City's Use of Existing Modular Building for a Public Library at Piedmont Elementary School, located at 4314 Piedmont Avenue, Oakland 94611**

Fiscal Impact Revenue - \$2500 per month

Attachments

- Joint-Use Lease Agreement Between Oakland Unified School District and City of Oakland for City's Use of Existing Modular Building for a Public Library at Piedmont Elementary School, Oakland CA

**JOINT-USE LEASE AGREEMENT BETWEEN OAKLAND UNIFIED SCHOOL DISTRICT
AND CITY OF OAKLAND FOR CITY'S USE OF EXISTING MODULAR BUILDING
FOR A PUBLIC LIBRARY AT PIEDMONT ELEMENTARY SCHOOL, OAKLAND, CA**

THIS JOINT-USE LEASE AGREEMENT ("Agreement") is made this 7th day of September, 2017, by and between the OAKLAND UNIFIED SCHOOL DISTRICT, a California public school district ("District"), and the CITY OF OAKLAND, a California municipal corporation ("City"), referred to collectively as the "Parties", pursuant to City Resolution No. 86858 C.M.S. passed on July 18, 2017.

RECITALS

WHEREAS, City requires space to house a public library ("Activities"), as the City's Activities are further defined and depicted in **Exhibit A**;

WHEREAS, District is the owner of the real property known as Piedmont Elementary School, 4314 Piedmont Ave., Oakland, CA ("School Site"), and a modular classroom building at 80 Echo Avenue ("Modular Building") located on the School Site, as further depicted in **Exhibit B**;

WHEREAS, City's lease and use of the Modular Building is subject to Education Code § 17527 et seq.;

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

WHEREAS, District intends to utilize all remaining portions of the School Site for District purposes during the Term, and City shall only have use of the space as designated in **Exhibit B**; and

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

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

WHEREAS, the purpose of this Agreement is to set forth the Parties' responsibilities with respect to the use and occupancy of the Modular Building;

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

AGREEMENT

1. Lease and Use of Property. District hereby leases to City, and City hereby leases from District, the Modular Building at the School Site to be used for Activities. The Modular Building that constitutes the premises subject to this Agreement is described in **Exhibit B**. City shall have use of the Modular Building at all times for Activities only, subject to modification by agreement of both Parties, and only to the extent City pays Rent for the Modular Building.

2. Condition of Modular Building.

2.1. The Modular Building is leased to City in its "AS-IS" condition. District shall not be required to make or construct any alterations, additions, or improvements to the Modular Building.

2.2. By entry and taking possession of the Modular Building pursuant to this Agreement, City accepts the Modular Building in its "AS-IS" condition.

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

2.4. If required, City will bear all costs associated with providing ADA access to the Modular Building. City shall work in consultation with District to ensure compliance with ADA, and costs will be borne by City.

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

4. Term.

4.1. The term of this Agreement shall commence upon full execution by both Parties after approval by the governing body of each ("Commencement Date") and shall expire **5 years** after the date of full execution of this Agreement, unless sooner terminated pursuant to provisions contained in this Agreement ("Term").

4.2. Renewal of Agreement.

4.2.1. The Parties may decide to enter into written extensions or renewals of this Agreement. If the Parties wish to renew this Agreement after the first 5 years, this can only be done by a separate writing executed by both Parties that complies with all of the following provisions:

4.2.1.1. It specifically authorizes further tenancy by City and specifies the terms of that tenancy, and

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

4.2.2. On the last day of the Term hereof, or on sooner termination of this Agreement, City shall surrender to District the Modular Building and any then existing improvements in good order, condition, and repair, reasonable wear and tear excepted, free and clear of all liens, claims, and encumbrances; other than any preexisting liens, claims, or encumbrances; or any liens, claims, or encumbrances that are unrelated to City's Activities or use of the Modular Building. This condition shall be similar to that existing as of the Commencement Date, excepting normal ordinary wear and tear and any structural improvements made by District after the Commencement Date. This Agreement shall operate as a conveyance and assignment to District of any improvements identified by District to remain on the School Site. City shall execute, acknowledge, and deliver to District such instruments of further assurance as in the opinion of District are necessary or desirable to confirm or perfect District's right, title, and interest in, and to, any improvements.

City shall remove from the Modular Building all of City's personal property, trade fixtures, and any improvements made by City which the Parties agreed would be removed by City. All property not so removed shall be deemed abandoned by City. If the Modular Building is not so surrendered at the termination of this Agreement, City shall indemnify District against loss or liability resulting from delay by City in so surrendering the Modular Building, including, without limitation, any claims made by any succeeding lessees or losses to District due to lost opportunities to lease to succeeding lessees.

5. Security Deposit. N/A.

6. Rent.

6.1. For and in consideration of the use of the Modular Building for the Term, City agrees to pay District the sum of **\$2,500.00 per month** ("Rent"). The Parties acknowledge that District is currently undertaking a comprehensive facilities master planning process which may identify standardized rates for agreements such as this. If

there is a recommendation to adjust the rent for joint-use agreements with other public agencies, District will provide City with 6 months' notice of such proposed rate change. City may elect to give 60 days' notice to terminate in lieu of accepting the rate change.

6.2. City shall pay District prorated Rent for the first month, based on a 30-day month, upon Commencement Date. Thereafter, City shall pay Rent to District in advance on the first of each month during the Term, without deduction, set off, prior notice, or demand.

6.3. City acknowledges that late payment by City to District of the Rent and other sums due hereunder will cause District to incur costs not contemplated by this Agreement, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, if District does not receive any installment of Rent or any other sum due from City by 4:00 p.m. within 10 days after such amount is due, City shall pay to District, as additional rent, a late charge equal to 5% of such overdue amount or the maximum amount allowed by law, whichever is less. The Parties agree that such late charges represent a fair and reasonable estimate of the costs District will incur because of late payment by City. Acceptance of such late charge by District shall in no event constitute a waiver of City's default with respect to such overdue amount, nor prevent District from exercising any of its other rights and remedies granted hereunder.

6.4. Taxes, costs, expenses, assessments, levies, possessory interest taxes, late charges, and other charges, and governmental fees, general and special, ordinary and extraordinary, unforeseen as well as foreseen, of any kind or nature whatsoever; which during the Term; assessed, levied, imposed upon, or became due and payable, which City is required to pay hereunder; together with all interest and penalties that may accrue thereon in the event of City's failure to pay such amounts; and all reasonable damages, costs, and attorneys' fees and expenses which District may incur by reason of any default of City or failure on City's part to comply with the terms of this Agreement; shall be deemed to be additional rent and, in the event of nonpayment by City, District shall have all of the rights and remedies with respect thereto as District has for the nonpayment of Rent. The provisions of this Section shall survive the expiration or earlier termination of this Agreement.

6.5. Any amount due to District not paid when due shall bear interest at 1.5% per month commencing 30 days after the due date, but not to exceed the maximum rate permitted by law. Payment of interest shall be in addition to any late charges owing pursuant to this Agreement and shall not excuse or cure any default by City under this Agreement.

7. Utilities. In addition to Rent, City shall pay to District monthly all actual utility costs incurred for the use of the Modular Building ("Utility Charges"), on a prorated basis based on the square footage of the Modular Building relative to the School Site. For purposes of this Agreement, the Utility Charges include: water, gas, electricity, telephone, data and

communication lines and service, and sewage fees. City shall pay these Utility Charges to District on a reimbursement basis at the same time it pays Rent. District shall send an invoice monthly to City for the Utility Charges at least 10 days prior to the date payment is due, along with supporting documentation verifying the amount and nature of the invoiced Utility Charges. Charges for other utility services shall be paid by City directly to the provider, including security/fire/intrusion alarm monitoring and garbage collection.

8. Maintenance and Repairs.

8.1. City, at its cost, shall maintain the Modular Building, interior of the Modular Building and surrounding premises in a good condition consistent with their condition at the time of delivery in accordance with applicable provisions of the Education Code, the implementing regulations, and District policies and/or practices. City acknowledges and accepts that the Modular Building is leased in its "AS-IS" condition.

8.2. District shall keep and maintain the structural elements of the building, as hereinafter defined, on the Modular Building in the condition existing at the time City takes possession of the Modular Building, excepting normal wear and tear. District makes no representations or warranties for the structure of the building as it exists. District agrees that if the structural elements of the building become damaged to a lesser condition than currently exists, and if such structural damage is due to no fault or negligence of City, then District shall repair the damage in such a manner as to bring it back to a condition which is similar to the condition which existed at the time City took possession of the Modular Building; however, District may terminate this Agreement if such repair cost exceeds the total sum of one year's rent per incident. District agrees to abate Rent if, and to the extent that, structural damage or repair or maintenance work on the structural elements of the building impairs City's Activities. If District elects not to perform a repair estimated to cost more than the total sum of one year's rent, then City may elect to remain in possession of the Modular Building and pay Rent (as abated), or City may elect to terminate this Agreement.

8.3. City shall reimburse District for the cost of repairs of the structural elements of the building if such repair is required because of the negligence or willful misconduct of City or its Council, employees, agents, or invitees, in which event necessary repairs or replacements shall be charged to City as additional rent.

8.4. As used in this Agreement, the term "structural elements of the building" is defined as, and shall be limited to, the foundation, footings, floor slab but not flooring, structural walls excluding glass and doors, and the roof excluding skylights. Plumbing, electrical, and heating systems shall be considered "structural elements of the building"; excluding, however, repairs or maintenance to fixtures or appliances such as toilets, sinks, hot water heaters, stoves, refrigerators, fans or window cooling units, and/or those repairs

and maintenance items to any systems that can be completed without wall or floor removal, in which case these repairs shall be the responsibility of City.

8.4. If District fails to commence work on any of the repairs required to be made by District under this Agreement within 30 days after written notice of the necessity therefore, City, in addition to any other rights it may have hereunder, shall have the right, but not the obligation, to make said repairs on behalf of District and bill District for the reasonable costs thereof, and District shall promptly reimburse City for the costs thereof; or City may, at its option, offset such costs against Rent due and owing. If such repairs are necessitated by an emergency affecting public health and safety, then City may make such repairs upon reasonable notice.

8.5. District shall have no maintenance or repair obligations with respect to the Modular Building except as expressly provided in this Section. City expressly waives the provisions of §§ 1932 (subsection 1), 1941, and 1942 of the Civil Code and all rights to make repairs at the expense of District as provided in § 1942 of said Civil Code.

8.6. If City wishes to have any improvements, alterations, work, or other services performed on the Modular Building that are not part of the maintenance or repair services indicated herein, City shall request that work via the Building & Grounds Work Order Protocol in **Exhibit C**.

8.6.1. The type of work that would be subject to this provision includes, for example, painting that is neither repainting nor painting to bring the facility to its original condition, new room dividers, installing or removing casework, whiteboards, or other fixtures, and similar City-requested improvements.

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

8.7. Scope of Interior Maintenance. Except as expressly provided above, City shall, at its cost, maintain and repair the Modular Building and surrounding premises, including the windows, skylights, doors and all door hardware, walls and partitions, ceilings, all other surfaces visible to the public or City, electrical, plumbing, lighting, heating, and ventilating and air conditioning systems, in a condition similar to that which exists at the time City takes possession of the Modular Building. The term "maintain and repair" shall include routine, regular, or necessary maintenance. If electrical, plumbing, heating, and ventilating systems can be accessed without the removal of walls or floors, repairs and maintenance shall be City's responsibility. For example, City shall be responsible for toilet replacements and clogged toilets while District will be responsible for main sewer lines that are clogged, damaged, or broken due to no fault of City. City shall have sole

and complete responsibility for the cost of maintenance, repair, and replacement of the air conditioning systems.

9. Title to and Removal of City's Improvements to Facilities.

9.1. City shall not construct or cause to be constructed on the Modular Building or School Site any improvements ("City's Improvements") without express prior written consent from District.

9.2. City shall, at its own expense, obtain all necessary environmental and governmental approvals and permits, including, without limitation, the California Environmental Quality Act ("CEQA"), any necessary approvals from any local authority, including any site, grading, zoning, design review, and other required permits or approvals, if applicable, prior to commencing construction of any approved City Improvements and shall provide District with evidence of approval by all applicable governmental agencies.

9.3. Any modifications to the Modular Building and surrounding School Site must be approved in writing in advance by District. City's contractor must be approved as well, unless the work is being performed by City employees. All contractors and subcontractors of City, if any, shall be duly licensed in the State of California. City shall be solely responsible for maintaining City's Improvements installed thereon during the Term, including any extensions, and for compliance with all applicable laws or ordinances, rules, and regulations.

9.4. All alterations, additions, and/or improvements to the Modular Building must be made in compliance with the applicable provisions of the Education Code, the Fair Employment and Housing Act, applicable building code standards, other applicable state and federal statutes, and District policies, practices, standards, and procedures. Regarding any improvements constructed on the School Site consistent with the provisions of this Agreement, City shall, prior to construction, repair, renovation, or demolition of any improvements on the School Site, obtain the prior written consent of District thereto and to the final plans, specifications, and schedule for completion thereof. City shall also, prior to construction of any improvements, obtain written approval from District and the Division of State Architect ("DSA") for the improvements and their related costs. Said approval or disapproval must be expressly made by District in writing. City agrees to deliver DSA's written approval to District within 10 days after City's receipt. City agrees not to proceed with any construction of improvements until City has obtained District's and DSA's written approvals. The Parties recognize that such approvals may be completed in phases, such that City initially requests conceptual

approval and, if approved by District, then proceeds to draw the plans and specifications. District shall respond to City with said approval or disapproval within 45 days after District receives a written request with architectural plans and drawings from City. District's approval shall be at District's sole and absolute discretion, and District may withhold or disapprove of such improvements without reason. As a condition of its approval, District may require that City agree to remove certain improvements and restore the School Site to its original condition upon expiration or earlier termination of this Agreement, and/or provide District with adequate security for such removal.

9.5. Title to removable furniture (including all shelving), equipment, and/or other personal property placed by City onto the Modular Building, but not affixed thereto, shall be held solely by City. These items shall remain the personal property of City and shall not be treated as real property or become a part of the School Site unless District accepts, or City abandons, any of this personal property at the end of the Term.

9.6. On or before the expiration of this Agreement, or within 30 days after any earlier termination of this Agreement, City shall remove City's Improvements, at its sole expense. City shall repair any damage to the School Site and/or Modular Building, caused by removal of City's Improvements and restore the School Site and the Modular Building to good condition, less ordinary wear and tear. If City fails to timely remove City's Improvements, District, upon 30 days' written notice, may either (1) accept ownership of City's Improvements with no cost to District or (2) remove City's Improvements at City's sole cost. If District chooses to accept ownership of City's Improvements, City shall execute any necessary documents to effectuate the change in ownership of City's Improvements. If District removes City's Improvements, City shall pay all invoices for the removal of City's Improvements within 30 days of receipt of such invoices.

10. Supervision. City shall provide adequate and comprehensive supervision of the children attending Activities when in the Modular Building. City shall follow and adhere to all District policies and procedures. In the case of a minor accident or injury, City will be responsible for administering first aid and supplies as necessary. City will report all incidents or injuries to the site administrator and may be required to complete an accident/incident report.

11. Use of the Modular Building.

11.1. City shall not use the Modular Building for any use other than that specified in this Section without the prior written consent of District. City agrees to maintain the Modular Building and to conduct Activities in a manner that meets all federal, state, and local laws, regulations, and ordinances relating to the Modular Building and to the operation of Activities; and to comply with all federal, state, and local laws, regulations, and ordinances, now or hereafter enacted, concerning the Modular Building, the use of the Modular Building, and/or City's Activities. The effectiveness of this Agreement shall be subject to City obtaining any and all permits or approvals which may be required in

order for City to operate Activities in the Modular Building. City shall not use or permit the Modular Building to be used in whole or in part during the Term for any purpose or use in violation of the laws, regulations, and ordinances applicable thereto.

City shall indemnify, defend, and hold District harmless against any loss, expense, damage, attorneys' fees, or liability arising out of failure of City to comply with any applicable law, regulation, rule, or ordinance. City shall not commit, or suffer to be committed, any waste upon the Modular Building; or allow any sale by auction upon the Modular Building; or allow the Modular Building to be used for any unlawful purpose; or place any loads upon the floor, walls, or ceiling which endanger the structure; or place any harmful liquids in the plumbing, sewer, or storm water drainage system of the Modular Building. No waste materials or refuse shall be dumped upon or permitted to remain upon any part of the Modular Building except in trash containers designated for that purpose. Any uses which involve the serving and/or sale of alcoholic beverages and the conducting of games of chance are prohibited in the Modular Building. City shall comply with District-wide policy prohibiting the use of tobacco products in the Modular Building at all times. City shall not use, or permit the use of, the Modular Building, or any part thereof, for any purpose which is inimical to public morals and welfare, or morally objectionable as unsuitable for a public educational facility. City agrees to respond within a reasonable time to concerns expressed by neighbors or District relating to the operation of the Modular Building. So long as City pays all Rent and complies with all of the terms and conditions of this Agreement, City shall peaceably and quietly have, hold, and enjoy the Modular Building.

11.2. City represents that it is qualified to administer and operate Activities. City shall be solely responsible for the administration and operation of Activities, including the hiring of all employees. City shall be responsible for verifying the qualifications, credentials, certificates, and licenses of its staff, agents, consultants, and/or subcontractors who may provide services in conjunction with Activities in the Modular Building.

11.3. City's use of the Modular Building shall be exclusively limited to Activities. Unless otherwise agreed in writing by District, City must remove any equipment at the end of the Term. District is in no manner responsible for damage or theft of City's equipment or materials. City must maintain and repair any damage to the Modular Building to at least as good a condition as the Modular Building existed as of the Commencement Date, less ordinary wear and tear.

11.4. Responsibility for the Operation, Maintenance, and Management. The operation, management, and supervision of day-to-day operations of the library will be the responsibility of City, with advice from the Library Coordinating Committee. The Modular Building will be maintained per conditions outlined in the Agreement. During those school hours when the library is closed to the public, District staff will supervise any use by classes. Any security plan for the Modular Building that has been developed

by the Parties shall continue in effect. City shall comply with all fingerprinting requirements set forth in District policy or the Education Code.

12. Inspection of Modular Building. District agrees to provide City with a set of keys for the Modular Building. City shall permit District and/or its agents to enter the Modular Building at any reasonable time for the purpose of inspecting the Modular Building and/or exhibiting the Modular Building to prospective lessees, occupants, purchasers, or mortgagees.

13. Default and Termination.

13.1. Either Party may terminate this Agreement for cause. Cause may include:

13.1.1. Material violation of this Agreement by the other Party; or

13.1.2. Any act by a Party in violation of this Agreement, exposing the other Party to liability to others for personal injury or property damage.

13.2. A Party exercising its rights under this Section shall give written notice to the other Party of the event of default giving rise to cause for termination. Said notice shall specify the nature of the act, omission, or deficiency giving rise to the event of default, and shall specify the action required to cure the default, and a reasonable date, which shall not be less than 30 calendar days from the mailing of the notice, by which the defaulting Party must take or commence such action to cure. If the notice specifies only a commencement date for the cure, the defaulting Party must commence such cure within the specified time and must diligently pursue the cure to completion within a reasonable time thereafter.

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

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

13.5. Upon termination of this Agreement due to a default by City, City shall be responsible to restore the Modular Building to its condition prior to the Commencement Date, reasonable wear and tear excepted.

13.6. Notwithstanding anything to the contrary in this Agreement, District shall have the right to terminate the Agreement at any time if the Modular Building is needed by District for public school purposes, or if any requirements of Education Code § 17529 cease to be met. District shall give City at least 6 months' notice of such termination.

14. Indemnification. To the fullest extent permitted by California law, City shall defend, indemnify, and hold harmless District, its agents, representatives, officers, consultants, employees, trustees, and volunteers from any and all losses, liabilities, claims, suits, and actions of any kind, nature, and description, including, but not limited to, attorneys' fees and costs, directly or indirectly arising out of, on account of, connected with, or resulting from, City's negligence or willful misconduct in its operation, use, or occupancy of the Modular Building, all improvements thereon, and all areas appurtenant thereto; and if any action or proceeding is brought against District, City shall defend the same at City's sole expense. City shall keep the School Site clear of all liens, encumbrances, and/or clouds on District's title to any portion of the School Site.

To the fullest extent permitted by California law, District shall defend, indemnify, and hold harmless City, its councilmembers, agents, representatives, officers, consultants, employees, trustees, and volunteers from any and all losses, liabilities, claims, suits, and actions of any kind, nature, and description, including, but not limited to, attorneys' fees and costs, directly or indirectly arising out of, on account of, connected with, or resulting from, District's negligence, willful misconduct, or breach or failure to comply with the terms and conditions of this Agreement; and if any action or proceeding is brought against City, District shall defend the same at District's sole expense.

When the liability or claim is caused by the joint negligence or willful misconduct of both City and District, each Party's duty to defend, indemnify, and hold harmless shall be in proportion to the Party's allocable share of the joint negligence or willful misconduct.

15. Insurance.

15.1. Insurance is to be placed with insurers with a current A.M. Best Insurance rating of no less than A-minus: VII and subject to the approval of District. City shall furnish District with the original certificates and amendatory endorsements effecting coverage required.

15.2. City acknowledges that the insurance to be maintained by District on the Modular Building will not insure any of City's property or improvements made by City.

15.3. City shall, at City's expense, obtain and keep in force during the Term a policy of commercial general liability insurance and a comprehensive auto liability policy insuring

the Parties against claims and liabilities arising out of the operation, condition, use, or occupancy of the Modular Building and all areas appurtenant thereto, including parking areas. City's comprehensive auto liability policy shall insure all vehicles, whether hired, owned, or non-owned. City's commercial general insurance shall be at least as broad as the Insurance Service Office (ISO) CG 00-01 form and in an amount of not less than \$1,000,000 for bodily injury or death and property damage as a result of any one occurrence and a \$2,000,000 general aggregate policy limit. In addition, City shall obtain a products/completed operations aggregate policy in the amount of \$1,000,000.

The insurance carrier, deductibles, and/or self-insured retentions shall be approved by District, which approval shall not be unreasonably withheld. Prior to the Commencement Date, City shall deliver to the Risk Management Office of District a certificate of insurance evidencing the existence of the policies required hereunder and copies of endorsements stating that such policies shall:

15.3.1. Not be canceled or altered without 30 days' prior written notice to District;

15.3.2. State that the coverage is primary, and any coverage by District is in excess thereto;

15.3.3. Contain a cross liability endorsement; and,

15.3.4. Include a separate endorsement naming District as an additional insured.

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

15.4. During the Term, District shall maintain at its cost a policy of standard fire and casualty insurance limited to the value of the buildings and improvements located on the School Site as of the Commencement Date. In the event of loss or damage to the School Site, the buildings, the Modular Building, or any contents, each of the Parties hereto, and all persons claiming under each of the Parties, shall look first to any insurance in its favor before making any claim against the other Party. And to the extent possible, without adding additional costs, each Party shall obtain, for each policy of insurance, provisions permitting waiver of any claim against the other Party for loss or damage within the scope of the insurance; and each Party, to the extent permitted, for itself and its insurers, waives all such insurance claims against the other Party.

15.5. During the Term, City shall comply with all provisions of law applicable to City with respect to obtaining and maintaining workers' compensation insurance. Prior to the Commencement Date and any renewal of this Agreement and City's occupancy of the Modular Building, City shall provide District, as evidence of this required coverage, a certificate in a form satisfactory to District on or before the Commencement Date or

renewal, providing that insurance coverage shall not be canceled or reduced without 30 days' prior written notice to District.

15.6. As an alternative to the insurance policies specified above, City may submit evidence of adequate self-insurance to District, whose approval of self-insurance shall not be unreasonably withheld or conditioned.

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

17. Notices.

17.1. Notices to District. Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Agreement or by law to be served on, or given to, District by City or any lender described in this Agreement shall be in writing and shall be deemed duly served and given when personally delivered to District, to any managing employee of District, or, in lieu of personal service, when deposited in the United States mail, first-class postage prepaid, and sent by express mail that allows for tracking, addressed to District at Oakland Unified School District, 955 High St., Oakland, CA 94607, Attn: Joe Dominguez, Deputy Chief Facilities. District may change District's address for the purpose of this Section by giving written notice of that change to City in the manner provided in Section 17.2.

17.2. Notices to City. Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Agreement or by law to be served on, or given to, City by District shall be in writing and shall be deemed duly served and given when personally delivered to City, any managing employee of City, or, in lieu of personal service, when deposited in the United States mail, first-class postage prepaid, and sent by express mail that allows for tracking, addressed to Oakland Public Library at 125 14th St., Oakland, CA, 94612, Attn: Associate Director. City may change its address for the purpose of this Section by giving written notice of that change to District in the manner provided in Section 17.1.

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

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

20. Entire Agreement of Parties. This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.

21. California Law. This Agreement shall be governed by; and the rights, duties, and obligations of the Parties shall be determined and enforced in accordance with; the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in the county in which District's administrative offices are located.

22. Compliance with All Laws.

22.1. City shall, at City's expense, comply with all requirements of all governmental authorities, in force either now or in the future, affecting the Modular Building; and shall faithfully observe, in its use of the Modular Building, all laws, regulations, and ordinances of these authorities, in force either now or in the future; including, without limitation, all applicable federal, state, and local laws, regulations, and ordinances pertaining to air and water quality, hazardous material, waste disposal, air emission, and other environmental matters (including CEQA and its implementing regulations in its use of the Modular Building); and all District policies, rules, and regulations, including those indicated herein in **Exhibit D**. Specifically, City shall comply with the restriction on chemical usage indicated in **Exhibit D**.

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

22.3. City shall not cause or permit any hazardous material to be generated, brought onto, used, stored, or disposed of in or about, the Modular Building and any improvements, by City or its agents, employees, contractors, subtenant, or invitees, except for limited quantities of standard office, classroom, and janitorial supplies (which shall be used and stored in strict compliance with environmental laws). City shall comply with all environmental laws. "Hazardous material" 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. "Hazardous material" includes, without limitation, petroleum products, asbestos, PCBs, and any material or substance which is (i) defined as hazardous or extremely hazardous pursuant to Title 22 of the California Code of Regulations, Division 4.5, Chapter 11, Article 4, § 66261.30 et seq., (ii) defined as a "hazardous waste" pursuant to § 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 § 10 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et seq. (42 U.S.C. 9601). "Hazardous materials law" means any statute, law, ordinance, or regulation of any governmental body or agency (including the U.S. Environmental Protection Agency, the California Regional Water Quality Control Board, and the California Department of Health Services) which regulates the use, storage, release, or disposal of any hazardous material.

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

24. Attorneys' Fees. If either Party files any action or brings any proceedings against the other arising out of this Agreement, the prevailing Party shall be entitled to recover, in addition to its costs of suit and damages, reasonable attorneys' fees to be fixed by the court. The "prevailing Party" shall be the Party who is entitled to recover its costs of suit, whether or not suit proceeds to final judgment. No sum for attorneys' fees shall be counted in calculating the amount of a judgment for purposes of determining whether a Party is entitled to its costs or attorneys' fees.

25. Waiver. The waiver by either Party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

26. Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, the Parties hereto and their respective heirs, legal representatives, successors, and assigns.

27. Counterparts. This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.

28. Captions. The captions contained in this Agreement are for convenience only and shall not in any way affect the meaning or interpretation hereof, nor serve as evidence of the interpretation hereof or of the intention of the Parties hereto.

29. Severability. Should any provision of this Agreement be determined to be invalid, illegal, or unenforceable in any respect, such provision shall be severed, and the remaining provisions shall continue as valid, legal, and enforceable.

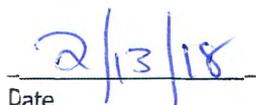
30. Incorporation of Recitals and Exhibits. The Recitals and each Exhibit attached hereto are hereby incorporated herein by reference.

ACCEPTED AND AGREED on the dates indicated below:

CITY OF OAKLAND



City Administrator



Date

Approved as to Form and Legality:



Deputy City Attorney



Date

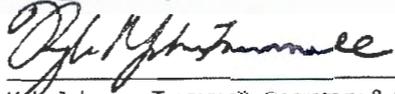
OAKLAND UNIFIED SCHOOL DISTRICT



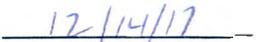
James Harris, President



Date



Kyla Johnson-Trammell, Secretary & Superintendent



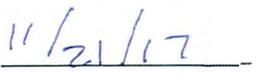
Date

Approved as to Form and Legality:



Marion McWilliams

Oakland Unified School District, General Counsel



Date

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2017 JUN 29 PM 12:54

Approved as to Form and Legality


Oakland City Attorney's Office

OAKLAND CITY COUNCIL

Resolution No. 86858 C.M.S.

Introduced by Councilmember _____

RESOLUTION AUTHORIZING A LEASE AGREEMENT WITH THE OAKLAND UNIFIED SCHOOL DISTRICT FOR THE CITY'S USE OF THE MODULAR BUILDING AT 80 ECHO AVENUE FOR THE PIEDMONT AVENUE BRANCH LIBRARY FOR A FIVE YEAR TERM WITH LEASE PAYMENTS OF \$2,500 PER MONTH

WHEREAS, since 2012 the Piedmont Avenue Branch Library has been located on Oakland Unified School District (OUSD) property at 80 Echo Avenue at the Piedmont Avenue Elementary School; and

WHEREAS, the current lease agreement with OUSD for use of the modular building at 80 Echo Avenue expires September 6, 2017; and

WHEREAS, the City wishes to continue to operate a public library in this location; and

WHEREAS, the OUSD will lease the facility to the City at \$2,500 per month for five (5) years after the date of full execution of the lease agreement; and

WHEREAS, the OUSD is undertaking a comprehensive facilities master planning process which may identify standardized rates for agreements and which may call for an amendment to the proposed lease agreement and an adjustment to the lease payments, and City staff will seek City Council approval for any increase to the term of the lease or increase in the lease payments; and

WHEREAS, pursuant to the proposed lease, the City will be responsible for utilities on a prorated basis based on the square footage of the facility, and maintenance and custodial of the interior and surrounding premises of the facility; and

WHEREAS, the continuation of the library at this location will benefit not only OUSD students and area residents, but also others throughout the City; and

WHEREAS, the City desires to lease the property for a five-year period; and

WHEREAS, funding for the lease payments is available for fiscal year ("FY") 2017 - 2019, in Measure Q Fund (2241); and

WHEREAS, funding for the utilities, maintenance and custodial payments is available for FY 2017 - 2019, in City Facilities Services Fund (4400); now, therefore, be it

RESOLVED: That the City Administrator is hereby authorized to execute a lease agreement with the Oakland Unified School District for City's use of the modular building at the Piedmont Avenue Elementary School for a five (5) year term with lease payments of \$2,500 per month; and be it

FURTHER RESOLVED: That the City Administrator or her designee is hereby authorized to amend the lease agreement, not including extensions of the term or rent increases, without returning to the City Council, and to take any and all actions with respect to the lease necessary and consistent with this Resolution; and be it

FURTHER RESOLVED: That the lease agreement and other documents shall be approved as to form and legality by the Office of the City Attorney and a copy shall be placed on file in the Office of the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, JUL 18 2017

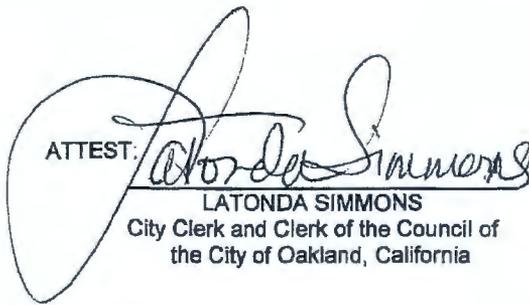
PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL-WASHINGTON, GALLO, GIBSON MCELHANEY, GUILLÉN, KALB, KAPLAN AND PRESIDENT REID *—8*

NOES - *∅*

ABSENT - *∅*

ABSTENTION - *∅*

ATTEST: 
LATONDA SIMMONS
City Clerk and Clerk of the Council of
the City of Oakland, California

PROGRAMS & ACTIVITIES AGREEMENT BETWEEN THE OAKLAND UNIFIED SCHOOL DISTRICT AND THE CITY OF OAKLAND REGARDING THE THE PIEDMONT AVENUE BRANCH LIBRARY OF THE OAKLAND PUBLIC LIBRARY

In fulfillment of the Oakland Unified School District's (District) commitment to improve the quality of educational facilities for its students and in keeping with the goals stated in Bond Measure B, the District has agreed to allow the City of Oakland (City) to operate a public library on the site of the Piedmont Avenue Elementary School.

In meetings with the general and school communities of Piedmont Avenue, it has been agreed that a public library that operates on the school's site, and that may be used by both students and members of the public, enhances the services and facilities that might be offered by either agencies individually.

Consequently, the City and the District agree to the following joint cooperative activities:

SECTION 1 General

- (a) This Cooperative Activities Agreement is contingent upon approval by the governing bodies of each Party of the Joint-Use Lease Agreement between the City and the District and will become effective on the date when the last Party authorizes its designated representative to execute the Joint-Use Lease Agreement on behalf of that Party.
- (b) Standards for the operation of the library facility shall be generally consistent with the standards established for the operation of other Oakland Public Library facilities, including hours of operation, staff qualifications, materials selection guidelines and circulation policies, to the extent provided in this Agreement.
- (c) The primary purpose of the Piedmont Avenue Library shall be to equally serve the educational and recreational reading needs of the general public, students and faculty using the facility. The library modular facility shall be open for use to District students, faculty and administrators and members of the general public, in accordance with established policies and procedures of the Oakland Public Library and such additional policies and procedures as may be developed pursuant to authority granted in this Agreement.

SECTION 2 Definition of the Roles and Responsibilities of Each Party with Respect to Funding, Staffing, Supervision, Operation, and Management

- (a) A Library Coordination Committee (LCC) will be established to implement and evaluate the joint venture. The Committee will include two representatives from the Piedmont Avenue Elementary School (School) and two for the Piedmont Avenue Library (Library). The LCC will meet quarterly to review and implement the joint venture project and clarify guidelines for operations and services. Any issues that cannot be resolved by the LCC will be referred to the Library Director and the School Superintendent or their designee.

EXHIBIT A

- (b) In addition to participating in the LCC, the City and District will have the following responsibilities:

The City shall provide:

- Library staff for the operation of the library during public service hours; and to supervise day-to-day operations of the library.
- A general collection for use by students, faculty, administrators and the general public.
- Furnishings, equipment and supplies for the library.
- All necessary software and related equipment to operate the functions of circulation and collection management.

The District shall provide:

- Staff for operation of the library during non-public hours.
- Staff to supervise students brought into the library during school hours.

The Library Director, as a representative of the City, and the School Superintendent or designee shall meet to finalize and initiate any actions necessary to insure that any necessary adjustments are made to this Agreement.

SECTION 3 Description of the Joint Services and How They Will Be Provided

The joint use services include all available library collections, services and programs to support the K-5 students at the Piedmont Avenue Elementary School with which the library shares a campus, as well as other local schools.

In order to better implement the joint services, the Library has been designed with a separate, non-public school entrance available for all students and faculty who will be using the library during school hours. After-school entry will be through the public entrance.

Classes from the school may be scheduled for visits to the library on a regular basis. Classes from other local schools (traditional and charter) may also be scheduled. Planning for class visits will be done on a quarterly basis by the LCC, with the calendar maintained by the Library staff.

School staff shall supervise students using the library during school hours. Students may use the library whenever it is open to the public.

SECTION 4 Staff Members Available for Services

City-Library

The library staff available to assist the general public and school for general operations includes a Branch Manager, Children's Librarian, Library Assistant and Aide.

EXHIBIT A

To support the **joint venture** work with the school, additional staff will be assigned as needed.

District--School

For the **joint venture** services the District will provide:

Teachers or designated adults to supervise library use when the library is not open to the public and classes are brought in, and to supervise students using the library during school hours.

SECTION 5 Responsibility for the Operation, Maintenance and Management

The operation, management and supervision of day-to-day operations of the library will be the responsibility of the City, with advice from the LCC. The facility will be maintained per conditions outlined in the Joint-Use Lease Agreement.

During those school hours when the library is closed to the public, District staff will supervise any use by classes.

The parties shall develop a mutually agreeable security plan for the joint use facility prior to commencement of operation of the facility.

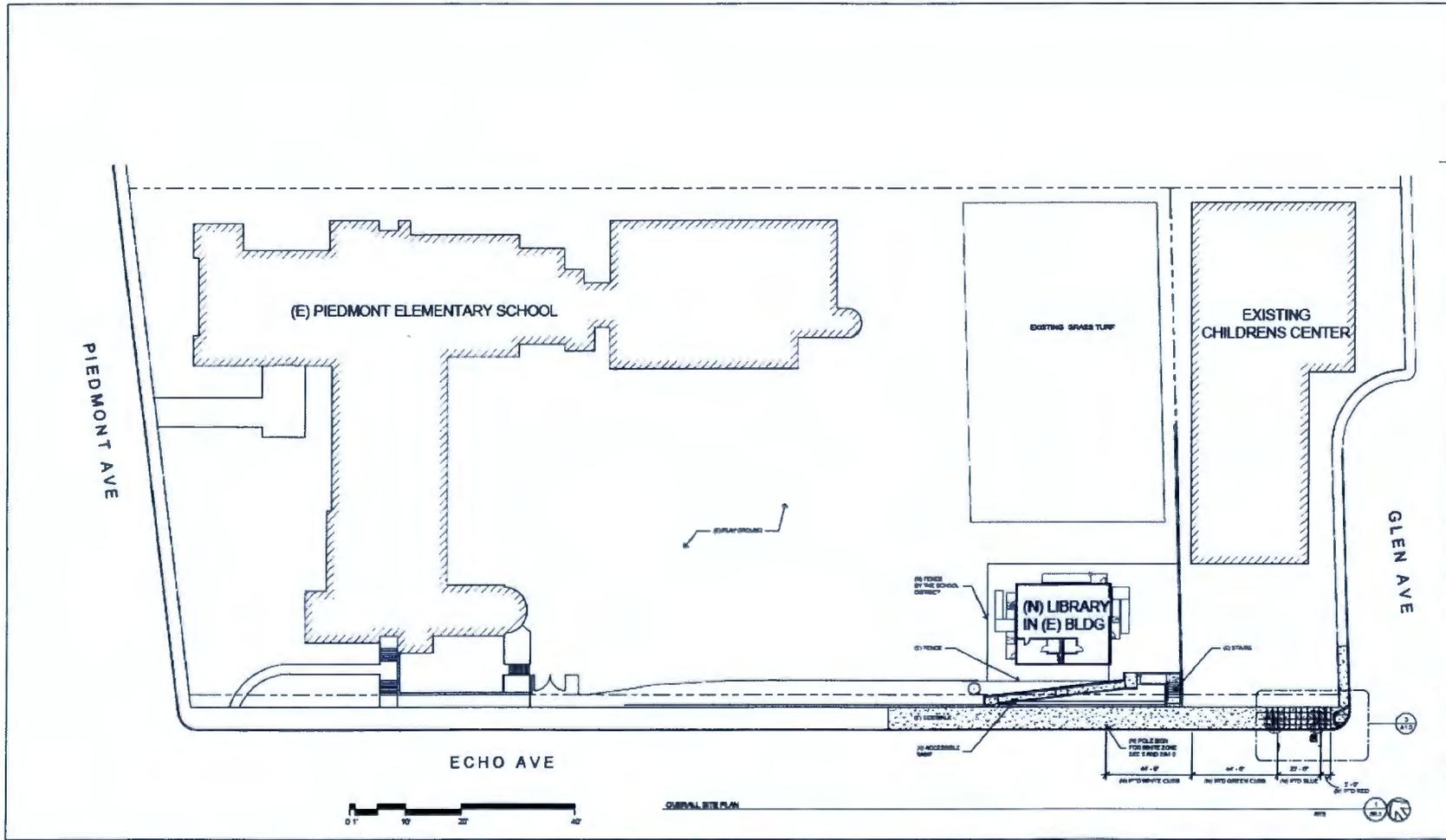
SECTION 6 Review and Modification Process for the Conditions of the Agreement

This Agreement will be reviewed quarterly by both Parties through the Library Coordination Committee for the first two years and semi-annually thereafter, with either party able to call for a review at any time. Proposed changes may be submitted to the Committee at any time in writing for consideration.

The agreement may be modified to provide services that meet the greater need of residents and students than the services described herein, provided that the services still meet the spirit and intent of the original cooperative. Changes to the conditions of the agreement will be made by written agreement signed by the Library Director and School Superintendent or their designee.

THIS EXHIBIT IS ATTACHED TO AND MADE A PART OF THE AGREEMENT OF THE JOINT-USE LEASE AGREEMENT BETWEEN THE CITY OF OAKLAND, OAKLAND PUBLIC LIBRARY AND THE OAKLAND UNIFIED SCHOOL DISTRICT FOR OPERATION OF A PUBLIC LIBRARY AT THE PIEDMONT AVENUE ELEMENTARY SCHOOL.

EXHIBIT B



		 <p>CITY OF OAKLAND OAKLAND PUBLIC WORKS AGENCY 1878 BUSHWICK PLACE, SUITE 402 OAKLAND, CALIFORNIA 94612 PROJECT NO. CASB10</p>		<p>CHECKED BY: <u>DA</u></p> <p>DRAWN BY: <u>DA</u></p>	<p>PIEDMONT LIBRARY RELOCATION</p> <p>REDAUNTING OAKLAND, CA 94612</p> <p>OVERALL SITE PLAN</p>	<p>SCALE: 1"=20'-0"</p> <p>DATE: 08/11/10</p> <p>PROJECT NO.: CASB10</p> <p>SHEET NO.: A0.1</p> <p>2 of 6</p>
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EXHIBIT C

District's Form of Work Order



OAKLAND UNIFIED
SCHOOL DISTRICT

Community Schools, Thriving Students

Buildings & Grounds Work Order Protocol

- **WORK ORDERS ARE TO BE PLACED BY DESIGNATED SITE STAFF ONLY**
- **CONTACT WORK CONTROL CENTER AT (510)535-2718 WITH THE FOLLOWING INFORMATION:**
 1. Site Name (Site Number if applicable)
 2. Contact Name and Phone Number
 3. Exact nature of request (i.e. 2 light fixtures broken/missing in room 2 Main Building vs. replace light fixtures) – Please specify if EMERGENCY
 4. Specific location (Building/Room Number/Area)
 5. Obtain your Work Order number
- **WORK CONTROL HOURS: MONDAY – FRIDAY 7:30AM – 4:00PM**
 1. If Emergency and No Answer contact Main Office: (510) 535-2718
 2. If After Hours (For Emergency Only) contact on-call Manager: (510) 277-7284

OUR WORK CONTROL CENTER HAS THE RESPONSIBILITY OF EVALUATING AND ASSIGNING A PRIORITY LEVEL TO ALL WORK REQUESTS

PRIORITY LEVELS AND TIME LINES ARE AS FOLLOWS:

- **Emergency Requests -Same day** response whenever possible **or next business day**, depending on nature of problem and time received.
 1. **Emergencies consist of repairs/replacements that need to be addressed immediately in order to: Protect the health and safety of a student, employee or other person at the site and/or prevent damage to the integrity of the site** (see B&G Prioritization List for more details)
 - **Non-emergency requests** that require immediate attention, but do not require same day service completed within **1-7 business days**.
 - **Requests of a general nature** that do not pose an immediate threat to the safety of the facility or its occupants to be completed within **10-30 business days**.
-

- If you have placed a work order and the request has not been addressed within the allotted timeframe, please follow up with our Work Control Center at (510) 535-2718 (please have your work order number and date of request available), or email carla.colbert@ousd.k12.ca.us.

For Pest Management and custodial requests contact Custodial Services at (510) 434-2202
For Environmental concerns contact Risk Management at (510) 535-2750

EXHIBIT D
RESTRICTION ON CHEMICAL USAGE
(Administrative Regulation 3514.1)

Oakland Unified School District
Administrative Regulation

AR 3514.1
Business and Noninstructional Operations

Hazardous Substances

The disposal of chemicals may be accomplished in accordance with removal and disposal systems established by the County Office of Education or by permission of the County Superintendent of Schools. (Education Code 49411)

Hazard Communication Program

The written hazard communication program shall be available upon request to all employees and their designated representatives. (8 CCR 5194)

The following materials are exempted from the hazard communication program and this district regulation: hazardous wastes; tobacco products; wood and wood products; manufactured articles; food, drugs and cosmetics intended for personal consumption by employees while in the workplace; and substances used in compliance with regulations issued by the Department of Pesticide Regulation pursuant to Food and Agriculture Code 12981.

1. Container Labeling

Except for consumer products, pesticides, alcoholic beverages, and food, drug and additive products which are already labeled in compliance with federal law, no container of hazardous substance shall be accepted by schools or the district unless labeled by the supplier with the following information:

- a. Identity of the hazardous substance(s)
- b. Hazard warning statements
- c. Name and address of the chemical manufacturer or importer

Whenever hazardous substances are transferred from their original containers to other containers, the secondary containers shall likewise be labeled with the identity and hazard warning statement.

2. Material Safety Data Sheets

Upon receiving a hazardous substance or mixture, the Superintendent or Deputy Superintendent of Business shall ensure that the manufacturer has also furnished a Material Safety Data Sheet (MSDS) as required by law. If the MSDS is missing or obviously incomplete, the Superintendent or designee shall request a new MSDS from the manufacturer and shall notify the California Occupational Safety and Health Division (Cal/OSHA) if a complete MSDS is not received.

The Superintendent or Deputy Superintendent of Business shall maintain copies of the MSDS for all hazardous substances and ensure that they are kept up to date and available to all affected employees during working hours. He/she shall review each incoming MSDS for new and significant health or safety information and shall disseminate this information to affected employees.

3. Employee Information and Training

Employees shall receive inservice training on hazardous substances in their work area at the time of their initial assignment and whenever a new hazard is introduced into their work area. This training shall include but is not limited to: (8 CCR 5194)

- a. An overview of the requirements of California's Hazard Communication Regulation (8 CCR 5194), including employee rights described therein
 - b. The location, availability and content of the district's written hazard communication program
 - c. Information as to any operations in the employees' work area where hazardous substances are present
 - d. The physical and health effects of the hazardous substances in the work area
 - e. Techniques and methods of observation that may determine the presence or release of hazardous substances in the work area
 - f. Methods by which employees can lessen or prevent exposure to these hazardous substances, such as appropriate work practices, use of personal protective equipment and engineering controls
 - g. Steps the district has taken to lessen or prevent exposure to these substances
 - h. Instruction on how to read labels and review the MSDS for appropriate information
 - i. Emergency and first aid procedures to follow if exposed to the hazardous substance(s)
-

CITY OF OAKLAND CERTIFICATE OF SELF-INSURANCE

CERTIFICATE HOLDER: Oakland Unified School District
1000 Broadway, Suite 150
Oakland, CA 94607
(510) 879-4026

LOCATION OF OPERATION: Piedmont Avenue Library, 80 Echo Avenue, Oakland, CA

DESCRIPTION OF ACTIVITY: Lease of Modular Facility

DATE(S) OF COVERAGE: September 6, 2017 – September 5, 2022

CERTIFICATE ISSUER: CITY OF OAKLAND
HUMAN RESOURCES MANAGEMENT
RISK MANAGEMENT DIVISION
150 Frank Ogawa Plaza, 3rd Floor
Oakland, CA 94612
510-238-7165

This is to certify that the City of Oakland is self-insured for the following coverages:

<u>Type of Coverage(s)</u>	<u>Self-Insured Limit(s)</u>
I. General Liability:	\$1,000,000 ea. Occ./ \$2,000,000 aggregate
II. Automobile Liability	\$1,000,000 CSL
III. Completed Operations:	\$1,000,000 aggregate
<p>SPECIAL TERMS AND CONDITIONS: The following entities are hereby named as additional insured for the above referenced project in the covered areas of General Liability and Automobile Liability, but only as regards work performed by or on behalf of the City of Oakland and its employees in conjunction with the referenced event:</p> <ul style="list-style-type: none"> • Oakland Unified School District, its Board of Supervisors, the individual members thereof, and all officers, agents, employees and representatives. 	
<p>Should any of the above described programs of self-insurance be modified or cancelled before the expiration date shown below, the City of Oakland will give 30 days written notice to the named certificate holder. The coverages indicated herein are primary and any coverage by District is in excess. Cross Liability applies.</p>	
<p style="text-align: center;">It should be expressly understood, however, that the intent of the insurance evidenced herein is extended pursuant to the Administrative Policies of the City of Oakland, which does not permit any assumption of liability which does not result from and is not caused by the negligent acts or omissions of its officers, agents, or employees. Any indemnification or hold harmless clause with broader provisions shall invalidate this certificate.</p>	
<p>Note: Any unauthorized alteration of this certificate will render the intended coverage null and void.</p>	

DATE ISSUED: September 15, 2017

CERTIFICATE EXPIRES: September 5, 2022 @ 11:59 PM

Deborah Grant
AUTHORIZED SIGNATURE
RISK MANAGER

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



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

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 surplusd, 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.

sadfsdf

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.

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 INTENTIONALLY 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 INTENTIONALLY LEFT BLANK; SIGNATURE PAGE FOLLOWS

LANDLORD:

Oakland Unified School District,
a California public school district

Name: _____ Signature: _____

Position: _____ Date: _____

- Board President
- Superintendent
- Chief/Deputy Chief/Executive Director

Name: _____ Signature: _____

Position: _____ Date: _____

Approved as to Form and Legality:

By: 

November 20, 2022

Exhibit A

(Depiction of the Property and the Premises)

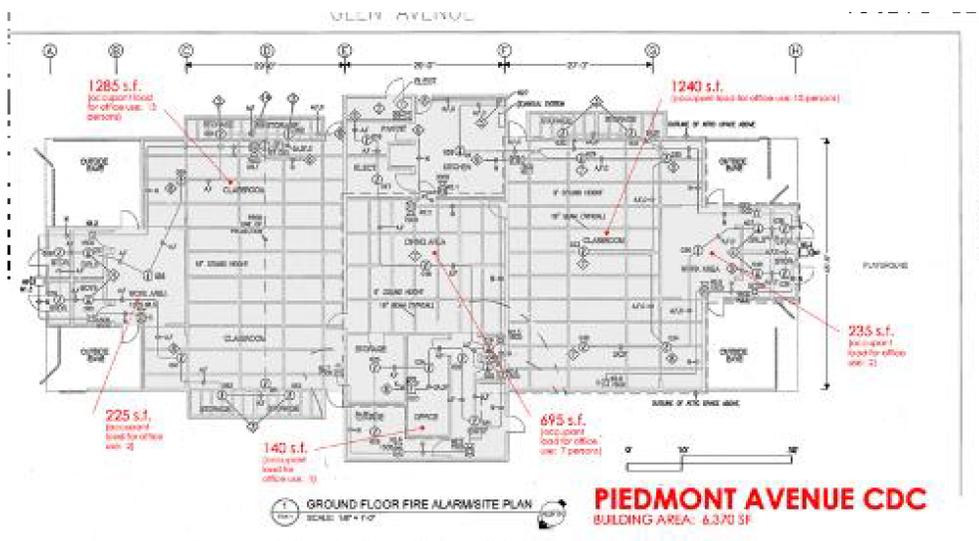


Exhibit B

(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 INTENTIONALLY LEFT BLANK; SIGNATURE PAGE FOLLOWS

Type text here

LANDLORD:

Oakland Unified School District,
a California public school district

Name: _____ Signature: _____

Position: _____ Date: _____

- Board President
- Superintendent
- Chief/Deputy Chief/Executive Director

Name: _____ Signature: _____

Position: _____ Date: _____

Approved as to Form and Legality:

By: 

November 20, 2022

Exhibit D

Asbestos Report and Lead Report

[Attached]