

**Joint Use Agreement Between San José Unified School District and  
Pacific Autism Center for Education for  
Use of Classroom and Other Spaces for Child Care Purposes at  
the Cory Site**

This Joint Use Agreement and Agreement (“**Agreement**”) is made this 19<sup>th</sup> day of June, 2024, by and between the San José Unified School District, a California public school district of California (“**District**”) and **Pacific Autism Center for Education**, a California private 501(c)3 non-profit organization (“**Tenant**”). District and Tenant may be referred to herein individually as a “**Party**” or collectively as the “**Parties**”.

**RECITALS**

**WHEREAS**, Tenant requires space to provide preschool services for the Sunny Days Preschool students (“**Program**” or “**Activities**”), as further defined herein; and

**WHEREAS**, District has available space for Tenant’s Program as further described in **Exhibit "A"** attached hereto and made a part of this Agreement (“**Premises**”), located at the Cory Site, located at 2280 Kenwood Avenue, in the City of San José, County of Santa Clara, California (“**School Site**”); and

**WHEREAS**, District desires to allow Tenant to use the Premises on the designated School Site while providing services for Tenant’s Program and as further detailed herein and in **Exhibit “B”** attached hereto and made a part of this Agreement; and

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

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

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

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

**AGREEMENT**

- 1. Tenant’s Use of the Premises.** District agrees to allow use of the Premises at the School Site(s) by Tenant to perform Tenant’s Activities, as more fully described in **Exhibit “B”**. Tenant will have use of the Premises to perform Tenant’s Activities only, subject to modification by the Parties, and only to the extent Tenant pays Rent for Tenant’s use of the Premises.

2. **Shared School Site(s) and Recreational Facilities.** Tenant acknowledges and understands that the Premises are located in an operating public school. As such, the School Site(s) and the playgrounds, common areas, recreational facilities and other outdoor play areas (collectively "**Shared Space**") will be used by other parties, including District. Tenant shall cooperate with the other parties and District in reaching amicable arrangements concerning the use, maintenance and security of the Shared Space.
3. **Civic Center Act.** Tenant recognizes that the Premises and School Site may be subject to the Civic Center Act (Ed. Code, § 38130, et seq.) ("**Act**"). District shall coordinate and be responsible for all scheduling, use, fee collection, and other activities relating to use of the School Site or Premises consistent with the Act.
4. **Parking.** Tenant will have non-exclusive use of the parking located on the School Site. Tenant, and Tenant's visitors, invitees and guests must abide by District's policies concerning the use of parking, including District policy relating to the drop-off and pick-up of children participating in Tenant's Program. Tenant's use of the parking shall be on a first come, first serve basis. Tenant shall coordinate with the School Site administration for ongoing direction related to Tenant's use of parking.
  - 4.1. Tenant shall not abandon any inoperative vehicles or equipment on any portion of the School Site(s). District shall not be liable for any personal injury suffered by Tenant or Tenant's visitors, invitees and guests for any damage to or destruction or loss of any of Tenant's personal property located or stored on the School Site, street parking, or the School Site(s). Tenant accepts parking "as is" and acknowledges that District has not made and is not making any warranties whatsoever with respect to the parking.
5. **Condition of Premises.**
  - 5.1. The Premises are leased to Tenant on an "**AS IS**" basis. District shall not be required to make or construct any alterations including structural changes, additions or improvements to the Premises. By entry and taking possession of the Premises pursuant to this Agreement, Tenant accepts the Premises in "**AS IS**" condition.
  - 5.2. Tenant acknowledges that neither District nor District's agents have made any representation or warranty as to the suitability of the Premises for Tenant or Tenant's Program. Any agreements, warranties or representations not expressly contained in this Agreement shall in no way bind the District or Tenant, and District and Tenant expressly waive all claims for damages by reason of any statement, representation, warranty, promise or agreement, if any, not contained in this Agreement.
  - 5.3. Except as may be otherwise provided herein, District has no obligation, in any manner whatsoever, to repair, maintain or replace the Premises, or any portion thereof, or any Tenant Improvements hereafter located thereon, all of which obligations are intended to be solely that of the Tenant.
  - 5.4. Tenant shall be solely responsible for all telephone or technology communication services/systems required by Tenant for its Program.
6. **Title to School Site(s) / Premises.** The Parties acknowledge that title to the School Site(s), including the Premises is held by District.

**7. Term.**

- 7.1. The term of this Agreement shall be for **one (1) year**. The commencement date shall be July 1, 2024, ("**Commencement Date**"), and, unless sooner terminated under any provision hereof, this Agreement shall end on June 30, 2025 ("**Term**").
- 7.2. At District's sole discretion, this Agreement may be extended on mutually agreed upon terms and conditions beyond the initial Term for an additional **four (1) year terms**; provided the District can make the requisite findings required by the Education Code ("**Renewal Term**", collectively with the initial Term, the "**Term**"). Any Renewal Term shall be evidenced as a written amendment to the Agreement signed by the Parties. The District's authority to approve a Renewal Term, is hereby delegated by the District's Board of Education ("**Board**") to the Superintendent or Superintendent's delegee, and shall be presented for ratification by the Board at the next available Board meeting following the execution of any amendment hereunder.
- 7.3. Notwithstanding anything to the contrary in this Agreement, District shall have the right to terminate the Agreement at any time if the Premises or any portion thereof is needed by the District for public school purposes, and/or if the District's Governing Board decides to repurpose the School Site. The District will give the Tenant sixty (60) calendar days' advance notice of such termination.
- 7.4. On the last day of the Term hereof, or on earlier termination of this Agreement, Tenant shall surrender the Premises to District and any existing improvements in good order, condition and repair, free and clear of all liens, claims and encumbrances. The condition of the Premises when surrendered shall be similar to that existing as of the Commencement Date of Tenant's occupancy of the Premises excepting normal ordinary wear and tear and any structural improvements made by District subsequent to the Commencement Date. This Agreement shall operate as a conveyance and assignment to District of any improvements identified by District to remain on the Premises. Tenant shall remove from the Premises all Tenant's personal property, trade fixtures, and any improvements made by Tenant which Tenant and District agreed would be removed by Tenant. All property not removed shall be deemed abandoned by Tenant. If the Premises are not surrendered at the end of the Term or upon earlier termination of this Agreement, Tenant shall indemnify District against loss or liability resulting from delay by Tenant in surrendering the Premises including, without limitation, any claims made by any succeeding tenant or loss to District due to lost opportunities to timely obtain succeeding tenants.
- 7.5. Holding Over. If Tenant remains in possession of the Premises or any part thereof after the end of the Term or upon earlier termination of this Agreement without the express written consent of District, Tenant's occupancy shall be a tenancy on a month-to-month basis for rent equal to one hundred fifty percent (150%) of all monthly sums charged and owing the previous thirty (30) calendar day period.

**8. Rent.**

- 8.1. For and in consideration of the use of the Premises for the Term of this Agreement Tenant agrees to pay District one hundred three thousand one hundred sixty-one dollars and sixty cents (103,161.60) for the year, or eight thousand five hundred ninety-six dollars and eighty cents (\$8,596.80) per month based ("**Rent**") for each of the twelve (12) calendar months for

2024-2025. Rent for the first month shall be due upon commencement of this Agreement. Thereafter, Rent shall be due on the first of each month until the expiration or earlier termination of this Agreement. Tenant shall promptly pay to District the monthly Rent on the first day of each month in advance during the Term of the Agreement, without deduction, setoff, prior notice or demand. Payments shall be made by electronic fund transfers and the Parties agree to exchange necessary information prior to the first payment due in order to provide for the transfer of funds.

- 8.2. The lease rate for SJUSD school facilities is the per square foot Fair Market Value (FMV) for the Premises. The annual lease rate for SJUSD school facilities is calculated by taking the prior year's lease rate for the period of July 1 through June 30, and adjusting it by the percentage of the [Annual Adjustment to the School Facility Program Grants](#) adopted by the California State Board of Allocation for the next fiscal year. Tenant's obligations for Pro Rata Utilities defined below and/or for Additional Rent are not limited by this Section and those costs shall be calculated annually as described herein.

8.2.1.1. For purposes of this section, the applicable square footage for the Premises is 5,280 SF:

8.2.1.1.1. Building area: 3,840 SF

8.2.1.1.2. Land area for Tenant owned buildings: 1,440 SF

- 8.3. Late Charge. Tenant acknowledges that late payment 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. Those costs include, but are not limited to, processing and accounting charges. Accordingly, if District does not receive any installment of Rent or any other sum due from Tenant by 4:00 p.m. within ten (10) calendar days after Rent is due, Tenant shall pay to District, as additional rent, a late charge equal to five percent (5%) of the overdue amount or the maximum amount allowed by law, whichever is less. The Parties hereby agree that any late charge assessed to Tenant shall represent a fair and reasonable estimate of the costs District will incur by reason of late payment by Tenant. Acceptance of any late charge by District shall in no event constitute a waiver of Tenant's default with respect to any overdue amount, nor prevent District from exercising any of its other rights and remedies granted hereunder.

- 8.4. Interest Rate on Past Due Obligations. Any amount due to District not paid when due shall bear interest at the rate of Bank of America's or its successor's reference rate plus three percent (3%) per annum commencing thirty (30) calendar days after the due date, but not to exceed the maximum rate permitted by law. Payment of interest shall be in addition to any late charges owing pursuant to this Agreement and shall not excuse or cure any default by Tenant under this Agreement.

9. **Utility Pro Rata**. For the first year of the Term, Rent includes the costs for "utilities and services". Commencing on the anniversary of the Commencement Date and each year thereafter during the Term, in addition to Rent, Tenant shall be responsible for payment of its pro rata share of the utilities and services ("**Utility Pro Rata**") as follows:

- 9.1. Tenant shall pay its pro rata share of the costs of utilities and shall pay all taxes and surcharges on all utilities and services. The Utility Pro Rata shall be due and payable in the same manner as Rent and shall constitute "**Additional Rent**" which shall be subject to all provisions of this Agreement relating to Rent. For purposes of this Agreement, "utilities" grounds service,

security monitoring, natural gas, electricity, solar infrastructure, water, irrigation, waste removal, hazardous waste compliance, sewage fees, and associated insurance fees.

- 9.2. Calculation of Utility Pro Rata. Utility Pro Rata costs shall be calculated by dividing the District's total prior year's actual annual utility costs by the District's total square footage for the inventory of buildings included in those costs. Thus, for example, the Utility Pro Rata share for the first year of the Term (2023/24) will be based on the actual utility costs of the District from the 2020/21 fiscal year. The Utility Pro Rata will then be multiplied by the square footage of the Premises and further pro-rated to twelve (12) monthly amounts due as Additional Rent. District will provide Tenant annual notice of the Pro Rata Utility cost for each fiscal year of the Term. The fiscal year shall begin on July 1 and end June 30. Tenant shall be responsible for anticipating and budgeting annual cost adjustments however the District will provide annual notice on or before April 15th for the following term year. District's failure to provide this notice on or before April 15th shall not constitute a breach of this Agreement nor relieve Tenant of its obligation to pay the Utility Pro Rata share.
- 9.3. District's Utility Pro Rata cost as of the Commencement Date(s) herein is \$5.99/SF/yr.
- 9.4. For the purposes of this Section only, the applicable square footage for the Premises are 5,280 SF.

## **10. Security Deposit.**

- 10.1. Tenant shall deposit with District a sum equal to the first month's payment of Rent. Any security deposit previously provided to District by Tenant for use of the Premises shall be used as security hereunder. Any such amount however, shall be increased to equal the Rent due hereunder. The deposit will be held by the District, without interest, as security for the faithful performance by Tenant of all of the terms, covenants, and conditions of this Agreement. District will hold the deposit as a debtor, not a trustee, and may commingle the deposit with other funds.
- 10.2. Impermissible Use of Security Deposit. Tenant may not apply the Security Deposit to any Rent or Additional Rent due. If District sells or assigns the School Site, District shall have the right to transfer the Security Deposit to the new owner or assignee to hold under this Agreement, and upon so doing District shall be released from all liability to Tenant for return of the Security Deposit
- 10.3. Use and Return of Deposit. If Tenant fails to perform any of terms, covenants, and conditions of this Agreement, the District, in its sole discretion, may apply the entire deposit, or so much thereof as necessary, to compensate the District for all loss or damage sustained by District due to Tenant's breach of this Agreement. Tenant shall, within five (5) calendar days of written notice from District, remit sufficient funds to restore the deposit to the original sum deposited. If Tenant complies with all of the terms, covenants, and conditions of this Agreement and promptly pays all Rent due, the deposit shall be returned to Tenant within ten (10) calendar days of the expiration of the Term and Tenant's return of the Premises to the District. Notwithstanding the foregoing, the Parties acknowledge and agree that the District may retain Two Hundred Dollars (\$200.00) of the security deposit as a nonrefundable cleaning fee.

**11. Taxes; Assessments.** Tenant shall pay any assessment on the Premises, including any improvements which Tenant constructs or causes to be constructed on the Premises, whether real estate, general, special, ordinary or extraordinary, or rental levy or tax, improvement bond, and/or fee imposed upon or levied against the Premises or Tenant's legal or equitable interest created by this Agreement, and the taxes assessed against and levied upon Tenant's alterations and utility installations that may be imposed by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Premises' address and where the proceeds so generated are applied by the city, county or other local taxing authority having jurisdiction. The provisions of this Section shall survive the expiration or earlier termination of this Agreement.

**12. Maintenance and Repairs.**

12.1. The District will maintain the Premises in a good condition consistent with the condition of the Premises existing at the time of delivery, including all custodial duties and pest abatement.

12.2. Tenant shall be responsible for performing required maintenance and repairs at its sole cost and expense. Tenant shall perform such maintenance and repairs as are necessary to keep the Premises in good order and condition similar to that existing as of the Commencement Date. If Tenant fails to reasonably perform these obligations and/or if the Premises are in a state of disrepair due to the willful or negligent actions of Tenant, District will perform any necessary work and invoice Tenant for the costs related thereto. Tenant shall pay District for the repairs on a time and materials basis plus fifteen percent (15%) overhead costs. Any such costs due from Tenant shall be payable within fifteen (15) calendar days following Tenant's receipt of a written invoice from District.

12.3. Tenant acknowledges and accepts that the Premises are leased in "AS IS" condition. District shall keep and maintain the structural elements of the Premises, as defined herein, in the condition existing at the time Tenant takes possession of the Premises excepting normal wear, tear and damage by casualty.

12.4. District makes no representations or warranties for the structure of the building as it exists. District agrees that if the structural elements of the building become damaged to a lesser condition than currently exists, and if such structural damage is due to no fault or negligence of Tenant, then District will repair the damage in such a manner as to bring it back to a condition which is similar to the condition which exists at the time Tenant takes possession of the Premises; however, District may terminate this Agreement if such repair cost exceeds One Hundred Fifty Thousand Dollars (\$150,000) per incident. District agrees to pro-rate Rent during the "repair" period, if the resulting structural damage completely prevents Tenant from conducting its Program. If District elects not to perform a repair estimated to cost in excess of One Hundred Fifty Thousand Dollars (\$150,000), Tenant may elect to remain in possession of the Premises and pay Rent, as may be negotiated by the Parties, or Tenant may elect to terminate this Agreement.

12.5. As used in this Agreement, the term "structural elements of the building" are defined as and shall be limited to the foundation, footings, floor slab but not flooring, structural walls excluding glass and doors, and the roof excluding skylights. Plumbing, electrical and heating systems shall be considered "structural elements of the building" excluding, however, those repairs and maintenance items which can be completed without wall or floor removal in which case these repairs shall be the responsibility of Tenant.

- 12.6. District shall have no maintenance or repair obligations with respect to the Premises except as expressly provided in this Section. Tenant hereby expressly waives the provisions of sections 1932, 1941 and 1942 of the Civil Code of California and all rights to make repairs at the expense of District as provided in section 1942 of the Civil Code of California.
- 12.7. The cost of rekeying the Premises, if necessary, shall be the responsibility of Tenant. District reserves the right to key-control and issuance of duplicate keys in order to maintain the integrity of District policy.

**13. Custodial Services.**

- 13.1. The District **will not** provide custodial services to the standard of care equal to other classrooms on the School Site on “school days”.
  - 13.1.1. For purposes of this Agreement, a “school day” is defined as a day that District schools are in session, and does not include school holidays, October Break, December/January Break, February Break, April Break, furlough days, etc. Custodial service will be provided during summer vacation. The District’s approved school year calendars may be found on the District’s website.
  - 13.1.2. For purposes of this section, “Custodial Services” includes but is not limited to routine and scheduled cleaning of all interior spaces and exterior spaces, landscaping and athletic facilities (e.g. daily brooming and trash pick-up of planting areas, athletic hard courts or turf). Custodial Services includes but are not limited to; daily cleaning of all interior and exterior building components including exterior walkways; providing and replacing lighting lamps (i.e. bulbs, tubes); complete restroom care including cleaning, providing and stocking supplies (e.g. soap, toilet paper, paper towels, etc.); graffiti removal (excluding painting-over or water/media blasting when required); “handyman” minor repairs including providing, repairing and replacing dispensers and like building systems (e.g. tighten loose screws, installing replacement devices/fixtures); furniture/equipment distribution, moving and minor repairs; debris removal and disposal including recycling; and preventative custodial services including cleaning, waxing, sealing and caring for floor systems as appropriate.
  - 13.1.3. The Parties agree that the District may charge for custodial services for the Premises at its sole discretion commencing on the first anniversary of the Commencement Date at which time the Parties will meet to negotiate in good faith for the scope and costs of those services and execute a written amendment to the Agreement incorporating the same.

**14. Alterations and Improvements.**

- 14.1. With prior written approval of the District, Tenant may, at its sole cost and expense, construct or cause to be constructed on the Premises those improvements which Tenant deems necessary to the operation of its Program provided such improvements are subject to local site, zoning, and design review and other required approvals and provided District has approved all such improvements (“**Tenant Improvement(s)**”).
- 14.2. Mechanics Lien. Tenant shall: (i) 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;

and, (ii) indemnify, defend and hold District and the Premises 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, or materials used by or furnished to, Tenant or any contractor employed by Tenant with respect to the Premises; and, (iii) give notice to District in writing fifteen (15) calendar days prior to employing any laborer or contractor to perform services related to, or receiving materials for use upon, the Premises; and, (iv) permit District to post a notice of non-responsibility in accordance with the statutory requirements of California Civil Code § 8444 or any amendment thereof. In the event Tenant is required to post an improvement bond with a public agency in connection with the above, Tenant agrees to include District as an additional obligee.

- 14.3. Approval Process for Plans and Specifications. Tenant shall, prior to construction, major repair, renovation or demolition of any Tenant Improvement, obtain the prior written consent of District thereto and to the final plans, specifications, and schedule for completion thereof. Tenant shall also, prior to construction of any Tenant Improvement, obtain written approval from District and the Division of the State Architect (DSA) for the improvements. Said approval or disapproval must be expressly made by District in writing. Tenant must deliver DSA's written approval to District within ten (10) calendar days after Tenant's receipt. Tenant shall not proceed with any construction until Tenant has obtained District's and DSA's written approvals. District and Tenant recognize that approvals may be completed in phases, such that Tenant may initially request conceptual approval and, if approved by District, then proceeds to draw the plans and specifications. District will respond to Tenant with its approval or disapproval within fifteen (15) calendar days after District receives a written request with architectural plans and drawings from Tenant. District's approval shall be at District's sole and absolute discretion and District may withhold or disapprove of any Tenant Improvement without reason. As a condition of its approval, District may require that Tenant agree to remove certain improvements and restore the Premises to its original condition upon expiration or earlier termination of this Agreement, and/or provide District with adequate security for removal of improvements.
- 14.4. Not less than fifteen (15) calendar days prior to the construction, major repair, renovation or demolition of any improvements on the Premises, Tenant shall provide District with information regarding the contractor's financial condition and evidence to District's satisfaction that adequate funds to complete the improvements are committed and available or that completion has been otherwise adequately assured. Such assurances may include, in District's discretion, a completion guarantee. No construction shall commence until District has given Tenant written acceptance of such assurances.
- 14.5. Not less than fifteen (15) days prior to the construction, major repair, renovation or demolition of any improvement on the Premises, Tenant shall provide District with sufficient evidence that it has obtained all required approvals and permits for the work and that Tenant or Tenant's contractor(s) has in effect, with premiums paid, adequate casualty and liability insurance (including builder's risk) coverage and workers compensation that is satisfactory to District in its sole discretion.
- 14.6. Upon commencement of construction of any Tenant Improvement, Tenant shall cause the work to be diligently pursued to completion in accordance with the schedule for completion approved by District, subject to unavoidable delays caused by weather, supply shortages, strikes or acts of God.

- 14.7. All work or improvements shall be performed in a sound and workmanlike manner, in compliance with all applicable laws and building codes, in conformance with the plans and specifications approved by District and DSA, if applicable, or any modifications thereto which have been approved in writing by District. If Tenant Improvements require the use of DSA-approved Inspector services, Tenant shall reimburse District for the costs related to said services.
- 14.8. District or District's agent shall have a continuing right at all times during the period that improvements are being constructed on the Premises to enter the Premises and to inspect the work provided that such entries and inspections do not unreasonably interfere with the progress of the construction. Tenant shall require its contractors to reasonably cooperate with District or its agent in such inspections.
- 14.9. Within ninety (90) calendar days after completion of construction of any Tenant Improvement, Tenant shall deliver to District two (2) full and complete sets of as-built plans for the work so completed.
- 14.10. Removal of Tenant Improvements. Upon the expiration or earlier termination of the Agreement, Tenant shall, upon written demand by District, at Tenant's sole cost and expense, forthwith and with all due diligence, remove any alterations, additions, or improvements made by Tenant, designated by District to be removed, and Tenant shall, forthwith and with all due diligence, at its sole cost and expense, repair any damage to the Premises caused by such removal.
- 14.10.1. In the event that Tenant fails to timely remove Tenant's Improvements, District, upon fifteen (15) calendar days written notice, may either (1) accept ownership of Tenant's Improvements with no cost to District, or (2) remove Tenant's Improvements at Tenant's sole expense. If the District chooses to accept ownership of Tenant's Improvements, Tenant shall execute any necessary documents to effectuate the change in ownership of Tenant's Improvements. If District removes Tenant's Improvements, Tenant shall pay all invoices for the removal of Tenant's Improvements within thirty (30) calendar days of receipt of a written invoice.
15. **Fingerprinting and Criminal Background Verification.** Tenant shall be responsible for ensuring compliance with all applicable fingerprinting and criminal background investigation requirements including those described in California Education Code section 45125.1, which may be met under the fingerprinting provisions of Title 22 of the California Code of Regulations and applicable provisions of the California Health and Safety Code relevant to community care facility licensing (Health & Safety Code, § 1500 et seq.). Upon request by the District, Tenant shall provide written verification of compliance with the aforementioned fingerprinting and criminal background investigation requirements to District. The Tenant's obligation to provide documentation verifying compliance with this Section shall survive termination of the Agreement.
16. **Health & Safety.** Tenant must comply with the policies, safety protocols and practices established by the District, the Health Officer of the County of Santa Clara, the state of California, and OSHA and Cal-OSHA related to required health monitoring, cleaning and sanitization practices, physical distancing requirements, face coverings, use of personal protective equipment, site safety protocols, community infectious disease spread reduction plan, and communication matters (collectively "**Health & Safety Policies**") in effect as of the Commencement Date and as may be revised during the Term. Tenant, its

employees, agents, guests and invitees must always review and implement the Health & Safety Policies in their use of the Premises and School Site and in the performance of the Program.

**17. Compliance with All Environmental Laws.**

- 17.1. Tenant shall at Tenant' expense comply with all requirements of all governmental authorities, in force either now or in the future, affecting the Premises, and shall faithfully observe in Tenant's use of the Premises all laws, regulations and ordinances of these authorities, in force either now or in the future including, without limitation, all applicable federal, state and local laws, regulations, and ordinances pertaining to air and water quality, hazardous material, waste disposal, air emission and other environmental matters (including the California Environmental Quality Act ("**CEQA**") and its implementing regulations in its use of the Premises), and all District policies, rules and regulations ("**Environmental Laws**").
- 17.2. Tenant shall not cause or permit any Hazardous Material to be generated, brought onto, used, stored, or disposed of in or about the Premises and any improvements by Tenant or its agents, employees, contractors, subtenants, or invitees, except for limited quantities of standard office, classroom and janitorial supplies (which shall be used and stored in strict compliance with **Environmental Laws**). Tenant shall comply with all Environmental Laws. As used herein, the term "Hazardous Materials" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California or the United States Government. The term "Hazardous Materials" includes, without limitation, petroleum products, asbestos, 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, section 66261.30 et seq. (ii) defined as a "hazardous waste" pursuant to section (14) of the federal Resource Conservation and Recovery Act, 42 U.S.C. 6901 et. seq. (42 U.S.C. 6903), or (iii) defined as a "hazardous substance" pursuant to section 10 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et. seq. (42 U.S.C. 9601). As used herein, the term "Hazardous Materials Law" shall mean any statute, law, ordinance, or regulation of any governmental body or agency (including the U.S. Environmental Protection Agency, the California Regional Water Quality Control Board, and the California Department of Health Services) which regulates the use, storage, release or disposal of any Hazardous Material.
- 17.3. Notice. Tenant must promptly notify District in writing if Tenant has or acquires notice or knowledge that any Hazardous Substance has been or is threatened to be, released, discharged, disposed of, transported, or stored on, in, or under or from the Premises in violation of Environmental Laws. Tenant shall promptly provide copies to District of all written assessments, complaints, claims, citations, demands, fines, inquiries, reports, violations or notices relating to the conditions of the Premises or compliance with Environmental Laws. Tenant shall promptly supply District with copies of all notices, reports, correspondence, and submissions made by Tenant to the United States Environmental Protection Agency, the United States Occupational Safety and Health Administration, and any other local, state, or federal authority that requires submission of any information concerning environmental matters or Hazardous Substances pursuant to Environmental Laws. Tenant shall promptly notify District of any liens threatened or attached against the Premises pursuant to any Environmental Laws.
- 17.4. Inspection. District and District's agents, servants, and employees including, without limitation, legal counsel and environmental consultants and engineers retained by District,

may (but without the obligation or duty to do so), at any time and from time to time, on not less than ten (10) business days' notice to Tenant (except in the event of an emergency, in which case, no notice will be required), inspect the Premises to determine whether Tenant is complying with Tenant's obligations set forth in this Section, and to perform environmental inspections and samplings, during regular business hours (except in the event of an emergency) or during such other hours as District and Tenant may agree.

- 17.5. The judgment of a court of competent jurisdiction, or Tenant's admission in an action or a proceeding against Tenant, whether District be a party to it or not, that Tenant has violated any law or regulation or ordinance in Tenant's use of the Premises shall be considered conclusive evidence of that fact as between District and Tenant. If Tenant fails to comply with any law, regulation or ordinance, District reserves the right to take necessary remedial measures at Tenant's expense, for which Tenant agrees to reimburse District on demand.
- 17.6. Indemnification. Tenant shall indemnify, defend (by counsel reasonably approved in writing by District), protect, release, save and hold harmless District from and against any and all claims arising from any breach of Tenant's covenants under this Section. The indemnification obligations of this Section shall survive the expiration or earlier termination of this Agreement.

**18. Use of the Premises.**

- 18.1. Tenant shall use the Premises solely for the purpose of the Program and during the times set forth in **Exhibit "A"**.
- 18.2. Tenant shall not use the Premises for any use other than that specified in this Section without the prior written consent of District. Tenant shall submit a request in writing for District's consent at least thirty (30) calendar days prior to Tenant's use of the Premises for any purpose other than that specified in **Exhibit "A."**
- 18.3. Tenant agrees to maintain the Premises and to conduct the Program in a manner that meets all federal, state and local regulations relating to the Premises and to the operation of the Program, and to comply with all federal, state and local laws, regulations and ordinances, now or hereafter enacted concerning the Premises, the use of the Premises, and/or the Program. The execution of this Agreement shall be subject to the Tenant obtaining any and all permits or approvals which may be required in order for Tenant to operate the Program on the Premises. Tenant shall not use or permit the Premises to be used in whole or in part during the term of this Agreement for any purpose or use in violation of the laws or ordinances applicable thereto.
- 18.4. Tenant shall indemnify, defend, and hold District harmless against any loss, expense, damage, attorneys' fees or liability arising out of failure of Tenant to comply with any applicable law, regulation, rule or ordinance.
- 18.5. Tenant shall 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 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 Premises. No waste materials or refuse shall be dumped upon or permitted to remain upon any part of the Premises except in trash containers designated for that purpose.

- 18.6. Any uses which involve the serving and/or sale of alcoholic beverages and the conducting of games of chance are prohibited on the Premises. Tenant shall comply with District-wide policy prohibiting the use of tobacco products on the Premises at all times.
  - 18.7. Tenant shall not use or permit the use of the Premises or any part thereof for any purpose which is inimical to public morals and welfare or morally objectionable as unsuitable for a public educational facility. Tenant agrees to immediately respond to concerns expressed by neighbors or District relating to the operation of the Premises.
  - 18.8. If required, Tenant and all subtenants shall obtain a use permit from the City in which the School Site(s) is located for Tenant's use throughout the term of this Agreement. Tenant shall require all subtenants, licensees, and invitees to use the Premises only in conformance with the permitted use and with applicable governmental laws, regulations, rules and ordinances. During the Term, Tenant shall comply with the District's policy regarding Campus Security and Disruptions.
  - 18.9. Tenant represents that it is qualified to administer and operate the Program. Tenant shall be solely responsible for the administration and operation of the Program, including the hiring of all employees. Tenant shall be responsible for verifying the qualifications, credentials, certificates, and licenses of its staff, agents, consultants and/or subcontractors who may provide services in conjunction with Tenant's Activities on the Premises.
  - 18.10. Tenant must remove any personal property and/or equipment at the expiration or earlier termination of the Agreement. District shall not be responsible for damage or theft of Tenant's personal property and/or equipment.
  - 18.11. Tenant shall adopt and conform to the District's policies and standards for energy savings including but not limited to use of lighting, HVAC and appliances.
19. **Safety of Premises.** The School Site, including the Premises, may be monitored by a safety system or protocol implemented, maintained and operated by District ("**District's Safety Measures**"). However, Tenant specifically acknowledges, understands, and agrees that District is neither responsible for nor has the obligation to supply, provide, establish, maintain, or operate District's Safety Measures for either Tenant or the Premises. Tenant further expressly acknowledges and agrees that District shall not be liable for and is hereby released from any and all responsibility for any damage, loss, or injury to Tenant or its personal property resulting or arising out of any criminal activity (including, but not limited to, any damage, loss, or injury resulting from intrusions, petty theft, vandalism, or other similar acts) that may occur on or near the Premises, regardless of whether District was able to, actually did, or failed to provide notice to Tenant of a safety incident or situation occurring on the Premises which led to the damage, loss, or injury. District makes no warranties or representations as to the safety or security of Tenant, the Premises, the School Site, or District's Safety Measures. Unless expressly agreed to by District and Tenant, Tenant shall be responsible, at its sole cost, for supplying, providing, establishing, maintaining, and operating its own safety measures, protocols, personnel, or systems to encourage and ensure the security of Tenant, its agents, officers, employees, licensees and invitees, and the Premises ("**Tenant's Safety Measures**"); provided, however, that Tenant must obtain prior written approval from District prior to employing Tenant's Safety Measures and provided that all of Tenant's Safety Measures are compatible with District's Safety Measures.
20. **Accident/Incident Reporting.** Tenant shall submit written accident/incident reports to the District as soon as practicable but not more than twenty-four (24) hours after the occurrence of or Tenant's

receipt of information or notice regarding any accident or incident that occurs on the Premises including related claims, arrest or criminal charges associated with the Tenant's Activities or Tenant's staff working on the Premises. Submission of written accident/incident reports shall be made pursuant to the Section entitled "Notices" and by email to District's Property Agreements Department at [propertyagreements@sjusd.org](mailto:propertyagreements@sjusd.org). Accident/injury reports shall also be verbally reported to the District's Maintenance Office during normal business hours and to the District's Central Station during non-business hours.

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

**22. Termination.**

22.1. Termination for Convenience.

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

22.1.2. Tenant may terminate this Agreement by written notification sixty (60) calendar days prior to the effective date of the termination. Tenant acknowledges that this sixty (60) calendar day notice period is acceptable so that District can attempt to find another tenant.

22.1.3. Neither Party shall be required to provide just cause for termination in the written notification.

22.2. Termination for Cause- Events of Default. A breach of this Agreement shall exist if any of the following events (hereinafter referred to as "**Event of Default**") shall occur and shall be the basis for terminating this Agreement for cause:

22.2.1. Default in the payment when due of any installment of Rent, Additional Rent, or other payment required to be made by Tenant hereunder, and the default shall not have been cured within ten (10) calendar days after written notice from District;

22.2.2. Tenant's failure to perform any other term, covenant or condition contained in this Agreement and the failure shall have continued for thirty (30) calendar days after written notice of such failure is given to Tenant; however, should Tenant's default involve a serious risk to the safety of the students or an illegal use of the Premises, such cure must occur immediately. In the event the District has notified Tenant of default on the same basis on two prior occasions, the period to cure shall be reduced to five (5) business days. On the fourth occasion of default, the District may dispense with a cure period and determine that Tenant is in material default and commence termination of this Agreement.

22.2.3. The vacating or abandonment of the Premises by Tenant before the expiration of the Term.

- 22.2.4. The failure by Tenant to utilize the Premises for the sole purpose of operating the Program as authorized by this Agreement and the terms and conditions set forth herein.
  - 22.2.5. The occurrence of unduly disruptive activities or incidents. District will discuss with Tenant any reported incidents and responses to determine whether the incidents is deemed to be disruptive to other occupants on the School Site, interferes with the educational program or activities of the District, unduly disrupts residents in the surrounding neighborhood, or jeopardizes the safety of school children (“Unduly Disruptive Activity”). Unless otherwise agreed to by the Parties in writing, District will give the Tenant no less than ninety (90) calendar days’ advance written notice of the termination of this Agreement pursuant to this subsection. Revocation or non-renewal of Tenant’s license, permits or other authorizations to operate the Program.
  - 22.2.6. Failure to keep in effect insurance as required herein.
  - 22.2.7. The sequestration of, attachment of, or execution on, any substantial part of the property of Tenant or on any property essential to the conduct of the Program, shall have occurred and Tenant shall have failed to obtain a return or release of the property within thirty (30) calendar days thereafter, or prior to sale pursuant to such sequestration, attachment or levy, whichever is earlier.
  - 22.2.8. The Tenant or any guarantor of Tenant’s obligations hereunder shall generally not pay its debts as they become due or shall admit in writing its inability to pay its debts.
  - 22.2.9. Any case, proceeding or other action against the Tenant as debtor or against any guarantor of the Tenant’s obligations hereunder shall be commenced seeking to have an order for relief entered against it as debtor, or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its property, and the case, proceeding or other action (i) results in the entry of an order for relief against it which is not fully stayed within seven (7) business days after the entry thereof or (ii) remains undismissed for a period of forty-five (45) calendar days.
  - 22.2.10. The Tenant or any guarantor shall take any corporate action to authorize any of the actions set forth in subsections above.
- 22.3. **Remedies.** Upon any Event of Default, District shall have the following remedies, in addition to all other rights and remedies provided by law, to which District may resort cumulatively, or in the alternative:
- 22.3.1. **Recovery of Rent.** District shall be entitled to keep this Agreement in full force and effect (whether or not Tenant shall have abandoned the Premises) and to enforce all of its rights and remedies under this Agreement, including the right to recover Rent, Additional Rent and other sums as they become due, plus interest at the rate of Bank of America’s or its successor’s reference rate plus three percent (3%) per annum from the due date of each installment of Rent, Additional Rent and other sums until paid.

- 22.3.2. Termination. In the event of a default by Tenant, the occurrence of a dangerous condition on the Premises, violation of any applicable law, regulation or rules, or if Tenant's license or insurance lapses, District may terminate this Agreement immediately, upon the delivery of written notice of termination to Tenant. In any other circumstance, District may terminate this Agreement by giving thirty (30) calendar days' advance written notice of termination. Upon termination, all Tenant's rights under this Agreement will terminate and, Tenant shall surrender and vacate the Premises in the condition required under this Agreement, and District may re-enter and take possession of the Premises and all the remaining improvements or property and eject Tenant or any of Tenant's subtenants, assignees or other person or persons claiming any right under or through Tenant or eject some and not others or eject none.
- 22.3.3. This Agreement may also be terminated by a judgment specifically providing for termination. Any termination under this subsection shall not release Tenant from the payment of any sum then due District or from any claim for damages or Rent, Additional Rent, or other sum due hereunder previously accrued or then accruing against Tenant.
- 22.3.4. In no event shall any one or more of the following actions by District constitute a termination of this Agreement:
  - 22.3.4.1. maintenance and preservation of the Premises;
  - 22.3.4.2. efforts to relet the Premises;
  - 22.3.4.3. appointment of a receiver in order to protect District's interest hereunder;
  - 22.3.4.4. consent to any subletting of the Premises or assignment of this Agreement by Tenant, whether pursuant to provisions hereof concerning subletting and assignment or otherwise; or
  - 22.3.4.5. any other action by District or District's agents intended to mitigate the adverse effects from any breach of this Agreement by Tenant.
- 22.4. **Damages.** In the event this Agreement is terminated due to an Event of Default, District shall be entitled to damages in the following sums:
  - 22.4.1. the worth at the time of award of the unpaid Rent, Additional Rent and/or other sum due hereunder which has been earned at the time of termination; plus,
  - 22.4.2. the worth at the time of award of the amount by which the unpaid Rent Additional Rent and/or other sum due hereunder which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus,
  - 22.4.3. the worth at the time of award of the amount by which the unpaid Rent, Additional Rent and/or other sum due hereunder for the balance of the Term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided;

- 22.4.4. any other amount necessary to compensate District for all detriment proximately caused by Tenant's failure to perform Tenant's obligation under this Agreement, or which in the ordinary course of business would be likely to result therefrom including, without limitation, the following: (i) expenses for cleaning, repairing or restoring the Premises; (ii) costs of carrying the Premises and insurance premiums thereon, utilities and security precautions; (iii) expenses in retaking possession of the Premises; and (iv) reasonable attorneys' fees and court costs; and
- 22.4.5. the "worth at the time of award" of the amounts referred to in subsections 20.6.1 and 20.6.2 of this Section, is computed by allowing interest at the rate of Bank of America's or its successor reference rate plus three percent (3%) per annum. The "worth at the time of award" of the amounts referred to in subsection 20.6.3 of this Section is computed by discounting such amount at the discount rate of the Federal Reserve Board of San Francisco at the time of award plus one percent (1%).
- 22.5. This Agreement may also be terminated by a judgment specifically providing for termination. Any termination under this Section shall not release Tenant from the payment of any sum then due District or from any claim for damages or rent previously accrued or then accruing against Tenant.
- 22.6. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District and/or Tenant.
- 22.7. Upon termination of this Agreement, Tenant shall be responsible to restore the Premises to its condition prior to the commencement of this Agreement with no damage thereto, reasonable wear and tear excepted.
- 23. Indemnification.** To the fullest extent permitted by California law, Tenant shall defend, indemnify, and hold harmless District, its agents, representatives, officers, consultants, employees, trustees, and volunteers (the "indemnified parties") from any and all losses, liabilities, claims, suits, and actions of any kind, nature, and description, including, but not limited to, attorneys' fees and costs, directly or indirectly arising out of, on account of, connected with, or resulting from, the operation, condition, use or occupancy of the Premises, all improvements thereon, and all areas appurtenant thereto; and in case any action or proceeding be brought against District, Tenant shall defend the same at Tenant's sole expense. This Agreement is made on the express condition that District shall not be liable for, or suffer loss by reason of, injury to person or property, from whatever cause in any way connected with the condition, use or occupancy of the Premises specifically including, without limitation, any liability for injury to the person or property of the Tenant, its agents, officers, employees, licensees and invitees. Tenant shall keep the Premises and the School Site(s) clear of all liens, encumbrances and/or clouds on District's title to any portion of the Premises and the School Site(s).
- 24. Release.** Tenant acknowledges that it is voluntarily and freely entering into this Agreement and deciding to use the Premises for its Program and that Tenant's use of the Premises includes the possible exposure to and illness from infectious disease including, but not limited to, MSRA, influenza and COVID19, or any other similar virus or derivative strain (collectively "**Infectious Disease**"). Tenant further acknowledges the dangers involved and with full knowledge of these dangers, voluntarily agrees to assume all risks of bodily injury, death, or property damage, whether those risks are known or unknown. Tenant hereby releases the District, its agents, representatives, officers, consultants, employees, trustees, and volunteers (the "indemnified parties") from any and all liabilities, causes of

action, lawsuits, claims, demands, or damages of any kind whatsoever that Tenant, its staff, participants, relatives, children, spouse, partner, household members, family members, employees, guests, invitees, volunteers, agents, consultants and any other person tracing exposure or illness to Tenant, now have, or may have in the future, for injury, trauma, illness, loss, unwanted contact, harassment, disability, death or property damages related to being exposed to or contracting an Infectious Disease while using the Premises for Tenant's Program and/or Activities.

**25. Insurance.**

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

25.2. Tenant acknowledges that the insurance to be maintained by District on the Premises will not insure any of Tenant's property or improvements made by Tenant.

25.3. Tenant shall, at Tenant's expense, obtain and keep in force during the term of this Agreement a policy of commercial general liability insurance and a comprehensive auto liability policy insuring District and Tenant against claims and liabilities arising out of the operation, condition, use, or occupancy of the Premises and all areas appurtenant thereto, including parking areas. Tenant's comprehensive auto liability policy shall insure all vehicle(s), whether hired, owned or non-owned. Tenant's commercial general insurance shall be at least as broad as the Insurance Service Office (ISO) CG 00-01 form and in an amount of not less than One Million Dollars (\$1,000,000) for bodily injury or death and property damage as a result of any one occurrence and Two Million Dollars (\$2,000,000) general aggregate policy limit. In addition, Tenant shall obtain a products/completed operations aggregate policy in the amount of One Million Dollars (\$1,000,000). The insurance carrier, deductibles and/or self-insured retentions shall be approved by District, which approval shall not be unreasonably withheld. Prior to the Commencement Date, Tenant shall deliver to District a certificate of insurance evidencing the existence of the policies required hereunder and copies of endorsements stating that such policies shall:

25.4. Not be canceled or altered without thirty (30) calendar days prior written notice to District;

25.5. State the coverage is primary and any coverage by District is in excess thereto;

25.6. Contain a cross liability endorsement; and

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

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

25.8. During the term of this Agreement, District shall maintain at its cost a policy of standard fire and casualty insurance limited to the value of the buildings and improvements located on the School Site(s) as of the Commencement Date. In the event of loss or damage to the School Site(s), the buildings, the Premises or any contents, each Party, and all persons claiming under

the Party, 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.

- 25.9. No use shall be made or permitted to be made of the Premises, nor acts done, that will increase the existing rate of insurance upon the building or buildings of the Premises or cause the cancellation of any insurance policy, covering same, or any part thereof, nor shall Tenant sell, or permit to be kept, used, or sold in or about the Premises any article that may be prohibited by the standard form of fire insurance policies. Tenant shall, at its sole cost and expense, comply with any and all requirements pertaining to the Premises, of any insurance organization or company, necessary for the maintenance of reasonable fire and casualty insurance, covering the Premises' buildings, or appurtenances. Fire and casualty insurance premium increases to District resulting from Tenant's equipment and/or Activities shall be charged to Tenant.
- 25.10. During the Term of this Agreement, Tenant shall comply with all provisions of law applicable to Tenant with respect to obtaining and maintaining workers' compensation insurance. Prior to the commencement and any renewal of this Agreement and Tenant's use of the Premises, Tenant shall provide District, as evidence of this required coverage, a certificate in a form satisfactory to District on or before the commencement or renewal date, providing that insurance coverage shall not be canceled or reduced without thirty (30) calendar days prior written notice to District.
- 25.11. **Signs, Murals, and Other Decorations.** Tenant may, at Tenant's sole cost, have the right and entitlement to place a sign on the Premises to advertise Tenant's Program, provided Tenant obtains the prior written approval and consent of District. District's approval and consent will not be unreasonably withheld. Any signs shall be at Tenant's cost and in compliance with the local ordinances pertaining thereto and subject to Division of the State Architect approval, if applicable. In connection with the placement of Tenant's signs, District agrees to cooperate with Tenant in obtaining any governmental permits which may be necessary. Throughout the Term of this Agreement Tenant shall, at its sole cost and expense, maintain the signage and all appurtenances in good condition and repair. At the expiration or earlier termination of this Agreement, Tenant shall remove any signs which it has placed on the Premises and School Site(s), and shall repair, at its sole expense, any damage caused by the installation or removal of Tenant's signs. To the extent that the portions of the Premises and School Site cannot be repaired or restored to their original condition, Tenant shall be responsible for the cost of replacement of damaged portions of the Premises and School Site.
26. **Surrender of Agreement Not Merger.** The voluntary or other surrender of this Agreement by Tenant, or a mutual cancellation thereof, shall not work a merger and shall, at the option of District, terminate all or any existing subleases or subtenancies, or operate as an assignment to District of any or all subleases or subtenancies.
27. **Notice.** Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served and received if given in writing and personally delivered or either deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service or facsimile transmission or sent via e-mail addressed as follows:

**District:**

San José Unified School District  
855 Lenzen Avenue  
San José, CA 95126  
Attn: Director, Procurement  
E-mail: tmorrison@sjusd.org

**Tenant:**

Pacific Autism Center for Education  
1880 Pruneridge Avenue  
Santa Clara, CA 95050  
Attn: Kurt Ohlfs, Executive Director  
E-mail: kurtohlfs@pacificautism.org

Any notice personally given or sent by facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by certified or registered mail shall be effective three (3) calendar days after deposit in the United States mail.

28. **Subcontract, Assignment and Sublease.** Tenant shall not have the right, voluntarily or involuntarily, to assign, license, transfer or encumber this Agreement or sublet all or part of the Premises. Any purported transfer shall be void and shall, at District's election, constitute a default. No consent to transfer shall constitute a waiver of the provisions of this Section.
29. **Joint and Several Liability.** If Tenant is more than one person or entity, each such person or entity shall be jointly and severally liable for the obligations of Tenant hereunder.
30. **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.
31. **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. The Parties acknowledge that each of them has fully discussed the contents of this Agreement with their chosen representatives and/or legal counsel and has had the benefit of legal counsel in negotiating and drafting the terms of this Agreement. Accordingly, this Agreement shall not be construed as having been drafted by one Party or the other.
32. **California Law.** This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in county in which the District's administrative offices are located.
33. **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.

34. **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.
35. **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.
36. **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.
37. **Electronic Signatures.** Each Party agrees that this Agreement and any other documents to be delivered in connection herewith may be electronically signed, and that any electronic signatures appearing on this Agreement or such other documents are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.
38. **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.
39. **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.
40. **Partial Invalidity.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect and will in no way be impaired or invalidated, and the Parties agree to substitute for the invalid or unenforceable provision a valid and enforceable provision that most closely approximates the intent and economic effect of the invalid or unenforceable provision.
41. **Incorporation of Recitals and Exhibits.** The Recitals and each Exhibit attached hereto are hereby incorporated herein by reference.
42. **Authorization to Sign Agreement.** If Tenant is a corporation, each individual executing this Agreement on behalf of Tenant represents and warrants that individual is duly authorized to execute and deliver this Agreement on behalf of Tenant in accordance with a duly adopted resolution of Tenant's Board of Directors, and that this Agreement is binding upon Tenant in accordance with its terms, and Tenant shall, concurrently with its execution of the Agreement, deliver to District upon its request a certified copy of a resolution of its Board of Directors authorizing the execution of this Agreement. If Tenant is a partnership or trust, each individual executing this Agreement on behalf of Tenant represents and warrants that individual is duly authorized to execute and deliver this Agreement on behalf of Tenant in accordance with the terms of such entity's partnership agreement or trust agreement, respectively, and that this Agreement is binding upon Tenant in accordance with its terms, and Tenant shall, concurrently with its execution of the Agreement, deliver to District upon its request such certificates or written assurances from the partnership or trust as District may request authorizing the execution of this Agreement. Each individual executing this Agreement on behalf of District represents and warrants that individual is duly authorized to execute and deliver this Agreement on behalf of District and this Agreement is binding upon District in accordance with its terms.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the later date indicated below:

Dated: 7/15/2024

Dated: 7/10/2024

**San José Unified School District**

**Pacific Autism Center for Education**

By:   
24398E33D9794D1...

By:   
AD58B4A008244EF...

Print Name: Tracy Morrison

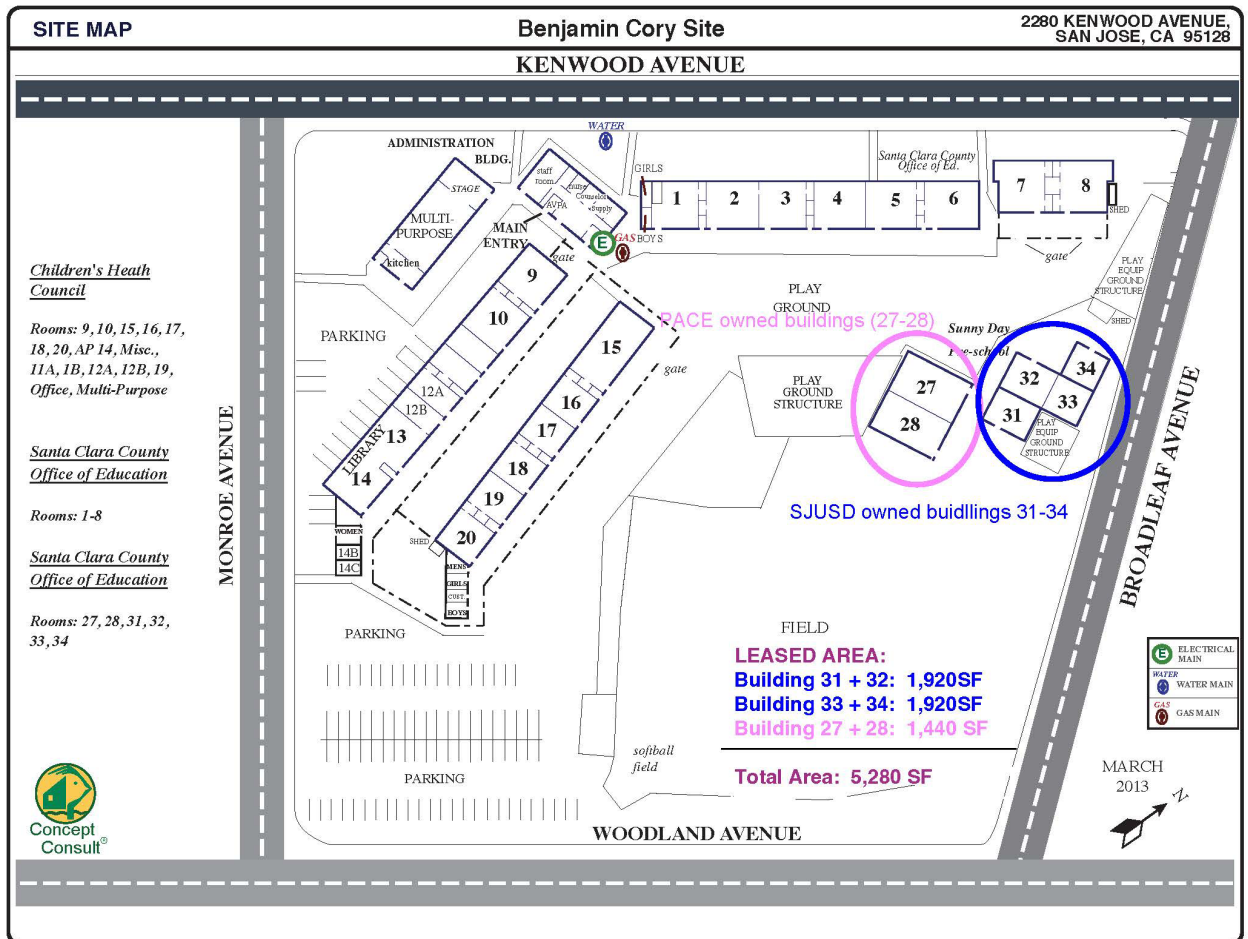
Print Name: Kurt Ohls

Print Title: Director of Procurement

Print Title: Executive Director

## EXHIBIT A DESCRIPTION OF PREMISES AND SITE

1. Tenant will have use of the Premises described as:
  - 1.1. The Premises that are being allocated to the Pacific Autism Center for Education to operate the Sunny Days Preschool Program, including shared space, shall consist of approximately 5,280 square feet of dedicated and shared space located in the room(s) and area(s) as depicted on the map below.



**EXHIBIT B**  
**DESCRIPTION OF TENANT'S PROGRAM AND ACTIVITIES**

**1. Tenant's Program**

1.1. Sunny Days Preschool was founded in 2005. Sunny Days Preschool is a NPS (non-public school) and CCL-certified preschool. OUR progressive, inclusive program for 3 – 6-year-olds supports children on the autism spectrum, neuro-typical children, and those needing a little extra support in a responsive and nurturing environment. Sunny Days Preschool has a highly trained, energetic staff and offer a developmentally appropriate, responsive approach to child growth. Sunny Days is licensed by the State of California Department of Social Services, Facility Number 434414613. They work directly with families as well as school districts that are interested in sending their students to our program.

1.2. Sunny Days Highlights:

1.2.1. The inclusive program welcomes both children on the autism spectrum and neurotypical children

1.2.2. Maximum of 1:3 adult to student ratio (1:1 aide option available for an additional fee. Note: external aides are not permitted)

1.2.3. Classroom size of 8-12 students

1.2.4. Highly trained, energetic staff, directed by a certified Early Childhood Special Education teacher

1.2.5. Activities emphasize social learning as well as kinder-readiness

1.2.6. Program is supported by Occupational, Speech and Behavior Therapists

1.2.7. Teaching philosophy based on responsive teacher/child relationships

1.2.8. Ongoing assessments of child's progress in the program

1.2.9. Parents strongly encouraged to bring the learning process home

1.2.10. Supports toilet training regimen

**2. Hours of Operation.**

2.1. Preschool Classes: Monday – Friday, 9AM-12PM.

2.2. Extended Day/Behavior Clinic (for additional fees): Monday- Friday, 12PM-5PM.

**EXHIBIT C  
TENANT CERTIFICATIONS**

**THE UNDERSIGNED EXECUTE THIS FORM AND HEREBY CERTIFIES TO THE GOVERNING BOARD OF THE DISTRICT THAT UNDERSIGNED IS:**

- (1) A representative of the Tenant,
- (2) Familiar with the facts herein certified,
- (3) Authorized and qualified to execute this certificate on behalf of Tenant and that by executing this Agreement is certifying the following items.

**Fingerprint and Background Certification.** Tenant shall comply with Education Code section [45125.1](#). Such entities are responsible for ensuring full compliance with the requirements of this statute and should thoroughly review the requirements thereunder.

The Tenant and the Tenant Parties shall at all times comply with the fingerprint and background certification requirements as set forth below. Specifically, by checking an applicable option below, Tenant hereby represents and warrants to District the following:

- Tenant and/or Tenant Parties will not be present on a District site or will not have contact with District students when District students are present during the term of this Agreement.
- The Tenant shall conduct the required criminal background check(s) of all persons who will be providing services to the San José Unified School District on behalf of Tenant, and that none of those persons have been reported by the Department of Justice (“DOJ”) as having been convicted of a serious or violent felony as specified in Penal Code Sections [667.5](#) and/or [1192.7\(c\)](#). I understand that this Certificate is not to be signed and submitted until I have received clearance from DOJ regarding those persons named. Upon request, Tenant will provide a list of the names of the employees who may come in contact with pupils while providing Services under this Agreement. This list shall be regularly maintained and updated by Tenant and shall be available to District upon request or audit.
- Arrange to have a Certificated District Employee continually monitor and supervise the Tenant at all times while services are provided on site such that Tenant will have no interaction with any District student outside the immediate supervision and control of a District employee. As supported by California Education Code Section 45125.1.

Certificated District Employee: N/A, N/A at N/A

Signature: \_\_\_\_\_ Date: \_\_\_\_\_ Principal Initials: \_\_\_\_\_

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**Megan’s Law (Sex Offenders).** I have verified and will continue to verify that the employees of the Tenant and the Tenant Parties having contact with District students under this agreement are **not** listed on California’s “Megan’s Law” Website (<http://www.meganslaw.ca.gov/>).

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**Tuberculosis Certification.** The Tenant and the Tenant Parties shall at all times comply with the certification requirements as set forth below. Specifically, by checking the one applicable option below, Tenant hereby represents and warrants to District the following:

- Tenant and/or Tenant Parties will not be present on a District school site and will not have contact with District students when District students are present during the term of this Agreement.
- District has determined that Tenant will not have frequent or prolonged contact with students. District's determination is in compliance with and supported by California Education Code Section [49406\(m\)](#).
- The following Tenant and/or Tenant Parties shall or may be on a District school site and have contact with District students during the term of this Agreement and, at no cost to District, they have received a tuberculosis risk assessment that complies with the requirements of California Education Code Section [49406](#). In addition, the Tenant shall maintain on file the certificates showing that the Tenant Parties were examined and found free from active tuberculosis. These forms shall be regularly maintained and updated by Tenant and shall be available to District upon request or audit.

Tenant further agrees and acknowledges that all new personnel hired after the effective date of this Agreement are subject to the tuberculosis certification requirements and shall be prohibited from having any contact with District students until the tuberculosis certification requirements have been satisfied and District determines whether any such contact is permissible.

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**COVID-19 Certification.** The Tenant and the Tenant Parties shall at all times comply with the Covid-19 certification requirements as set forth below. Tenant hereby represents and warrants to District the following:

I acknowledge and am aware of all applicable requirements and recommendations to mitigate the spread of COVID-19, including [COVID-19 Public Health Guidance for K–12 Schools to Support Safe In-Person Learning for the 2023–23 School Year](#) and [San José Unified's COVID Health and Safety Information](#).

Tenant further agrees and acknowledges that District may at its sole discretion modify the requirements of this COVID-19 certification to ensure the health and safety of students.

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**Lobbyist Certification.** The Tenant and the Tenant Parties shall at all times comply with the lobbyist certification requirements as set forth below. Specifically, by checking the one applicable option below, Tenant hereby represents and warrants to District the following:

- Tenant and/or Tenant Parties are not a "Lobbying Coalition," "Lobbying Firm," "Lobbyist" or "Lobbyist Employer" as those terms are defined in the Political Reform Act of 1974 (Gov. Code §§ 81000) (collectively "Lobbyist") and are not performing Services hereunder that would require registering as a Lobbyist.

- Tenant and/or Tenant Parties Services hereunder shall or may include lobbying. Tenant and/or Tenant Parties shall comply with all applicable District, local, state and/or federal policies, rules, regulations, statutes and requirements governing Lobbyists. In addition, the Tenant shall maintain on file registering and reporting records for Lobbyists. These records shall be regularly maintained and updated by Tenant and shall be available to District upon request or audit.
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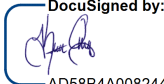
**Conflict of Interest Certification.** The Tenant and the Tenant Parties shall at all times comply with the conflict of interest certification requirements as set forth below. Specifically, by checking the one applicable option below, Tenant hereby represents and warrants to District the following:

- Tenant and/or Tenant Parties have read and understand the District’s Conflict of Interest Code (Board Bylaw 9270) and, to the best of Tenant’s knowledge, there are no conflicts of interest that must be disclosed pursuant to the Conflict of Interest Code.
  - Tenant and/or Tenant Parties have read and understand the District’s Conflict of Interest Code and, Tenant knows or has reason to believe that Tenant has a conflict of interest that requires disclosure and Tenant and/or Tenant Parties shall comply with the applicable disclosure requirements of the District’s Conflict of Interest Code. In addition, the Tenant shall maintain on file statements of economic interests in accordance with applicable disclosure requirements. These records shall be regularly maintained and updated by Tenant and shall be available to District upon request or audit.
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I acknowledge and certify under penalty of perjury that I am duly authorized to legally bind the Tenant to all provisions and items included in this certification, that the contents of this certification are true, and that this certification is made under the laws of the State of California.

Date: 7/10/2024

Tenant Name: Pacific Autism Center for Education

Signature:  AD58B4A008244EF...

Name: Kurt Ohlfs

Title: Executive Director

END OF DOCUMENT