

JOINT-USE AGREEMENT AND LEASE
Between
MOUNT DIABLO UNIFIED SCHOOL DISTRICT
And
YMCA
For
CHILDCARE AND AFTERSCHOOL USES

THIS AGREEMENT AND LEASE ("Agreement") is made on July 1, 2014, by and between the MOUNT DIABLO UNIFIED SCHOOL DISTRICT, a California public school district ("District") and YMCA OF THE CENTRAL BAY AREA, a non-profit corporation ("Tenant"), referred to collectively as the "Parties."

RECITALS

WHEREAS, Tenant requires space for operation of a childcare and afterschool program ("Program"); and

WHEREAS, District has available space on Strandwood Elementary School, located at 416 Gladys Drive, Pleasant Hill, CA 94523 ("Property"), as described and depicted in **Exhibit "A"** attached hereto; and

WHEREAS, Tenant currently jointly uses existing facilities on the Property for operation of its Program; and

WHEREAS, Tenant desires to finance the rearrangement/expansion of current school facilities on the Property through a sub-contract with Mobile Modular ("Facilities"), and once constructed, District desires to allow Tenant to use the Facilities for expanded operation of its Program; and

WHEREAS, District, pursuant to section 17527, et seq., of the Education Code, is authorized to lease space in school buildings to Tenant, a non-profit corporation; and

WHEREAS, District, pursuant to section 17529 of the Education Code, has determined that leasing the Premises to Tenant for its Program will not (1) interfere with the educational programs or activities of any school or class conducted on the Property, (2) unduly disrupt the residents in the surrounding neighborhood, or (3) jeopardize the safety of the children at the Property; and

WHEREAS, District is authorized by Education Code section 17534 to permit Tenant, a non-profit corporation making capital outlay improvements to the Property for park and recreation purposes, to jointly occupy school facilities for a period in excess of five (5) years.

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

FINANCING AND CONSTRUCTION PROVISIONS

Section 1. Design of Facilities. The District shall cause the Facilities to be moved and made operational in accordance with **Exhibit "B"** attached hereto and made a part of this Agreement. The District or its agents or representatives shall meet and confer with the

Tenant prior to finalizing design work on the Facilities, and at reasonable intervals during the design process and collaborate and exchange key design documents. The Facilities shall be installed to comply with Division of State Architect standards.

Section 2. Installation of Facilities. The District (Tenant) shall cause the Facilities to be moved, installed, and completed, and Tenant shall pay the cost of said activities related to Facilities as indicated herein. The District or its agents or representatives shall meet and confer with the Tenant prior to commencing installation of the Facilities, and at reasonable intervals throughout the construction process and collaborate and exchange key design documents. Installation of the Facilities shall with all legal requirements governing the construction of public works and school facilities.

Section 3. Determination of Facilities Cost.

3.1. The Tenant shall directly pay all Facilities Costs.

Section 4. Environmental Review. The District shall be responsible for ensuring compliance with the California Environmental Quality Act and any other applicable environmental laws with regard to the construction of the New Facilities.

JOINT USE PROVISIONS

Section 5. Title to Property. The Parties acknowledge that title to the Property and the Facilities is and will be held by the District, subject to any liens or rights retained by Mobile Modular. Upon the conclusion and/or expiration of the Term herein, Tenant shall remove the Mobile Modular units.

Section 6. Use of Property. District agrees to allow use of the space on the Property by Tenant for the operation of the Tenant's Program. The premises that is the subject of this Agreement is described in **Exhibit "B,"** attached hereto, and consists of existing facilities on the Property, together with the Facilities (collectively, the "Premises"). Tenant shall have exclusive use of the Premises at all times to administer and operate the Tenant's Program, subject to modification by the Parties.

Section 7. Custodial Services, Maintenance, and Repairs. Tenant shall provide custodial services, maintenance and repairs to the Premises. Tenant shall maintain the Premises in a safe condition in conformance with all laws, rules, and regulations applicable to the use of the Premises by Tenant or District. If the District provides reimbursement for cost of custodial services, maintenance and/or repairs, Tenant shall pay District for those services within thirty (30) days of receipt of an invoice from District.

Section 8. Utilities. District/Tenant shall make all necessary payments for the following utilities for the Property: water and sewer service. Tenant shall pay for all other utilities and service to and for the Premises, which may include water, gas, electricity, telephone and other data and communication lines and service. Tenant shall pay its pro rata share of the cost of those utilities within thirty (30) days of receipt of an invoice from the District.

Section 9. Term. The term of this Agreement shall commence on July 25, 2014, and shall remain in effect for Three (3) years, and ending on July 24, 2017 ("Term") ____.

Section 10. Rent. For and in consideration of the use of the Premises for the full Term of this Agreement, Tenant agrees to pay District monthly payments of Forty Dollars (\$40.00) ("Rent") which the parties agree constitutes fair market value for the premises unless Tenant is a public entity. The first payment shall be due when Tenant executes this Agreement and thereafter due on or before the first day of each month through the term of this Agreement.

Section 11. Renewal. This Agreement may be renewed upon the mutual written agreement of the Parties. If either party wishes to renew this Agreement for an additional term, which shall not, under any circumstances, exceed five (5) years, it shall notify the other party in writing at least ninety (90) days before the expiration of any Term of this Agreement. Prior to each renewed Term, the District shall make the findings required by Education Code section 17529.

Section 12. Possession and Condition of Premises: The Premises are leased to the Tenant on an "as is" basis.

Section 13. Condition of Premises: District shall not be required to make or construct any alterations including structural changes, additions, or improvements to the Premises. By entry into and taking possession of the Premises pursuant to this Agreement, Tenant accepts the Premises as being in good and sanitary order, condition, and repair and accepts the Premises in the condition existing as of the commencement date of this Agreement.

Section 14. Improvements or Alterations: Tenant shall not construct or cause to be constructed on the Premises any improvements or alterations of any kind without the prior written approval of District.

Section 15. Termination.

A. Termination for Convenience

1. The District may terminate this Agreement by written notification thirty (30) days prior to the effective date of the termination.
2. The Tenant may terminate this Agreement by written notification ninety (90) days prior to the effective date of the termination.
3. Neither party shall be required to provide just cause for termination in the written notification.

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

1. Material violation of this Agreement by the Tenant; or
2. Any act by Tenant exposing the District to liability to others for personal injury or property damage; or
3. Tenant is adjudged a bankrupt, Tenant makes a general assignment for the benefit of creditors or a receiver is appointed on account of Tenant's insolvency.

- C. Restoration of Premises.** Upon termination of this Agreement, Tenant shall be responsible to restore the Property to its condition prior to the commencement of this Agreement with no damage thereto, reasonable wear and tear accepted. Additionally, Tenant shall be responsible for preparation of the building(s) for return to McGrath Inc. (DBA Mobile Modular), return transportation, cleaning, replacement of missing items, and repairs for any damages assessed upon the return of the building to Mobile Modular's facility.

Section 16. Title to and Removal of Tenant's Equipment. Title to Tenant's equipment, fixtures and/or improvements ("Tenant's Equipment") on the Premises shall be held solely by Tenant. All of Tenant's Equipment shall remain the personal property of Tenant and shall not be treated as real property or become a part of the Premises. On or before the expiration of this Agreement, or within thirty (30) days after any earlier termination hereof, Tenant shall remove Tenant's Equipment, at its sole expense. Tenant shall repair any damage to the Premises, caused by said removal and restore the Premises to good condition, less ordinary wear and tear.

In the event that Tenant fails to timely remove Tenant's Equipment, District, upon fifteen (15) days written notice, may either (1) accept ownership of Tenant's Equipment with no cost to the District, or (2) remove Tenant's Equipment at Tenant's sole cost. In the event that the District chooses to accept ownership of Tenant's Equipment, Tenant shall execute any necessary documents to effectuate the change in ownership of Tenant's Equipment to District. In the event that the District removes Tenant's Equipment, Tenant shall pay all invoices for the removal of Tenant's Equipment within thirty (30) days of receipt of such invoices.

Section 17. Destruction.

- A. If the Premises or the Property is damaged or destroyed so as, in District's judgment, to hinder Tenant's normal operations, Rent shall abate in proportion to the loss of use from the date such damage or destruction occurs until Tenant is able to commence normal operations.
- B. District and Tenant waive any statutory rights to terminate this Agreement on account of damage or destruction.

Section 18. Program Staffing and Background Verification. Tenant represents that it is duly formed to administer and operate its Program, and at District request, Tenant shall provide copies of relevant license(s), permit(s) and/or certification(s) to District. Tenant shall be solely responsible for obtaining all necessary permits and approvals from any and all applicable State, local or other regulatory agencies related to the operation of its Program, including without limitation, use permits and compliance with the California Environmental Quality Act ("CEQA").

Tenant shall be solely responsible for the administration and operation of its Program, including the hiring of all employees.

Prior to commencement of its Program, Tenant shall complete the Fingerprinting/Criminal background verification certificate attached hereto as **Exhibit "C,"** and shall be responsible for ensuring compliance with all applicable fingerprinting and criminal background investigation requirements described in Education Code section 45125.1. Tenant shall provide to District written verification of compliance with the aforementioned fingerprinting and criminal background investigation requirements prior to each individual's

commencement of employment or participation in any Tenant activity. Tenant shall not allow any person for whom the District has not received satisfactory written verification of compliance to enter the Property for any purpose related to or arising out of this Agreement at any time that District pupils may be present.

Section 19. Alcoholic Beverages/Illegal Drugs/Noise/Animals. Any uses, which involve the serving and/or sale of alcoholic beverages or illegal drugs and/or the conducting of games of chance, are prohibited on the Premises. Tenant shall comply with the District-wide policy prohibiting the use of tobacco products on the Premises at all times. 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/or welfare or morally objectionable as unsuitable for a public educational facility. Licensee agrees to respond immediately to concerns expressed by neighbors or District relating to the operation of the Premises. No animals are allowed on the Premises.

Section 20. Hold Harmless/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 direct losses, liabilities, claims, suits, and actions, including, but not limited to, attorneys' fees and costs, directly arising out of, connected with, or resulting from the performance of this Agreement by Tenant or from an activity, work, or thing done, permitted, or suffered by Tenant in conjunction with the performance of this Agreement, unless caused by the sole negligence or willful misconduct of the indemnified parties; and, in case any action or proceeding be brought against District due to Tenant's acts or omissions, Tenant shall defend the same at Tenant's expense.

Section 21. Insurance

A. Commercial General Liability Insurance. Tenant shall, during the term of this Agreement, maintain in force, a combined, single-limit liability commercial general insurance policy in the amount of not less than two million dollars (\$2,000,000) with District, its employees and agents, at Tenant's expense, named as additional insureds under such policies. Such policy shall provide for a thirty (30) day written notice to District of any cancellation or reduction of coverage. Tenant agrees to provide District a certificate of insurance evidencing this coverage in a form satisfactory to District upon execution of this Agreement, upon renewal of each policy and upon request of District during the term of this Agreement.

B. Auto Insurance. Tenant shall, during the term of this Agreement, maintain in force, a comprehensive auto liability policy naming District, its employees and agents, at Tenant's expense, named as additional insureds under such policy. Such policy shall provide for a thirty (30) day written notice to District of any cancellation or reduction of coverage. Tenant agrees to provide District a certificate of insurance evidencing this coverage in a form satisfactory to District upon execution of this Agreement, upon renewal of each policy and upon request of District during the term of this Agreement.

C. Workers' Compensation Insurance. During the term of this Agreement, Tenant shall comply with all provisions of law applicable to Tenant with respect to obtaining and maintaining workers' compensation insurance. Prior to the commencement and any renewal of this Agreement and Tenant's occupancy of the Property, Tenant shall provide District, as evidence of this required coverage,

a certificate in a form satisfactory to District on or before the commencement or renewal date, providing that insurance coverage shall not be canceled or reduced without thirty (30) days prior written notice to District.

D. Tenant's Equipment Insurance. Tenant acknowledges that the insurance to be maintained by District on the Premises will not insure any of Tenant's Equipment, property or any improvements made by Tenant. Accordingly, Tenant shall, at its own expense, maintain in full force and effect an insurance policy on all of its fixtures, equipment, improvements made by Tenant and personal property in, about, or on the Premises. Said policy is to be for "All Risk" coverage insurance to the extent of at least ninety percent (90%) of the insurable value of Tenant's property.

Section 22. 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 deposited in the United States mail, postage prepaid, return receipt required, or sent by overnight delivery service or facsimile transmission, addressed as follows:

MOUNT DIABLO UNIFIED SCHOOL DISTRICT

Superintendent
Mount Diablo Unified School District
1936 Carlotta Drive
Concord, CA 94519-1397
Tel: (925)682-8000, ext. 4000

YMCA

Attn: Executive Director
YMCA of the Central Bay Area - D.F. Brancat
350 Civic Drive
Pleasant Hill, CA 94523

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 five (5) days after deposit in the United States mail.

Section 23. Subcontract and Assignment. Tenant shall not assign its rights, duties or privileges under this Agreement, nor shall Tenant subcontract or attempt to confer any of its rights, duties or privileges under this Agreement on any third party, without the written consent of the District. Any such attempt without District written consent shall be void.

Section 24. 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.

Section 25. 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.

Section 26. 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 Contra Costa County, California.

Section 27. Attorneys' Fees. If either party files any action or brings any proceedings against the other arising out of this Agreement, each party shall bear its own costs of suit, including attorneys' fees.

Section 28. 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.

Section 29. 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.

Section 30. Counterparts. This Agreement and all amendments and supplements to it may be executed in counterparts and transmitted by facsimile, and all counterparts together, whether original or facsimile, shall be construed as one document.

Section 31. 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.

Section 32. 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.

Section 33. Incorporation of Recitals and Exhibits. The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date(s) indicated below.

ACCEPTED AND AGREED on the date indicated below:

Dated: _____, 2014

Dated: August 8, 2014

**MOUNT DIABLO UNIFIED SCHOOL
DISTRICT**

YMCA OF THE CENTRAL BAY AREA

By: _____

By: Michael Cassidy

Print Name: Dr. Nellie Meyer

Print Name: Michael Cassidy

Print Title: Superintendent

Print Title: Vice President/COO

EXHIBIT "A"

Description of Property And Site Map

Attached is description for a portion of the school site and description of the area subject to this lease agreement which YMCA will occupy at:
Strandwood Elementary School, 416 Gladys Drive, Pleasant Hill, CA 94523

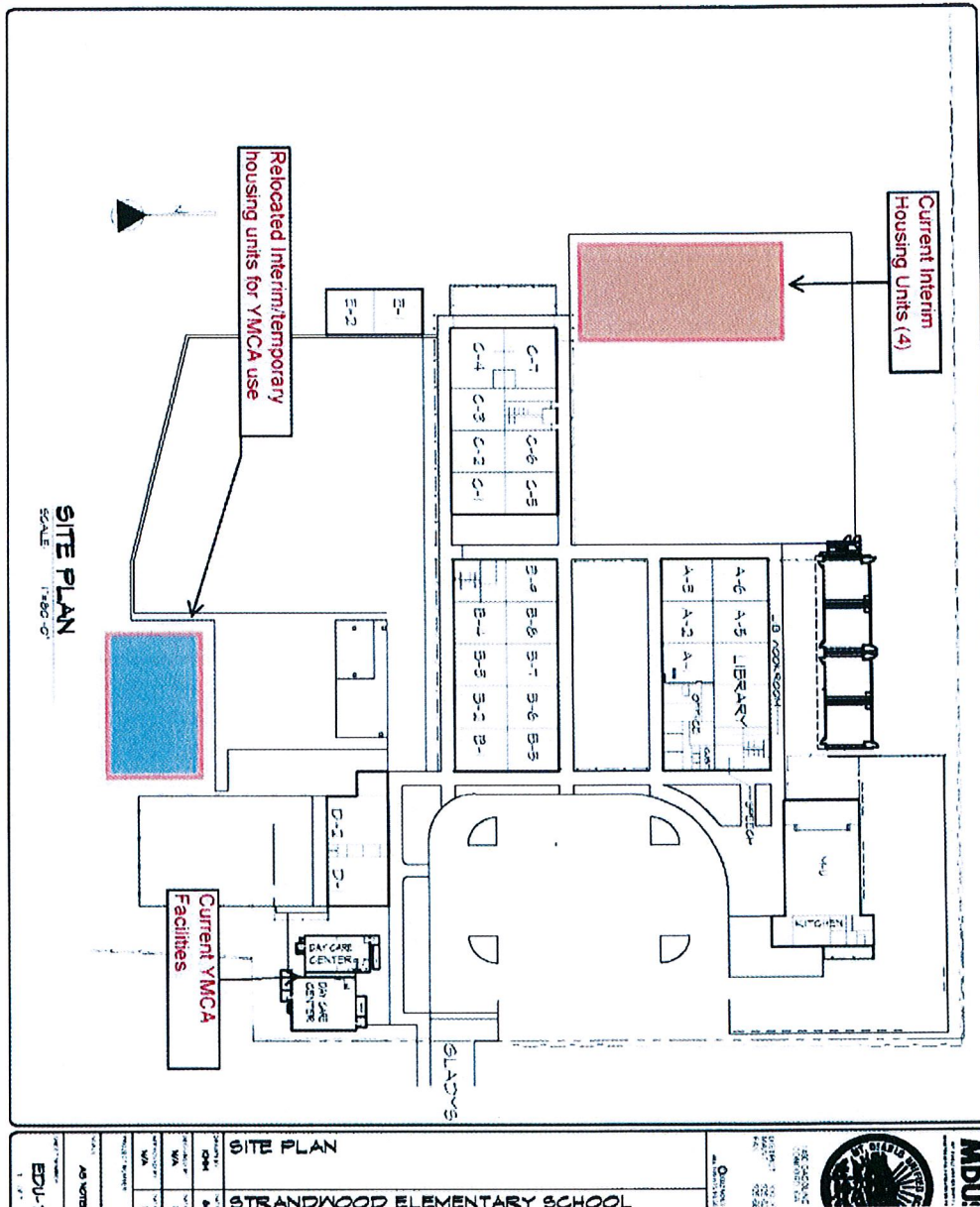


EXHIBIT "B"

Description of Facilities

Temporary/Interim Housing Units currently located at:
Strandwood Elementary School, 416 Gladys Drive, Pleasant Hill, CA 94523

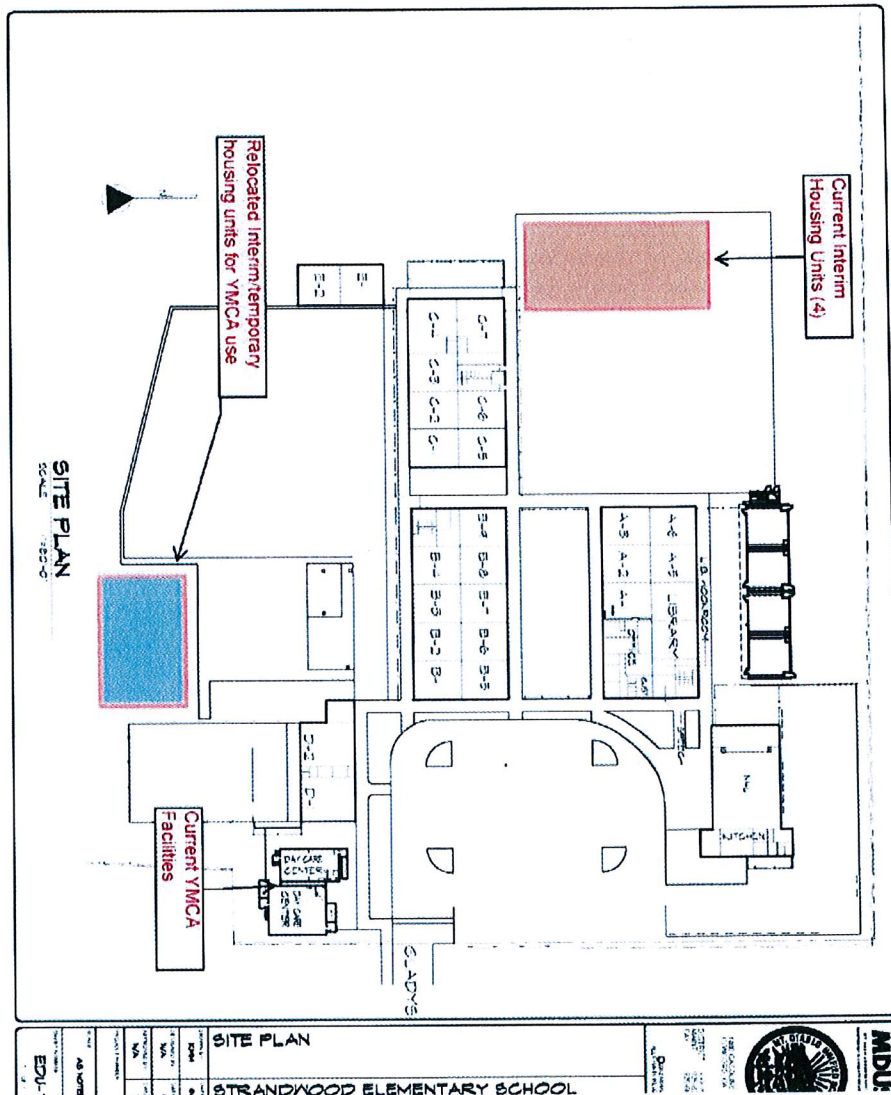


EXHIBIT "C"

Description of Premises

The "Premises" that are being leased to Tenant are the following rooms, premises and/or other spaces as described below and as indicated on the attached site map, which are located at Strandwood Elementary School, 416 Gladys Drive, Pleasant Hill, CA 94523:

Rooms: IH1, IH2, _____, _____, _____.

The total square footage of this space is +/-2400 square feet.

EXHIBIT "D"

Criminal Background Investigation/Fingerprinting Certification

I certify to the District governing board that I am the Tenant and I am familiar with the facts herein certified, and I am authorized and qualified to execute this certificate on behalf of Tenant. I certify that Tenant has taken at least one of the following actions with respect to the Joint Use and License Agreement:

W Tenant has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all Tenant's employees, agents, and representatives and all of its consultants, contractors or subcontractors' employees who may have contact with District pupils during the Term of the Agreement, and the California Department of Justice has determined that none of those employees, agents or representatives has been convicted of a felony, as that term is defined in Education Code section 45122.1. A complete and accurate list of Tenant's employees, agents, and representatives and of all of its consultants, contractors, and subcontractors' employees who may come in contact with District pupils during the Term of the Agreement is attached hereto; and/or

W The Premises is at an unoccupied school site and no employee, agent, representative and/or employee of any contractor, subcontractor or supplier of any tier shall come in contact with any District pupils.

Tenant's responsibility for criminal background clearance extends to all of its employees, agents, representatives, consultants, contractors, subcontractors, and employees of each coming into contact with District pupils regardless of whether they are designated as employees or acting as independent contractors of Tenant. Tenant shall not allow any person for whom the District has not received satisfactory written verification of compliance to enter the Property for any purpose related to or arising out of this Agreement at any time that District pupils may be present.

TENANT: YMCA of the Central Bay Area **Date:** 8/8/14

Signature: Michael Cassidy

Print Name: Michael Cassidy