



JOINT USE AGREEMENT AND REAL PROPERTY LEASE

THIS JOINT USE AGREEMENT AND LEASE (the "Agreement") is dated for convenience June 26, 2025 ("Commencement Date"), by and between the Mt. Diablo Unified School DISTRICT, a public school district and political subdivision of the State of California ("DISTRICT"), and CLAYTON COMMUNITY SCHOOL, a day care center ("LESSEE"). The DISTRICT and LESSEE may be referred to herein singularly as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, the DISTRICT owns and operates the MT. DIABLO ELEMENTARY School, School Site I.D.154 which is located at 5880 Zion Drive, Clayton in the County of Contra Costa, State of California, ("Site");

WHEREAS, LESSEE has requested that DISTRICT allow it to operate, and maintain a child care facility ("Facility") containing approximately 4,480 SQUARE FEET of the Site as more fully described in Exhibit A attached hereto ("Premises"). The Facility is more fully described in Exhibit B attached hereto;

WHEREAS, the DISTRICT intends to allow LESSEE to use the Premises on the Site as detailed herein this Agreement;

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

WHEREAS, pursuant to California Education Code § 17529, the DISTRICT has determined, by approving this Agreement, that LESSEE's joint-use of the School Site will not (1) interfere with the educational program or activities of any school or class conducted on the Site, (2) unduly disrupt the residents in the surrounding neighborhood, or (3) jeopardize the safety of the children of the Site;

WHEREAS, pursuant to California Education Code § 17531(b), the DISTRICT has determined that this Agreement is compatible with the educational purpose of the Site;

WHEREAS, LESSEE agrees that the DISTRICT's fee interest in the Premises and the Site shall at all times be and remain unsubordinated to any leasehold mortgage which may be imposed upon LESSEE's interest hereunder or upon the Facility, 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, the DISTRICT and Company agree as follows:

1. **Premises.** The Premises subject to this Agreement is fully described in **Exhibit A**, attached hereto and hereby made a part of this Agreement.
 - 1.1. The DISTRICT leases the Premises to LESSEE 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.
 - 1.2. LESSEE acknowledges that neither District nor its agents have made any representations or warranties of any kind whatsoever, either express or implied, as to the suitability of the Premises for the Facility, its Use, or any other use. Any agreements, warranties, or representations not expressly contained herein shall in no way bind either Party and the Parties expressly waive all claims for damages by reason of any statement, representation, warranty, promise, or agreement, if any, not contained in this Agreement.
 - 1.3. District makes no representation or warranty, expressed or implied, concerning the location of present or future facilities on or surrounding the Site.

2. **Use of Premises:**
 - 2.1. **LESSEE**
 - 2.1.1. DISTRICT agrees to allow LESSEE to use the Premises to construct, operate, repair, replace, upgrade and maintain the Facility, as more fully described in Exhibit B. The DISTRICT will provide LESSEE the use of land space in the size (4,480 square feet), to the extent and in the location designated by DISTRICT in **Exhibit B**, which is incorporated as part of this AGREEMENT. The LESSEE will use the land space to, install and operate a relocatable building or buildings for the purpose of operating a child care center and preschool in compliance with all appropriate California licensing requirements.
 - 2.1.2. LESSEE shall use the premises only for a **child care center**. This use shall be made possible by LESSEE'S installation of a relocatable building. LESSEE agrees to maintain the facility in a manner that meets all State and local regulations relating to the construction, operation and licensing of **child care centers and preschools**.
 - 2.1.3. The District leases the Premises to Company 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.
 - 2.2. **DISTRICT:** In consideration of the DISTRICT granting the LESSEE permission to use the DISTRICT's property and to place a building on said property, the LESSEE agrees that the DISTRICT shall have the use of this building during the regular school day.

3. **Term.** The initial term of this Agreement shall be for three (3) years. The Commencement Date of this Agreement is on **JULY 1, 2025**, and, unless sooner

terminated under any provision hereof, this Agreement shall end **June 30, 2028** (“**Initial Term**”).

- 3.1. This Agreement shall become effective only upon proper execution by the Parties; and approval or ratification by the District’s Board of Education in an open, noticed meeting.
 - 3.2. Upon mutual written agreement of the Parties, the Parties may renew the lease for two additional one year terms. The Parties recognize that the DISTRICT cannot enter into any Joint Use Agreement for a term exceeding five (5) years pursuant to Education Code § 17534(a). If either party chooses not to renew the LEASE AGREEMENT, then that party shall provide forty-five (45) days written notice to the other party in advance of the renewal date.
4. **Cancellation of Lease Agreement.** The DISTRICT shall have the right to cancel or terminate this LEASE AGREEMENT before expiration of its term if the DISTRICT determines, in its discretion, that the Premises so leased under this AGREEMENT to LESSEE is needed and necessary for use by the DISTRICT for any type of expansion or modification of the school program or if complaints about the operation of the child care center are received by DISTRICT from the principal, employees, patrons and/or others. To exercise this right, the DISTRICT shall notify LESSEE, by written notice, of its intent to cancel or terminate this LEASE AGREEMENT pursuant to this section. The notice shall state the date LESSEE is required to vacate and surrender the Premises which must be at least sixty (60) days after the date the written notice is presented to LESSEE (“**Termination Date**”). the DISTRICT shall prorate as of the “**Termination Date**” any advance utility payments (see Paragraph **11**) paid by LESSEE that is not yet due before the “**Termination Date**.” LESSEE agrees to vacate and surrender the leased Premises and Real Property on or before the “**Termination Date**” pursuant to this provision.
 5. **Rent.** In consideration for the lease of this property, LESSEE shall pay DISTRICT rent of One Dollar (\$ 1.00) per year payable on July 1 of each year.
 6. **Compliance with Laws.** LESSEE shall comply with all laws, statutes, ordinances and requirements of any City, County, State, and Federal authorities, now or later in force, pertaining to the use of the Premises and the operation of a licensed child care center and preschool.
 7. **Participation in Expanded Learning Opportunity Programs.** DISTRICT’s Expanded Learning Opportunities Program (“**ELOP**”) includes before and after school, intersession and summer youth programs that focus on developing the academic, social, emotional, and physical needs and interests of pupils through hands-on, engaging learning experiences for elementary and middle school youth. It is the intent of the California Legislature that expanded learning programs be pupil-centered and that they include community partners. To that end, DISTRICT and LESSEE agree to collaborate so that students enrolled in LESSEE’s child care center may participate in DISTRICT’s ELOP programs at no cost for student participation.

8. **Alterations.** DISTRICT and LESSEE have agreed to the placement of the relocatable building in consideration of traffic flow, accessibility for emergency equipment to adjacent structures as well as restoration or repair of damages caused by the installation effort. LESSEE shall not make any alterations of the premises without first obtaining the written consent of the DISTRICT. All plans and drawings must be approved, in advance, by the office of the Director of Maintenance, Operations and Facilities. Any additions to or alterations of the premises, except moveable equipment, furniture and fixtures, including the relocatable building, shall become at once a part of the premises. Notwithstanding the foregoing, LESSEE shall have the right to remove any relocatable building or buildings it has installed, as set forth in Paragraph 8. Any alterations approved by DISTRICT shall be made at no expense to DISTRICT.
- 8.1. LESSEE agrees that said relocatable building and all trade fixtures, equipment and appliances will be installed and removed without any damage to the premises. In the event any damage, as determined by the DISTRICT, is caused by LESSEE or its agents or employees in the installation or removal of said building, trade fixtures, equipment and appliances, LESSEE agrees to immediately repair the said damage at its sole cost and expense.
- 8.2. LESSEE shall comply with all state and local requirements including but not limited to; The California Department of State Architect ("DSA"), the California Environmental Quality Act ("CEQA") and any zoning ordinances of the City of Concord and the County of Contra Costa, if applicable, to the alterations made by LESSEE. LESSEE agrees to take reasonable steps to meet and confer with neighbors and other concerned citizens regarding the placement and construction of any alterations.
9. **Maintenance of Premises.** LESSEE shall maintain the premises at all times in good condition and repair at no expense to DISTRICT and upon termination of this LEASE AGREEMENT, shall surrender them to DISTRICT in as good order and condition as the same were at the commencement of the terms of this AGREEMENT, except for the effect of grading, foundation work and other site modification which DISTRICT accepts as permanent improvements to its property and except for reasonable wear and tear, damage from the elements, fire or acts of nature.
- 9.1. LESSEE, as its sole cost, shall remove any graffiti and repair any vandalism within seven (7) calendar days of discovery by LESSEE and/or at DISTRICT's request. DISTRICT reserves the right to remove the graffiti following the notice and cure period (or immediately if it is an emergency situation, a dangerous condition, or contains offensive language or depictions) and to charge LESSEE for that removal, which shall be paid by LESSEE within thirty (30) calendar days of notice from the DISTRICT with the amount of that charge, along with reasonable supporting documentation evidencing the costs.
- 9.2. Upon termination of this AGREEMENT, by its term or agreement, LESSEE shall have the right to remove any relocatable building or buildings, which LESSEE has installed at its sole cost and expense. Upon such removal, LESSEE shall restore the premises to as good or better condition than existed prior to such removal. In the event LESSEE fails to remove the relocatable building or buildings within sixty (60) days of termination, without additional written

extension granted by the DISTRICT, the DISTRICT shall have the right to remove said structures, and LESSEE shall be held responsible and liable for said cost and expense.

10. **Custodial Services.** LESSEE shall be responsible for custodial services for the relocatable building.
11. **Utilities Expense & Taxes.** All necessary modifications to the utilities shall be at no expense to DISTRICT. LESSEE shall pay \$415.00 monthly for all water, sewer and trash collection services supplied to the premises. Costs will be reviewed annually at the beginning of each school year and adjusted at DISTRICT'S discretion. LESSEE shall pay for all gas and electric connections and services. LESSEE shall pay for all possessory interest taxes attributable to the lease of this property. Failure to pay for the aforementioned costs for a thirty (30) day period can result in the immediate termination of the agreement. This section has priority over the termination provisions set forth in paragraph 4.
12. **Telecommunications/ Security.** LESSEE shall be responsible for the cost of installation and monthly bills for any telephone, data and security services.
13. **Fingerprinting.** LESSEE shall be responsible for ensuring compliance with all applicable fingerprinting and criminal background investigation requirements described in Education Code § 45125.1 for employees, contractors, sub-contractors or volunteers of LESSEE. Verification of compliance with the applicable fingerprinting requirements shall be provided in writing to DISTRICT prior to each individual's commencement of employment or participation in any activity of LESSEE and prior to permitting contact with pupils participating in any activity of LESSEE.
14. **Mandated Reporter:** LESSEE agrees to comply with California Penal Code § 11165.7 with respect to reporting of suspected sexual abuse to Child Protective Services. LESSEE is requested, but not required to notify the District when a CPS report has been filed.
15. **Indemnification.** LESSEE agrees to indemnify, reimburse, hold harmless, and defend DISTRICT, its officers, employees from and agents against any and all claims, causes of action, judgments, obligations or liabilities, and all reasonable expenses incurred in investigating or resisting the same (including reasonable attorneys' fees), on account of, or arising out of, the operation, condition, use or occupancy of the Premises and all areas appurtenant thereto. 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 LESSEE, its agents, officers, employees, licensees, clients and invitees. This indemnification shall also apply, specifically and without limitation, to claims or action by any private party or governmental agency arising out of or relating to the California Environmental Quality Act ("CEQA"). LESSEE shall also hold DISTRICT harmless from any liability, costs, or expense arising from LESSEE'S use or storage in

the Premises of any hazardous or toxic substance which are prohibited on school property. These indemnity obligations shall include reasonable attorneys' fees, investigation costs, and other reasonable costs incurred by DISTRICT from the first notice of any claim or demand that is to be made or may be made. DISTRICT shall promptly give notice to LESSEE of any claim or demand. The provisions of this section shall survive the termination of this LEASE AGREEMENT for any event occurring prior to the termination.

16. **Health & Safety.** Company 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. Company, its employees, agents, guests and invitees must always review and implement the Health & Safety Policies in their use of the Premises and School Site.
17. **Liabilities With Regard To Adjacent Playgrounds.** Adjoining playgrounds consist of the surrounding adjacent outside playgrounds located at 5880 Zion Drive, Clayton, including those covered by asphalt, grass and/or tanbark and equipment permanently installed thereon.
 - 17.1. Due to multiple entities publishing, changing and making different recommendations for configuration and construction of playground equipment, DISTRICT represents only that playground equipment met any Consumer Product Safety Commission Guidelines in effect at the time of construction of playground equipment.
 - 17.2. LESSEE is responsible for supervising children using said playground equipment and to make certain the use thereof is safe and proper for the age and abilities of the using children. The LESSEE is further responsible for making a reasonable effort to inspect and note any defects to the playground and to immediately call these defects to the attention of the DISTRICT.
 - 17.3. DISTRICT is responsible for the care and maintenance of said equipment, including the cost thereof, as well as the conformance of the equipment to any Consumer Product Safety Commission Guidelines in effect at the time of its construction.
18. **Insurance.** LESSEE, at its own expense, shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the LESSEE, his or her agents, representatives or subLESSEES. Specifics regarding the amount and type of insurance are set-forth in the attached **Exhibit C** ("**Insurance Requirements**").

19. **Access.** LESSEE shall permit DISTRICT and its agents to enter into and upon the premises at all reasonable times for the purpose of inspecting the same or for the purpose of making repairs, alterations, or additions to any other portion of said premises.
20. **Events of Default.** The following events shall constitute events of default under this LEASE AGREEMENT:
 - 20.1. A default by LESSEE of in the payment and the continuation of this default for ten (10) or more days after notice of a default from DISTRICT provided that if LESSEE has failed two or more times in the term of this LEASE AGREEMENT to pay any rent or other sum when due and notice of this default has been given to DISTRICT in each instance.
 - 20.2. A default by LESSEE in the performance of any of the terms, covenants, agreements, or conditions in this LEASE AGREEMENT, other than a default by LESSEE in the payment when due of any rent or other sum payable under this LEASE AGREEMENT and the continuation of the default beyond thirty (30) days after notice by DISTRICT or, if the default is curable and would require more than thirty days to remedy, beyond the time reasonably necessary for cure.
 - 20.3. The bankruptcy or insolvency of LESSEE, a transfer by LESSEE in fraud of creditors, an assignment by LESSEE for the benefit of creditors, or the commencement of proceedings of any kind buyer gets LESSEE under the Federal Bankruptcy Act or under any other insolvency, bankruptcy, or reorganization act, unless LESSEE is discharged from voluntary proceedings within ninety (90) days.
 - 20.4. The appointment of a receiver for a substantial part of LESSEE'S assets.
 - 20.5. The abandonment of the Premises and the levy upon this LEASE AGREEMENT or any estate of LESSEE under this LEASE AGREEMENT by attachment or execution and the failure to have the attachment or execution vacated within thirty (30) days.
21. **Assignments.** LESSEE shall not assign or sublet the premises in whole or in part, without the prior written consent of DISTRICT.
22. **No Partnership.** LESSEE and DISTRICT are separate and independent entities and nothing herein contained shall be construed to create a partnership, employee/employer relationship or joint venture in any sense, or to constitute LESSEE the agent of DISTRICT for any purposes. Neither party has the authority to, and will not, act as agent for or on behalf of the other party or represent or bind the other party in any manner.
23. **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.
24. **Applicable Law.** 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 brought and maintained in the County within which the District's administrative offices are located.

25. **Compliance with All Laws.** At its sole expense, LESSEE shall comply with all requirements of all governmental authorities, in force either now or in the future, affecting the Premises, and shall faithfully observe in LESSEE'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 (as defined below), waste disposal, air emission and other environmental matters (including CEQA and its implementing regulations in its use of the Premises), and all District policies, rules, and regulations.
26. **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.
27. **Counterparts.** This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.
28. **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.
29. **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.
30. **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.
31. **Incorporation of Recitals and Exhibits.** The Recitals and each Exhibit attached hereto are hereby incorporated herein by reference as though set forth in full.
32. **Notice.** Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing and either served personally or by prepaid, first-class mail as follows (courtesy email required):

District:
Mt. Diablo Unified School District
1936 Carlotta Drive
Concord, CA 94519
Email: facilities@mdusd.org
Phone: (925) 682-8000, ext. 3815
Attn: Melanie Koslow

LESSEE:
Clayton Community School
5880 Mt. Zion
Clayton, CA 94517
Email: claytoncommunityschool@gmail.com
Phone: (925) 672-0388
Attn: Nancy Haley

IN WITNESS WHEREOF, the parties hereto have executed this LEASE AGREEMENT on this _____ day of _____ at Concord, California.

LESSEE:

MT DIABLO UNIFIED SCHOOL DISTRICT

APPROVED

APPROVED

BY: Nancy Haley

BY: _____

NAME: NANCY HALEY
TITLE: EXECUTIVE DIRECTOR

ADAM CLARK, SUPERINTENDENT

DATE: 4-3-2025

DATE: _____

RECOMMENDED

APPROVED

BY: Melanie Koslow

MELANIE KOSLOW, EXECUTIVE DIRECTOR, MOF

DATE: 4/10/25

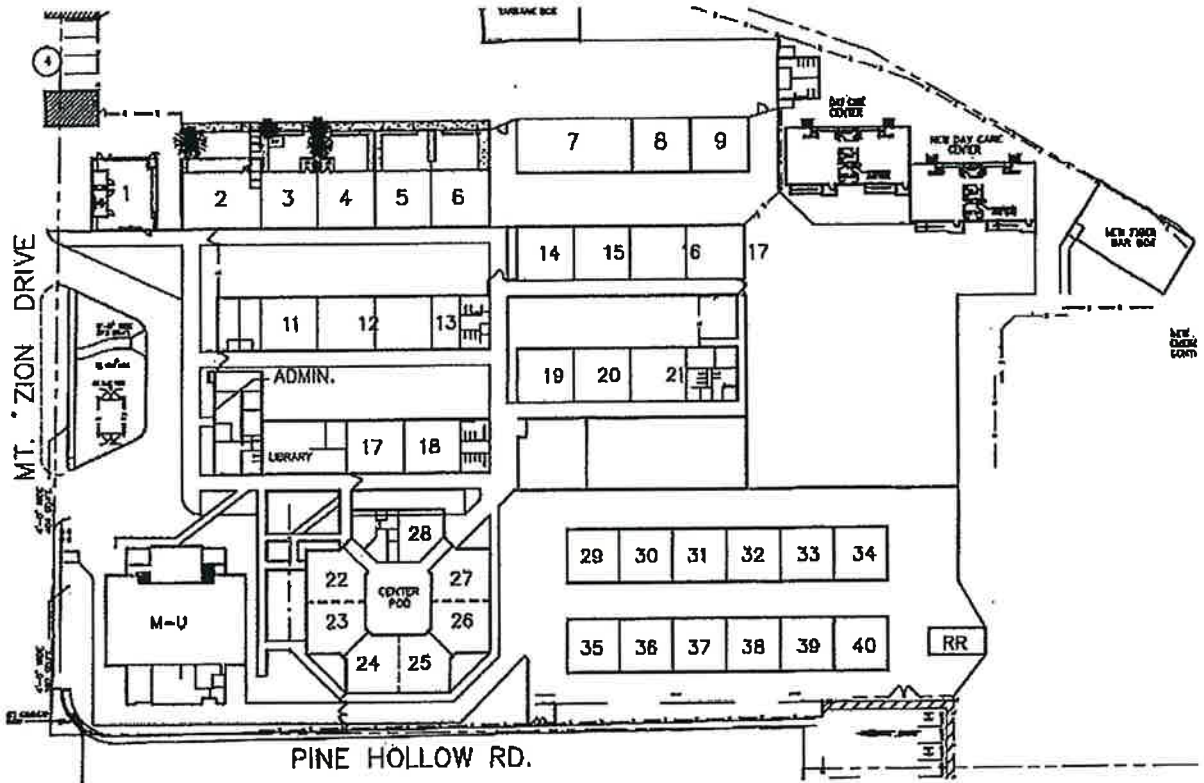
APPROVED AS TO FORM

BY:

SUSANNE STARECKI KIM, GENERAL COUNSEL

DATE: _____

Exhibit A



MT. DIABLO ELEMENTARY School, 5880 Zion Drive, Clayton

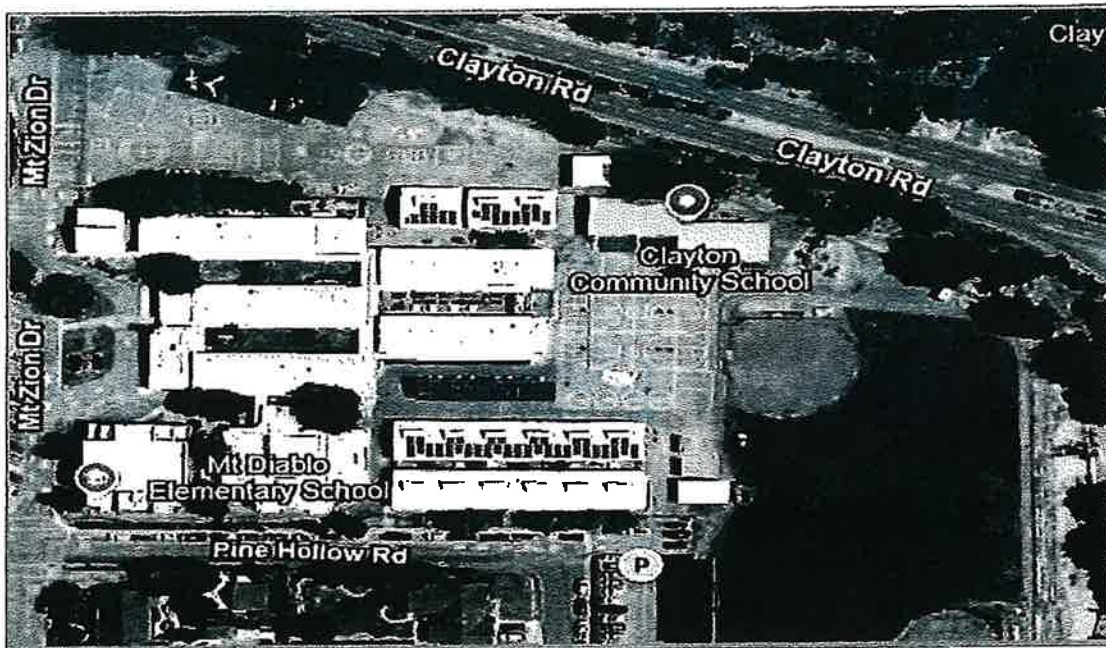


Exhibit B
Description of the Facility

The “Facility” is described below and is located within the Premises:

Facility Name: Mt. Diablo Elementary School

Property Address: 5880 Zion Drive, Clayton, CA

Parcel Size: 8.88 acres

1. Legal Description

The leased premises consist of approximately 8.88 acres of land located at 5880 Zion Drive, Clayton, Concord, CA, within the jurisdiction of the Mt. Diablo Unified School District. The property is further identified by Assessor’s Parcel Number (APN) 119-060-008, and is legally described as POR SECS 11 & 14 T1N R1W.

2. Current Use & Purpose

The property is currently utilized as Mt. Diablo Elementary School, an educational facility operated by the Mt. Diablo Unified School District. The site includes classrooms, administrative offices, recreational areas, and related infrastructure supporting K-12 education.

3. Existing Structures & Improvements

The leased premises include, but are not limited to, the following structures and improvements:

- Academic buildings containing classrooms, administrative offices, and common areas.
- Parking facilities for staff, students, and visitors
- Athletic fields, playgrounds, and outdoor recreational spaces
- Utility infrastructure including water, sewer, electricity, and telecommunications
- Fencing, walkways, and landscaping features

4. Utilities & Infrastructure

The facility is connected to all necessary utilities, including electricity, natural gas, water, sewer, and telecommunications services. Maintenance of these utilities will be subject to the terms of the lease agreement.

5. Permitted Use & Restrictions

The premises shall be used solely for purposes outlined in the lease agreement, which may include educational, administrative, or other district-approved activities. Any modifications, subleases, or alternative uses require prior written approval from the Mt. Diablo Unified School District.

6. Additional Provisions

The property is subject to all applicable zoning regulations, district policies, and local, state, and federal laws. Any proposed structural modifications, new construction, or alterations must comply with regulatory requirements and be approved by the appropriate authorities.

Exhibit C
INSURANCE REQUIREMENTS

LESSEE shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the LESSEE, his or her agents, representatives, employees or sub-providers.

1. MINIMUM SCOPE OF INSURANCE:

- a. **Commercial General Liability ("CGL"):** Insurance with limits not less than two million dollars (\$2,000,000.00) per occurrence and four million dollars (\$4,000,000.00) in the aggregate. Insurance shall be written on an "occurrence" basis and be at least as broad as Insurance Services Office (ISO) Form CG 00 01, covering products and completed operations, property damage, bodily injury, personal & advertising injury, independent contractors, and broad from contractual liability.
- b. **Sexual Abuse & Molestation Liability ("SAM"):** Insurance with limits not less than two million dollars (\$2,000,000.00) per occurrence and four million dollars (\$4,000,000.00) in the aggregate. This coverage may be waived, in the District's sole discretion, if the LESSEE has certified that it will have no physical contact or will have limited contact and will not interact with District Students outside of the immediate supervision and control of the student's parents or SFUSD staff in the performance of this Agreement.
- c. **Automobile Liability ("AL"):** Insurance with limits not less than one million dollars (\$1,000,000.00) each accident Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired automobiles. The Parties understand and agree that the District shall rely upon the representations that the LESSEE shall make in any such waiver.
- d. **Workers' Compensation ("WC"):** As required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than one million dollars (\$1,000,000.00) per accident for bodily injury or disease.
- e. **Professional Liability (Errors and Omissions Insurance):** As appropriate to the LESSEE's profession, with limits no less than one million dollars (\$1,000,000.00) per claim, and two million dollars (\$2,000,000.00) aggregate.
- f. **Technology Errors and Omissions Liability:** Technology errors and omissions liability coverage with limits of One Million Dollars (\$1,000,000.00) per occurrence/claim. The policy shall, at a minimum, provide coverage for the following risks:
 - i. Liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or personally identifiable information, such as, without limitation, name, address, social security number, protected health information, security codes, access codes, passwords, or personal identification numbers (PINs) stored or transmitted in electronic form, and shall include coverage for privacy notification costs, credit monitoring and regulatory fines & fees arising from such theft, dissemination and/or use of confidential information.

- ii. Network security liability arising from the unauthorized access to, use of, or tampering with computers or computer systems, including hacker attacks.
 - iii. Liability arising from the introduction of a computer virus into, or otherwise causing damage to the District's or a third party's computer, computer system, network, or similar computer-related property and the data, software, and programs thereon.
 - iv. Liability arising from the failure of the technology services/product(s) provided pursuant to this Agreement.
- g. Network and Cyber Security Liability: Network and cyber security liability coverage with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence/claim and an annual aggregate of Two Million Dollars (\$2,000,000.00) covering liability arising from occurrences/claims involving privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion, network security, and failure to render professional services. Such insurance shall also provide coverage for liability assumed under a contract.

2. REQUIRED ENDORSEMENTS

- a. Additional Insured Status: Mt. Diablo Unified School District (the "District"), its Board, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the LESSEE including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the LESSEE's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used).
- b. Primary and Noncontributory: With the exception of Workers' Compensation and Professional Liability insurance, for any claims related to this contract, the LESSEE's insurance coverage shall be primary and non-contributory and at least as broad as ISO CG 20 01 04 13 as respects the District, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the District, its officers, officials, employees, or volunteers shall be excess of the LESSEE's insurance and shall not contribute with it. This requirement shall also apply to any Excess or Umbrella liability policies.
- c. Notice of Cancellation: The following requirement is only applicable for contracts in which the total compensation to the LESSEE is one million dollars (\$1,000,000.00) or more. No policy required to be maintained by LESSEE shall be canceled, non-renewed, or materially altered without thirty (30) days prior written notice to the District, except where cancellation is due to the nonpayment of premium(s) in which event, ten (10) days prior written notice to the District shall suffice.
- d. Waiver of Subrogation
 - i. The waiver of subrogation applies to CGL, SAM, AL, and WC.
 - ii. LESSEE hereby grants to District a waiver of any right to subrogation

which any insurer of said LESSEE may acquire against the District by virtue of the payment of any loss under such insurance. LESSEE agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the District has received a waiver of subrogation endorsement from the insurer.

3. ADDITIONAL INSURANCE REQUIREMENTS

- a. **Claims Made Policies:** If any of the required policies provide claims-made coverage:
 - i. The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.
 - ii. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract work.
 - iii. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the LESSEE must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.
- b. **Verification of Coverage:** Prior to the commencement of services pursuant to this Agreement, LESSEE shall furnish to the District, Certificates of Insurance and all applicable endorsements evidencing the insurance coverage and limits required herein. The District reserves the right to require complete copies of any required policy(ies) required hereunder at any time. Acceptance of the Certificates of Insurance by the District does not relieve LESSEE of the insurance requirements, nor decrease the liability of LESSEE under this Agreement. It is the LESSEE's responsibility to ensure compliance with these insurance requirements. Any actual or alleged failure on the part of the District to obtain proof of insurance required under this Agreement shall not in any way be construed to be a waiver of any right or remedy of the District, in this or any regard.
- c. **Certificate(s) of Insurance** shall include the following: Certificate Holder: Mt. Diablo Unified School District, 1936 Carlotta Drive, Concord, CA 94519. Please email insurance documents with corresponding contract to: facilities@mdusd.org
- d. **Umbrella or Excess Policy:** LESSEE may use Umbrella or Excess Policies to provide the liability limits as required in this Agreement. This form of insurance will be acceptable provided that all of the Primary and Umbrella or Excess Policies shall provide all of the insurance coverages herein required, including, but not limited to, primary and non-contributory, additional insured, Self-Insured Retentions ("SIRs"), indemnity, and defense requirements. The Umbrella or Excess policies shall be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability insurance. No insurance policies maintained by the Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the LESSEE's primary and excess liability policies are exhausted.
- e. **Acceptability of Insurers:** Unless otherwise reviewed and accepted by the District, all required insurance must be placed with insurers with a current A.M. Best rating of not less than A- VII and admitted to do business in California, or

approved by the Surplus Lines Association.

- f. **Broader Coverage:** If the LESSEE maintains broader coverage and/or higher limits than the minimums shown above, the District requires and shall be entitled to the broader coverage and/or higher limits maintained by the LESSEE. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of LESSEE hereunder.
- g. **Severability of Interest:** A severability of interest provision must apply for the additional insureds, ensuring that LESSEE's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the policies' limits.
- h. **Self-Insured Retentions:** Self-insured retentions must be declared to and approved by the District. The District may require the LESSEE to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.
- i. **Subcontractor Insurance:** Should the LESSEE use any subcontractor(s) to perform services under this Agreement, LESSEE shall be responsible for ensuring that such subLESSEE(s) procure and maintain insurance and limits appropriate to the nature and scope of services provided. LESSEE shall collect Certificates of Insurance evidencing coverage(s) and limits of insurance, and with the exception of Workers' Compensation and Professional Liability policies, the LESSEE and the District shall be included as additional insureds for all ongoing and completed operations of the subcontractor(s).
- j. **District's Right to Modify Insurance Requirements:** District reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.