REQUEST FOR PROPOSALS for LEASE

FORMER VALLE VISTA ELEMENTARY SCHOOL

2400 Flint Avenue | San Jose, CA

30 CLASSROOMS
780 ENROLLMENT CAPACITY

34,703 BLDG. SQUARE FEET

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Location & Aerial Map
Site Plan, General Plan, Zoning, Demographic Data, San Jose Overview

Minimum Lease Terms, Documentation of Stability Selection Process For Submittals, Documentation of Financial Stability and Resolution of the Board

Appendix Draft Lease
OBJECTIVES

MT. PLEASANT ELEMENTARY SCHOOL DISTRICT ("DISTRICT") IS REQUESTING QUALIFIED PERSONS, FIRMS, PARTNERSHIPS, CORPORATIONS, ASSOCIATIONS, OR PROFESSIONAL ORGANIZATIONS TO LEASE THE FORMER VALLE VISTA ELEMENTARY SCHOOL SITE LOCATED AT 2400 FLINT AVENUE, SAN JOSE, CALIFORNIA (HEREINAFTER REFERRED TO AS THE "PROPERTY").

Respondents to this RFP should mail or deliver three (3) bound copies, one (1) unbound copy, and one (1) electronic submission in a PDF format, as further described herein, to:

Dominic D. Dutra BS, MBA, CCIM
3DStrategies.com
Cell Phone: (510) 366-9931
Email: ddutra@3DStrategies.com

Each Proposal must conform and be responsive to the requirements set forth in this RFP.

The District reserves the right to waive any informalities or irregularities in received Proposals. Further, the District reserves the right to reject any and all Proposals and to negotiate lease terms with one or more respondent firms for the entire Property or a portion of the Property. The District retains the sole discretion to determine issues of compliance and to determine whether a respondent is responsive, responsible, and qualified. RESPONDENT IS RESPONSIBLE FOR READING THIS RFP IN ITS ENTIRETY.
OBJECTIVES

I. BACKGROUND

The Mt. Pleasant Elementary School District ("District") is located in the City of San Jose, in the County of Santa Clara, California and serves approximately 2,000 students. The District’s mission is to foster a love of learning by providing high-quality education in a safe and joyful environment. Students and families engage in a technology-enhanced curriculum led by exceptional staff who validate the needs of the whole child. Providing this level of quality education in the face of declining enrollment and corresponding reduced funding is a challenge. With this in mind, the District is making strategic decisions to reallocate resources in order to continue providing its students with the best possible educational opportunities. A key component of this effort is to lease the former Valle Vista Elementary School site located at 2400 Flint Avenue, San Jose, California (hereinafter referred to as the “Property”). Based on Proposals received in response to this RFP, the Board of Education will consider leasing the Property or a portion of the Property on a long term basis. This decision will not only bring in key revenue for educational programs, but will allow the District to retain the school site in the event that enrollment and funding increase in the future.
OBJECTIVES

II. GENERAL INFORMATION
   A. LIMITATIONS

This RFP is not a formal offer by the District to contract with any party responding to this RFP. The District reserves the right to reject any and all responses, and likewise, the District reserves the right to contract with any entity responding to this RFP. The District also reserves the right to amend this RFP as necessary. The District makes no representation that participation in the RFP process will lead to a lease agreement or any consideration whatsoever. The District shall in no event be responsible for the cost of preparing a response to this RFP. The decision to negotiate a lease agreement, if at all, is at the sole discretion of the District.

The District reserves the right to reject any or all Proposals, to waive any irregularities or informalities not affected by law, to evaluate each Proposal submitted, and to negotiate a lease agreement, if any, according to the Proposals which best serves the interest of the District. Any contract(s) resulting from this RFP, however, will be made according to the form of the lease agreement attached to this RFP as Exhibit “E”.

The Respondent’s Proposal package, and any other supporting materials submitted to the District in response to this RFP will not be returned and will become the property of the District unless portions of the materials are designated as proprietary at the time of Proposal, and are specifically requested to be returned. Vague designations and/or blanket statements regarding entire pages or documents are insufficient and will not bind the District to protect the designated matter from disclosure. Pursuant to Michaelis, Montanari, & Johnson v. Superior Court (2006) 38 Cal.4th 1065, Proposals shall be held confidential by the District and shall not be subject to disclosure under the California Public Records Act until after either: (1) the District and the successful Respondent have completed negotiations and entered into an agreement, or (2) the District has rejected all responses. Furthermore, the District will have no liability to the Respondent or other party as a result of any public disclosure of any Proposal package requirements.
OBJECTIVES

The selected Respondent shall comply with all applicable federal, state, and local laws regarding COVID-19, including vaccination and testing requirements.

A. RESTRICTIONS ON LOBBYING AND CONTACTS
From the period beginning on the date of the issuance of this RFP and ending on the date the Respondent is selected to negotiate a lease agreement, no person, or entity responding to this RFP, nor any officer, employee, representative, agent, or consultant representing such a person or entity shall contact through any means or engage in any discussion regarding this RFP, the evaluation or selection process or the award of the contract(s) with any member of the District’s Governing Board (“Board”), selection committee members, or with any employee of the District except for clarifications and questions as described herein. Any such contact shall be grounds for the disqualification of the entity submitting a Proposal.

III. PROPERTY OVERVIEW
PHOTOGRAPHS
SITE PLAN
**Public/Quasi-Public Density:** FAR N/A This category is used to designate public land uses, including schools, colleges, corporation yards, homeless shelters, permanent supportive housing, libraries, fire stations, water treatment facilities, convention centers and auditoriums, museums, governmental offices and airports. Joint development projects which include public and private participation - such as a jointly administered public/private research institute or an integrated convention center/hotel/restaurant complex - are allowed.

This category is also used to designate lands used by some private entities, including private schools, daycare centers, hospitals, public utilities, and the facilities of any organization involved in the provision of public services such as gas, water, electricity, and telecommunications facilities that are consistent in character with established public land uses. Private community gathering facilities, including those used for religious assembly or other comparable assembly activity, are also appropriate on lands with this designation.

The appropriate intensity of development can vary considerably depending on potential impacts on surrounding uses and the particular Public/Quasi-Public use developed on the site. One of the larger areas within the City designated as Public/Quasi-Public is the City-owned buffer lands surrounding the Regional Wastewater Facility. Due to planned changes to the Facility’s operations, it is anticipated that the current extensive buffer land area will not be needed in the future. In 2013, the City adopted the Plant Master Plan for reuse of a portion of these buffer lands for a variety of new uses, including additional employment capacity. Accordingly the Envision General Plan includes job growth capacity for the buffer land area to support future expansion of employment uses.
PARCELS WILL LIKELY BE ADJUSTED TO REFLECT BOTH THE AREA OF PROPERTY TO BE USED BY THE TENANT, AND THE AREA TO BE RETAINED BY THE SCHOOL DISTRICT.

The R1-5 single-family residential old city zone is intended solely to facilitate development of land which has been subdivided into lots of less than six thousand square feet prior to the adoption of this title. The zone will not be applied to other land within the city.
The R-1-8 Residential Zone is established to provide low to medium density residential neighborhoods for the encouragement and promotion of an environment for family life by producing an area for single-family detached dwellings on individual lots. Certain nonresidential uses that are compatible with residential development are also anticipated and provided for.
### DEMOGRAPHICS

#### 2022 SUMMARY
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SAN JOSE, CALIFORNIA

San Jose Is...

- California’s oldest civilian settlement, founded in 1777.
- The site of California’s first state capital.
- Northern California’s largest city with a population of 1,002,094 (2016).
- The third largest city in California.
- The tenth largest city in the nation.
- The largest concentration of technology expertise in the world with over 6,600 companies.

Amazing, but True

- San Jose boasts the highest median household income in the nation.
- More than half of the adults living in Silicon Valley hold a college degree.
- 40% of San Jose residents are foreign born.
- San Jose has the largest Vietnamese population of any city outside Vietnam.
- San Jose leads the nation in patent generation.
- San Jose has one of only three Japan-towns in the U.S.

Stay and Play Like A Local

- Wine spectator noted the nearby Santa Cruz Mountains as the “most under-appreciated appellation in the world.”
- Lake Cunningham State Park is home to the world’s largest Monopoly board.
- The San Jose Museum of Quilts & Textiles is the first museum of it’s kind in the U.S.
- San Jose has the nation’s first Vietnamese Heritage Garden and Historical Museum.
- San Jose houses the largest collection of Egyptian artifacts in western North America.
- The Tech Museum of Innovation opened the first interactive bioengineering exhibit in the U.S.
- The San Jose Earthquakes soccer stadium has the largest outdoor bar in North America.

ONE OF THE SAFEST BIG CITIES IN AMERICA

RESIDENTS SPEAK MORE THAN 56 LANGUAGES.

THE SUN SHINES AN AVERAGE OF 300 DAYS A YEAR
MINIMUM LEASE TERMS

PROSPECTIVE LESSEES WILL ENTER A LEASE CONTAINING THE FOLLOWING MINIMUM TERMS AND CONDITIONS AND ALL PROPOSALS MUST ADDRESS THESE TERMS AND CONDITIONS:

1. The Lease will be an Absolute NNN/Bonded Lease: No landlord responsibilities. Tenant is responsible for taxes, insurance, maintenance and capital improvements and reserves including, but not limited to, roof, external parking lot and hardscape, painting (interior and exterior), etc.
2. Lease period will be a maximum of Ten (10) Years (“Base Term”) with potential options to renew, subject to negotiation.
3. The rentable Square Footage for the Property is as follows: 34,703 SF
4. Acreage to be exclusive to lessee’s respective use will be determined during negotiations. The District will retain any remainder acreage for their own use and to be leased, sold or developed at their discretion.
5. Respondents must be deemed responsible in order to be considered as a lessee.
6. Lease Proposals shall include the right of the Respondent to work with District staff to conduct appropriate due diligence on the Property. With this said, the lease of the Property is to be “as-is” without warranties or representations, express or implied, concerning the suitability of the Property for the Respondent’s intended use except as expressly stated in the Lease, and will require Lessee to be responsible for any required ongoing maintenance, capital improvements and reserve costs.
7. Lessee alterations or improvements to the Property are subject to the consent of the District and must be constructed in accordance with any and all requirements set forth in the Field Act and Division of the State Architect (“DSA”) compliant.
8. Payment Provisions: (Respondent to input proposed lease rates, etc.)
   A. RENT: Annual absolute net rent (meaning that tenant pays all costs related to the Property) shall be $2.50 per SF for the entire building of 34,703 square feet
   B. Annual rent increases shall be provided by the Respondent, but shall be a minimum of 3% annually
9. Form of Agreement. Any Respondent selected based on this RFP process must be able to execute the District’s Lease Agreement (“Agreement”), which is distributed with this RFP as Exhibit “E” and incorporated herein by this reference. Any objections/proposed changes to the form of the Agreement shall be stated in writing in an Appendix attached to the Proposal. Clear identification of the Agreement term and condition objected to, an explanation of the objection, and proposed revised language shall be provided. The District will not consider any objections/proposed changes to the Agreement that are raised after the deadline for Proposals.
DOCUMENTATION OF FINANCIAL STABILITY

All proposers must provide documentation showing that they have the financial ability to timely make lease payments, and meet the other financial obligations concerning the maintenance of the Property as set forth in the lease Proposal. The financial documentation is one important factor in determining whether a Proposal contains sufficient information to allow the District to select the Respondent to negotiate a lease agreement.

Documentation of financial responsibility shall include the following, at a minimum:

1. Financial statements for the past three (3) years.
2. A minimum of one (1) letter of reference from a major bank or lending institution.
3. A statement describing any and all litigation in which the entity and its principals have been involved during the past five (5) years, as well as any litigation which is pending or threatened against the entity and principals, and known to the entity based on its reasonable inquiry.
4. A statement regarding any past or current bankruptcies involving the entity, the principals, or any sub-entity.
5. All documentation of financial responsibility shall be submitted with the Proposal at the same time as the proposed lease terms.
6. The District reserves the right to perform a background or credit check on any entity or principals.
7. This RFP is made directly to interested tenants or principals. All responses must be net of any broker’s commission. The District shall not pay a real estate commission to a tenant’s and/or principal’s broker.
SELECTION PROCESS FOR SUBMITTALS

A. CRITERIA
All Proposals received by the specified deadline will be reviewed by the District for content, including but not limited to proposed rent, related experience, and professional qualifications of the Respondents.

The District will evaluate all Proposals. Each Proposal must be complete. Incomplete Proposals will be considered nonresponsive and grounds for disqualification. The District retains the sole discretion to determine issues of compliance and to determine whether a Respondent is responsive, responsible, and qualified. Based upon the information presented in the Proposals, the District may elect to conduct interviews with some or all of the Respondents. After the interviews, if any, the District will identify the Respondent(s) that can provide the greatest overall benefit to the District.

In selecting respondents, if any, with whom the District will enter into leases pursuant to this RFP, the District may consider a range of factors, including the financial terms offered, the experience, expertise and professional qualifications of the respondent team.

In selecting respondents, if any, with whom the District will enter into leases pursuant to this RFP, the District’s criteria for evaluating submissions may include, without limitation, the following:

- Financial terms offered;
- Experience, expertise and professional qualification of the respondent team;
- Nature, scope and extent of impacts of the proposed use;
- Previous District experience with the Respondent; and
- Other qualifications/criteria, as deemed appropriate in the District’s sole discretion.
SELECTION PROCESS FOR SUBMITTALS

The District will require the selected firm to maintain general liability (minimum $1,000,000 per occurrence / $2,000,000 aggregate) with additional endorsement page naming the District as additionally insured, automobile insurance, professional liability and worker’s compensation insurance. In addition, the selected firm shall obtain a products/completed operations aggregate policy in the amount of Two Million Dollars ($2,000,000.00) and a personal injury policy in the amount of Two Million Dollars ($2,000,000.00).

B. DISTRICT INVESTIGATIONS
The District may perform investigations of Respondents that extend beyond contacting the references identified in the Proposals. The District may request a Respondent to submit additional information pertinent to the review process. The District also reserves the right to investigate and rely upon information from other available sources in addition to any documents or information submitted.

C. INTERVIEWS
The District, at its sole discretion, may elect to interview selected Respondent(s). The District may elect to interview one or more Respondent. If a Respondent is requested to interview, the key proposed staff will be expected to attend the interview. The interview will be an opportunity for the District’s Selection Committee to review the Respondent’s Proposal and other matters the committee deems relevant to its evaluation. Any comments or proposed changes to the form of Agreement attached hereto as Exhibit “E” may be the subject of inquiry at the interview.

D. FINAL DETERMINATION AND AWARD
The District reserves the right to enter into leases with any entity responding to this RFP for all or any portion of the Property described herein, to reject any Proposal as non-responsive, and/or not to enter into any lease with any Respondent.
SELECTION PROCESS FOR SUBMITTALS

The District makes no representation that participation in the RFP process will lead to a lease agreement or any consideration whatsoever. The District reserves the right to enter into leases with any firm not participating in this process. The District shall in no event be responsible for the cost of preparing any Proposal in response to this RFP, including any supporting materials.

Entering into leases is at the sole discretion of the District. The District may, at its option, determine to enter into leases for only for portions of the Property identified herein. In such case, the Respondent(s) will be given the option not to agree to enter into the contract and the District will retain the right to negotiate with any other Respondent.

E. INFORMATION INCLUDED IN RFP
The information contained herein is in summary form. It is believed to be accurate, however, no warranties are expressed or implied. Interested parties should familiarize themselves with the Property itself, relevant reports, the Resolution, the development requirements of the City of San Jose, utility companies and other agencies.
RESOLUTION OF THE BOARD OF TRUSTEES

RESOLUTION OF THE BOARD OF TRUSTEES OF THE MT. PLEASANT ELEMENTARY SCHOOL DISTRICT OF INTENTION TO LEASE SURPLUS PROPERTY VIA REQUEST FOR PROPOSALS PROCESS:

WHEREAS, the Mt. Pleasant Elementary School District ("District") Board of Trustees ("Board"), voted in on February 16, 2022, to close the Valle Vista Elementary School site as of June 30, 2022; and

WHEREAS, the Board of Trustees of the District did appoint a property advisory committee ("7-11 Committee") to provide input and recommendations regarding the use disposition of the Valle Vista Elementary School site, in accordance with Education Code section 17389 et seq.; and

WHEREAS, the Board accepted the June 8, 2022 recommendation of the 7-11 Committee to declare the Valle Vista Elementary School, site located at 2400 Flint Avenue, San Jose, CA, to be surplus property ("Surplus Site") and earlier in this August 10, 2022 meeting, adopted a Resolution No. 22/23-08 memorializing the Board’s decision to accept the 7-11 Committee’s recommendation and adopted a resolution formally declaring the Surplus Site; and

WHEREAS, the District now desires to release an Request for Proposals ("RFP") for the lease of the Surplus Site and intends to review and consider all proposals received in response thereto at its regular meeting to be held on October12, 2022, or such later date as indicated herein, at which time the Board may approve a proposer, direct staff to enter into lease negotiations with one or more proposers, take action to extend the time for additional
RESOLUTION OF THE BOARD OF TRUSTEES

NOW, THEREFORE, THE BOARD OF TRUSTEES OF THE MT. PLEASANT ELEMENTARY SCHOOL DISTRICT DOES HEREBY RESOLVE, DETERMINE AND ORDER AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. Declaration of Intent to Lease Surplus Site. The Board hereby declares its intent, pursuant to Education Code Section 17466, to lease the Surplus Site. A Request for Proposals substantially in the form presented herewith is approved, subject to such edits, amendments or additions as the Superintendent shall approve. The Board shall on October 12, 2022, review and consider all proposals received, unless, in the discretion of the Superintendent, additional time is needed to receive, review or evaluate proposals, in which case the Board shall review all proposals received on November 9, 2022.

Section 3. Delegation to Staff. District staff is authorized to take all actions necessary to implement this Resolution, including providing any requisite legal notice of the Board’s intent to review all proposals as described herein. All actions heretofore taken by the officers, employees and agents of the District with respect to the matters set forth above are hereby approved, confirmed and ratified. In the event that a proposal is selected but negotiations are unsuccessful or do not culminate in a lease responsive to the District’s needs, the Board hereby authorizes staff to select another proposer, request additional or new proposals, extend the time for proposals, modify terms of the RFP, or take such other action deemed in the District’s best interest to obtain a lease arrangement and make recommendations for Board review and approval at a later date.

Section 4. This Resolution shall take effect from and after its date of adoption. PASSED, ADOPTED, and APPROVED by the Board of Trustees of the Mt. Pleasant Elementary School District this 10th day of August, 2022 by the following votes:
DISCLAIMER

While the information contained herein has been provided in good faith and in an effort to provide prospective buyers with relevant property data, it should not be considered a substitute for a thorough due diligence investigation.

The information contained herein has been obtained from sources we believe to be reliable; however, 3D Strategies has not verified, and will not verify, any of the information contained herein, nor has 3D Strategies conducted any conclusive investigation regarding these matters and makes no warranty or representation whatsoever regarding the accuracy or completeness of the information provided. All potential buyers must take appropriate measures to verify all of the information set forth herein.

3D Strategies has not made any investigation, and makes no warranty or representation, with respect to the subject property, the future projected financial performance of the property, the property's development potential, the size and square footage of the property and improvements, the presence or absence of contaminating substances, PCBs or asbestos (or any other hazardous materials or substances), the compliance with Local, State and Federal regulations, or the physical condition of the improvements of the subject property.
EXHIBIT A

ALLOWABLE USES AND PERMIT REQUIREMENTS
20.30.100 Allowed Uses and Permit Requirements.

A. Permitted" land uses are indicated by a "P" on Table 20-50.

B. "Conditional" uses are indicated by a "C" on Table 20-50. These uses may be allowed in such designated districts, as an independent use, but only upon issuance of and in compliance with a conditional use permit as set forth in Chapter 20.100.

C. "Special" uses are indicated by an "S" on Table 20-50. These uses may be allowed in such designated districts, as an independent use, but only upon issuance of and in compliance with a special use permit as set forth in Chapter 20.100.

D. "Restricted" land uses are indicated by an "R" on Table 20-50. These uses may occur in such designated districts, as an independent use, but only upon issuance of and in full compliance with a valid and effective zoning code verification certificate as set forth in Chapter 20.100.

E. Land uses not permitted are indicated by a "-" on Table 20-50. Land uses not listed on Table 20-50 are not permitted.

F. When the right column of Table 20-50 includes a reference to a section number or a footnote, the regulations cited in the section number or footnote apply to the use. In addition, all uses are subject to any other applicable provision of this Title 20 and any other title of the San José Municipal Code.

### Table 20-50

#### Residential Zoning Districts Use Regulations

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(Supp. No. 40, Update 4)
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<td>Child day care center located on an existing school site or as an incident to an on-site church/religious assembly use involving no building additions or changes to the site</td>
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<tr>
<td>Day care center</td>
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<tr>
<td>School, elementary and secondary (public)</td>
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<tr>
<td>School, elementary and secondary (private)</td>
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</tbody>
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<thead>
<tr>
<th>Entertainment and Recreation</th>
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<tbody>
<tr>
<td>Equestrian and riding club</td>
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<tr>
<td>Golf course</td>
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<tr>
<td>Private club or lodge</td>
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<tr>
<td>Swim or tennis club</td>
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<thead>
<tr>
<th>General Services</th>
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<tbody>
<tr>
<td>Bed and breakfast inn</td>
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<tr>
<td>Outdoor vending, fresh fruits and vegetables</td>
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<tr>
<th>Health and Veterinary Services</th>
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<tr>
<td>Emergency ambulance service</td>
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<tr>
<th>Historic Reuse</th>
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<tr>
<td>Historic landmark structure reuse</td>
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<tr>
<th>Public, Quasi-Public and Assembly Uses</th>
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</thead>
<tbody>
<tr>
<td>Cemetery</td>
</tr>
<tr>
<td>Church/religious assembly</td>
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<tr>
<td>Museums, libraries, parks, playgrounds, or community centers (privately operated)</td>
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<tr>
<td>Museums, libraries, parks, playgrounds, or community centers (publicly operated)</td>
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**Transportation and Utilities**

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<tbody>
<tr>
<td>Community television antenna systems</td>
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<tr>
<td>Off-site, alternating use and alternative use parking arrangements</td>
<td>S</td>
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<tr>
<td>Parking establishment, off-street</td>
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<tr>
<td>Utility facilities, excluding corporation yards, storage or repair yards and warehouses</td>
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<tr>
<td>Wireless communication antenna</td>
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<td>Wireless communication antenna, slimline monopole</td>
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<tr>
<td>Wireless communication antenna, building mounted</td>
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**Utilities, Electrical Power Generation**

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<tr>
<td>Solar photovoltaic system</td>
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<tr>
<td>Stand-by/backup facilities that do not exceed noise or air standards</td>
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<tr>
<td>Stand-by/backup facilities that do exceed noise or air standards</td>
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**Notes:**

1. Only one one-family dwelling unit per lot in the R-1, R-2, R-M and R-MH districts.
2. A maximum of two primary living units per lot, with Accessory Dwelling units, are permitted in the R-2 district. Accessory Dwelling units on a lot in the R-2 district may be permitted without a development permit in accordance with the provisions of Part 4.5.
3. No lot may be used solely for an accessory structure or an accessory building.
4. No driving ranges or miniature golf facilities.
5. Stand-by or backup generators that would not otherwise require some permit from the City (including but not limited to building, electrical, or mechanical), and do meet the applicable noise and air standards are not subject to the special use permit requirement.

6. Allowed on school sites, library sites, community center sites, church/religious assembly sites, and other publicly accessible sites that contain government operations including but not limited to United States Post Offices or State of California Department of Motor Vehicles offices.

7. The activity must conform with the location and operational requirements in Section 20.80.820 of Part 10, Chapter 20.80. Allowed for up to eight hours per day for each vending facility, but not to exceed eight hours per day per lot.

8. Certain modifications of existing wireless facilities may be permitted with an administrative permit in accordance with Section 20.80.1915 of Chapter 20.80.

9. Permitted or special uses allowed in the CP commercial pedestrian zoning district may be allowed with a special use permit for a residential-commercial mixed use project, except that twenty-four-hour non-residential uses or conditional uses allowed in the CP commercial pedestrian zoning district require a conditional use permit.

10. May be used as Transitional Housing.

(Ord. 26248, 26388, 26455, 26456, 27468, 27797, 28284, 28320, 28791, 29011, 29122, 29254, 29546, 29678, 29821, 30190, 30290, 30353, 30422, 30480, 30516, 30696, 30786.)
APPENDIX

DRAFT LEASE
LEASE AGREEMENT

BETWEEN

MT. PLEASANT ELEMENTARY SCHOOL DISTRICT

AND

(2400 FLINT AVENUE, SAN JOSE)
Table of Contents
(To Come)
LEASE AGREEMENT

Between
MT. PLEASANT ELEMENTARY SCHOOL DISTRICT
And

THIS LEASE AGREEMENT ("Lease") is made on ____________ ("Effective Date") by and between the Mt. Pleasant Elementary School District, a California public school district ("District"), and ______________________, a California __________ company ("Tenant"), referred to individually as "Party" and collectively as the "Parties."

RECITALS

WHEREAS, District is the owner of that certain real property containing approximately ___ acres located at 2400 Flint Avenue in San Jose, California, Santa Clara County, which is the site of the District’s former Valle Vista Elementary School ("Property"), which Property is generally depicted in Exhibit A attached hereto and made a part hereof. The Property includes approximately ___ square feet of building, parking and recreational area (hereinafter, the "Premises"); and

WHEREAS, as of June 30, 2022, the Valle Vista Elementary School was closed as a public school, determined by the District’s Board of Education to be surplus property; and

WHEREAS, Tenant is the owner and operator of a ___________________ that did propose and now and desires to lease the entire Property to operate its ____________ program ("Program") serving ____________; and

WHEREAS, the Parties desire for the playfields and playgrounds at the Property to remain available for use by the District and the community at times not in use by Tenant.

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

AGREEMENT

Section 1. Lease of Property.

District hereby agrees to lease to Tenant and Tenant hereby agrees to lease from District the Premises depicted on the location map attached hereto as Exhibit A and incorporated herein by reference, subject to the terms and conditions outlined herein.

Section 2. Term.

The term of this Lease shall be ___ (___) years, commencing on ___ __, 202__ ("Lease Commencement Date") and ending on _______ __, 20__ ("Term"), if not sooner terminated pursuant to the terms of this Lease. Tenant agrees to yield and peaceably deliver possession of the Premises to District on the date of expiration of the Term of the Lease or earlier termination of this Lease, whatsoever the reason for such termination.
Section 3. [RESERVED]

Section 4. Use of Premises.

A. Tenant's Program. Tenant shall use the Premises solely for the Program.

B. Non-Approved Uses. Tenant shall not use the Premises for any use other than that specified in this Lease without the prior written consent of the District. 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 Lease 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 Lease for any purpose or use in violation of the laws, ordinances, and/or regulations applicable thereto.

C. Tenant’s Qualifications. 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, employees, agents, consultants and/or subcontractors who may provide services in conjunction with Tenant’s use of or activities on the Premises.

D. Public Use Reserved. Tenant acknowledges that, over the term of the Lease, the black top areas and field areas on the Premises are to be used cooperatively by Tenant and the public. Tenant may use the black top paved areas and fields during school hours, from 8:00 a.m. to 4:00 p.m. and may exclude the public and other potential users from the black top paved areas and fields during these hours. Tenant agrees to allow the public ingress and egress to the fields and the black top areas prior to 8:00 a.m. and after 4:00 p.m., Monday through Friday, and all day on Saturday and Sunday, year round.

Section 5. Consideration.

A. Security Deposit. On the Effective Date, Tenant shall deliver to District a security deposit equal to the last month’s Base Rent ($__________) ("Security Deposit"). The Security Deposit shall become nonrefundable to Tenant at the conclusion of the Governmental Approvals Contingency Period.

The Security Deposit shall secure the timely, full and faithful performance by Tenant of each term, covenant and condition of this Lease. If during the Preparation Period or the Term, Tenant shall fail to make any payment or fail to keep or perform any term, covenant or condition on its part to be made or performed or kept under this Lease, without waiving or releasing Tenant from any obligation under this Lease, District may, but shall not be obligated to use, apply or retain the whole or any part of the Security Deposit: (a) to the extent of any sum due to District; (b) to make any required payment on Tenant's behalf; and/or (c) to compensate District for any loss, damage, attorneys' fees or expense sustained by District due to an Event of Default,
it being expressly understood that the Security Deposit shall not be considered an advance payment of Rent or a measure of District’s damages in case of an Event of Default. In such event, Tenant shall, within fifteen (15) days of written demand by District, remit to District sufficient funds to restore the Security Deposit to its original sum. No interest shall accrue on the Security Deposit. District shall not be deemed a trustee of the Security Deposit, and may commingle the Security Deposit with its other funds. Should Tenant comply with all the terms, covenants, and conditions of this Lease and make the first Base Rent payment, then the Security Deposit, less any sums owing to District, shall be credited to Tenant against Rent payments thereafter coming due until exhausted, and at such point, shall not be replenished and no further Security Deposit shall be required.

B. Monthly Base Rent, and Prepaid Rent.

1. For and in consideration of the use of the Premises for the Term of this Lease, Tenant agrees to pay District monthly rent ("Monthly Base Rent") at the rates set forth below. The first payment shall be due on the Lease Commencement Date and shall thereafter be due and paid on or before the first (1st) day of each month thereafter during the Term.

2. Monthly Base Rent, shall be as follows:

   • Year 1 of Term: $_____ per square foot per month ($_______ per month)
   • Year 2 of Term: $_____ per square foot per month ($_______ per month)
   • Year 3 of Term: $_____ per square foot per month ($_______ per month)
   • Year 4 of Term: $_____ per square foot per month ($_______ per month)
   • Year 5 of Term: $_____ per square foot per month ($_______ per month)

C. Place of Payment. All Base Rent, and Additional Rent that becomes due and payable under this Lease shall be paid to District at District’s office, located at 3434 Marten Avenue in San Jose, California, with Attention to: Chief Business Official, or any other place or places that District may designate by written notice to Tenant.

D. Absolute Net Lease. This Lease is an absolute net lease, and payment of Rent hereunder is intended as a fully net return to the District. Except to the extent expressly provided elsewhere in this Lease, Tenant, at its sole cost and expense, shall pay, as and when due, all taxes, insurance, minor and major maintenance, including replacement of major structural components of buildings or portions thereof located on the Premises, and other costs, expenses, and charges which may arise or become due in connection with Tenant’s lease of the Premises, whether now existing or hereafter arising, and whether or not beyond the present contemplation of the Parties. Except as otherwise set forth in this Lease, the Tenant shall indemnify, defend, and hold District harmless from and against any cost incurred by Tenant related to any of the net charges.

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

F. **Interest 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 on 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 Lease and shall not excuse or cure any default by Tenant under this Lease.

G. **Taxes.** Tenant shall pay, before delinquency, any and all taxes, assessments, levies, possessory interest taxes, and other charges and governmental fees, general and special, ordinary and extraordinary, unforeseen, as well as foreseen, of any kind or nature whatsoever, including, but not limited to assessments for any public improvements or benefits, which during the Term of this Lease are laid, assessed, levied, or imposed upon or become due and payable and a lien upon the Premises ("Taxes and Assessments"). Taxes and Assessments, late charges, costs and expenses which Tenant is required to pay hereunder, together with all interest and penalties that may accrue thereon in the event of Tenant's failure to pay such amounts, and all reasonable damages, costs, and attorneys' fees and expenses which District may incur by reason of any default of Tenant or failure on Tenant's part to comply with the terms of this Lease, shall be deemed to be Additional Rent and, in the event of nonpayment by Tenant, District shall have all of the rights and remedies with respect to all Additional Rent as District has for the nonpayment of the Base Rent. Nothing in this Section shall limit District's right to recover, as Additional Rent, utility and other costs, Taxes and Assessments payable after termination of this Lease pursuant to the terms of this Lease.

Section 6. **Premises and Improvements.**

A. **Condition of Premises.** The Premises is leased to Tenant on an “as is” basis, and Tenant acknowledges and accepts that the Premises are leased in its “as is” condition. District shall not be required to make or construct any alterations including structural changes, additions, or improvements to the Premises. Tenant acknowledges that neither the District nor District's agents have made any representation or warranty as to the suitability of the Premises to the conduct of Tenant's Program. By entry into and taking possession of the Premises pursuant to this Lease, 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 Effective Date of this Lease.

B. **Signs.** Tenant may, at Tenant's sole cost, have the right and entitlement to place Tenant's sign on the Premises, and otherwise to advertise its services, provided Tenant obtains the prior written approval and consent of District, such approval not to be unreasonably withheld, conditioned or delayed. Any signs shall be at Tenant’s cost and in compliance with all local ordinances pertaining thereto. 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 Lease, Tenant shall, at its sole cost and expense, maintain the signage and all
apprortunities and improvements in good condition and repair. At the termination of this Lease, Tenant shall remove any signs and shall repair any damage caused by the installation or removal of Tenant’s signs.

C. **Liens.** At all times during the Term of this Lease, Tenant shall keep the Property and Premises and all improvements now or hereafter located on the Premises free and clear of all liens and claims of liens for labor, services, materials, supplies, or equipment performed on or furnished to the Premises. Tenant agrees to settle and discharge all liens for materials for the Premises and Tenant’s Program, and to defend and hold the District harmless from and against any such claims or liens. If Tenant fails to discharge or cause the Premises to be released from any such lien or claim of lien within thirty (30) days of District’s request to do so, District may pay, adjust, compromise, and discharge any such lien or claim of lien on any terms and in any manner that the District may deem appropriate, and Tenant agrees to reimburse District for the full amount paid by District in connection therewith, including interest, attorneys’ fees, and costs which may be incurred.

D. **Nuisance.** Tenant shall not use or permit the Premises to be improved, developed, used or occupied in any manner that is in violation of any law, ordinance, or regulation of any federal, state, county, or local governmental agency, body or entity. Tenant shall not maintain, commit or permit the maintenance or commission of any nuisance as now or hereafter defined with respect to the Premises, or any part thereof.

E. **Maintenance and Repairs.** Tenant, at its cost, shall maintain the Premises in a good condition consistent with the condition of the Premises existing at the time of delivery. Tenant acknowledges and accepts that the Premises are leased in "AS IS" condition and Tenant shall keep and maintain the Premises, including the structural elements of the buildings, as hereinafter defined, on the Premises in a condition existing at the time Tenant takes possession of the Premises excepting normal wear, tear and damage by casualty.

1. District shall not be required to maintain, repair or replace the interior spaces including the interior surface of exterior walls. If District is required to perform maintenance that is not District’s obligation, Tenant shall reimburse District, as additional rent, within fifteen (15) days after receipt of billing, for the cost of such maintenance and repairs which are the obligation of Tenant hereunder.

2. As used in this Lease, the term "structural elements of the buildings" are defined as the roof, foundation, footings, floor slab, flooring, and structural walls. Plumbing, air conditioning, electrical and heating systems shall be considered “structural elements of the building.”

F. **Waiver of Statutes.** Except as provided in Section 6.E.1. above, District shall have no maintenance or repair obligations with respect to the Premises. Tenant hereby expressly waives the provisions of subsection 1 of Section 1932 and Sections 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 said Civil Code.

G. **Utilities and Security.** Tenant shall be responsible for and pay for all utility installation and service to and for the Premises, which may include water, gas, electricity, telephone and other data and communication lines and service as well as
the removal of garbage and rubbish from the Premises. Tenant agrees to reimburse District for the full amount of utility expense occasioned by the Tenant’s use and occupancy of the Premises, and shall reimburse District for all such payments within thirty (30) days of receipt of invoice from the District, which reimbursement payments shall constitute additional rent (“Additional Rent”). District shall provide Tenant with data with each invoice supporting the invoiced amount. Tenant shall be responsible for security of the Premises at all times.

H. Restoration of Premises. Upon expiration or earlier termination of this Lease, Tenant shall be responsible for restoring the Premises, and other portions of the Property that were affected by Tenant’s occupancy of the Premises, to its condition that existed on the date of Tenant’s first occupancy with no damage thereto, reasonable wear and tear excepted, provided that Tenant shall not be obligated to remove alterations which have been approved by District pursuant to Section 7.

Section 7. Construction of Alterations and Improvements.

A. Tenant Alterations. As permitted under this Lease or with prior written approval of the District, Tenant may, at its sole cost and expense (unless otherwise agreed upon by the Parties), 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 any and all other required approvals and provided District has approved all such construction of improvements.

B. Requirements. All alterations, additions, and/or improvements to the Premises must be made in compliance with applicable provisions of the California Education Code, applicable regulations, the Americans with Disabilities Act (ADA), the Fair Employment and Housing Act (FEHA), applicable building code standards, other applicable state and federal statutes (including review by the California Department of General Services - Division of the State Architect if deemed necessary by District), and the District’s policies, practices, standards and procedures. Tenant shall, prior to construction, repair, renovation or demolition of any improvements on the Premises, obtain the prior written consent of District thereto and to the final plans, specifications, and schedule for completion thereof, which approval shall not be unreasonably withheld, conditioned or delayed. Tenant shall also, prior to construction of any improvements, obtain written approval from District of the improvements and their related costs. Tenant agrees to deliver any local planning approval to District within ten (10) days after Tenant's receipt. Tenant agrees not to proceed with any construction until Tenant has obtained District's and planning department's approvals. District and Tenant recognize that approvals may be completed in phases, such that Tenant initially requests conceptual approval and, if approved by District, then proceeds to draw the plans and specifications. District's approval shall be at District's sole and absolute discretion, and District may withhold or disapprove of any improvements 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 Lease, and/or provide District with adequate security for such removal.

C. Tenant Assurances. Not less than fifteen (15) days prior to the construction, 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 bond or completion guarantee. No construction shall commence until District has given Tenant written acceptance of such assurances.

D. **Notice of Non-Responsibility.** Tenant shall give District fifteen (15) days prior written notice before commencing any work on the Premises so that District may post notices of non-responsibility with respect thereto as District may deem appropriate.

E. **Permits and Insurance.** Not less than fifteen (15) days prior to the construction, repair, renovation or demolition of any improvements, 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.

F. **Performance of Alterations.** Upon commencement of construction of any improvements, Tenant shall cause the work to be diligently pursued to completion in accordance with the schedule for completion approved by District, subject to unavoidable delays caused by weather, supply shortages, strikes or acts of God. All work on 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, or any modifications thereto which have been approved in writing by District.

G. **Inspection of Work.** 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. Tenant shall require its contractors who construct improvements on the Premises to cooperate with District and/or its employees and/or agent in such inspections.

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

**Section 8. Removal of Alterations.**

Upon the expiration or sooner termination of the Lease, 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 at the time of their approval 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.

**Section 9. Hazardous Materials.**

A. **Definition.** As used herein, the term “Hazardous Materials” means any hazardous or toxic substance, material or waste that 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, PCB’s, 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

As used herein, the term “Hazardous Materials Laws” shall mean any and all statutes, laws, ordinances, or regulations of any governmental body or agency (including the U.S. and California Environmental Protection Agencies, the California state and applicable Regional Water Quality Control Boards, the California Department of Toxic Substances Control, and the California Department of Health Services) which regulate the use, storage, release or disposal of any Hazardous Material.

B. **Hazardous Materials.** Tenant shall not cause or permit any Hazardous Materials to be generated, brought onto, used, stored, or disposed of in or about the Premises or Property and any improvements by Tenant and/or its agents, employees, officers, contractors, subtenants, representatives, or invitees, except for limited quantities of standard office, classroom and janitorial supplies (which shall be used and stored in strict compliance with all applicable Hazardous Materials Laws). Tenant shall comply with all Hazardous Materials Laws.

C. **Responsibility of Tenant.** From and after the Lease Commencement Date, Tenant shall be solely responsible for all environmental matters affecting the Premises and any improvements.

1. Any handling, transportation, storage, treatment, disposal or use of Hazardous Materials in or about the Premises and any improvements by any person or entity shall be the responsibility of Tenant and shall strictly comply with all applicable Hazardous Materials Laws and the provisions of this Lease.

2. It shall be the duty of Tenant to insure that the Premises and any improvements are at all times in strict compliance with all Hazardous Materials Laws and that all activities conducted in or about the Premises and improvements comply in every respect with all applicable Hazardous Materials Laws including, but not limited to, all notification, record keeping, and maintenance requirements of such Hazardous Materials Laws.

3. Tenant shall have and discharge all of the duties and obligations of the owner of the Premises and improvements under applicable Hazardous Materials Laws, including, but not limited to, response and remediation.

4. Tenant shall be responsible for all liability to any party or parties who may be harmed or claim harm resulting from an environmental condition on or about the Premises and any improvements.

Section 10. **Termination.**

A. **Early Termination by District for Convenience.** District shall have the right to terminate this Lease as of _____, 20__ for the convenience of District and without any cause whatsoever, provided that District has provided notice of termination to Tenant in writing by no later than _____, 20__. In the event that District should elect to exercise the right to terminate granted in this Section 10.A., District shall (i) on or before _____, 20__ reimburse Tenant the unamortized cost of improvements, alterations and additions to the Premises constructed by or for
Tenant, (ii) abate the payment of monthly base rent for the twelve month period commencing _____ __, 20__; and (iii) return the Security Deposit to Tenant.

B. **Termination by District at End of Term.** If the District requires the Premises to re-open a public school or program, District shall have the right to terminate the Tenant Option to Renew described in Section 11. To exercise such option, District must provide notice of termination to Tenant in writing by no earlier than _____ __, 20__, which is 36 months prior to the expiration of the Term but no later than _____ __, 20__, which is 24 months prior to the expiration of the Term. In the event that District should elect to exercise the right to terminate granted in this Section 10.B. and in the event that District for whatever reason does not re-open a public school at the Premises within 12 months after the expiration of the Term, District shall grant Tenant the same Option to Renew that was previously terminated by District at all the same terms and conditions and the District shall fully abate the payment of monthly Base Rent by Tenant for the twelve month period commencing at the beginning of the Renewal Term if exercised by Tenant.

C. **Termination by District for Cause.** District shall have the right to terminate this Lease in the event of a default of this Lease by Tenant as described in Section 12.B(2) hereof.

Section 11. Tenant Option to Renew.

A. **Two Five-Year Options.** District hereby grants to Tenant two (2) five (5)-year options to extend the Term (the “Renewal Option #1” and “Renewal Option #2", together the “Renewal Options”) upon all of the terms and conditions contained in this Lease, except as modified by the terms and conditions as set forth below.

B. **Option Term.** The Renewal Options are each for an additional five (5)-year term, the first of which would commence on _____ __, 20__ and end on _____ __, 20__ (“Option Term #1”) and the second of which would commence on _____ __, 20__ and end on _____ __, 20__ (“Option Term #2”).

C. **Exercise.** Tenant shall be eligible to exercise the Renewal Options only if it is not in material default under any of the terms and conditions of the Lease at the time of exercise and only if District has not exercised its option to terminate the lease to re-open an additional public school per Section 10. If Tenant elects to exercise one or both Renewal Options, Tenant for Renewal Option #1 shall provide District with written notice no earlier than _____ __, 20__, which is 24 months prior to the expiration of the Term but no later than ________, 20__, which is 12 months prior to the expiration of the Term, and Tenant for Renewal Option #2 shall provide District with written notice no earlier than ________, 20__, which is 24 months prior to the expiration of Option Term #1 but no later than ________, 20__, which is 12 months prior to the expiration of Option Term #1. Before the commencement date of Option Term #1 and Option Term #2, District and Tenant shall execute an amendment to this Lease extending the Term as provided for in this Section 11. If Tenant elects not to exercise Renewal Option #1, then Renewal Option #2 shall expire and not be exercisable by Tenant.

D. **Consideration.** Base Rent for Option Term #1 shall be as follows:

1. **Option Term #1**
Base Rent for Year 1 of Option Term #1 shall be based on Fair Market Value (FMV) determined as follows:

FMV is the rent that a willing lessee would pay and a willing lessor would accept for the Premises pursuant to a lease of the same terms and conditions as the current Lease subject to Tenant receiving credit for the unamortized cost of any improvements made by Tenant to the Premises and taking into account any other terms and conditions, including but not limited to rent abatement and tenant improvement allowance, available in the market at the time of renewal which are not being provided by District for Option Term #1 and for any other cost not being incurred by District for Option Term #1. Within thirty (30) days of exercise by Tenant, District shall provide its estimate of FMV to Tenant. Within thirty (30) days of receipt of District estimate, Tenant shall either accept District’s estimate, rescind its exercise, or elect that FMV be determined by an independent valuation professional with at least ten (10) years’ experience in the local market valuing school or educational use property (the “Valuation Expert”). Such Valuation Expert shall be selected jointly by District and Tenant; provided however, if District and Tenant cannot agree on the Valuation Expert, then each shall appoint their own Valuation Expert and those two Valuation Experts shall jointly agree on a third Valuation Expert who shall solely decide FMV.

Base Rent for Years 2, 3, 4 and 5 year of Option Term #1 shall increase by three percent (3%) annually.

2. **Option Term #2**

   Base Rent for Year 1 of Option Term #2 shall be three percent (3%) more than Year 5 of Option Term #1, and Base Rent for Years 2, 3, 4 and 5 of Option Term #2 shall increase by three percent (3%) annually.

E. **Other.** There shall be no Preparation Period during either Option Term #1 or Option Term #2, and there shall be no additional Renewal Options beyond Option Term #2. All of the other terms and conditions contained in this Lease, except as modified by the terms and conditions as set forth above in this Section 11 shall remain in effect during Option Term #1 and Option Term #2.

Section 12. **Default and Remedies.**

A. **Events of Default.** A breach of this Lease shall exist if any of the following events (hereinafter referred to as “Event of Default”) shall occur:

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

2. Tenant’s failure to perform any other term, covenant or condition contained in this Lease and such failure shall have continued for thirty (30) days after written notice of such failure is given to Tenant;

3. 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 Tenant’s business, shall have occurred and Tenant shall have failed to obtain a return
or release of such property within thirty (30) days thereafter, or prior to sale pursuant to such sequestration, attachment or levy, whichever is earlier;

4. 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;

5. Any case, proceeding or other action against the Tenant or 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 such 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 calendar (45) days.

6. The Tenant or any such guarantor shall take any corporate action to authorize any of the actions set forth in Subsections 4 or 5 above.

B. 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:

1. Recovery of Rent. District shall be entitled to keep this Lease 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 Lease, including the right to recover 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 or other sum until paid.

2. Termination. District may terminate this Lease by giving Tenant written notice of termination. On the giving of the notice all of Tenant's rights in the Premises shall terminate. Upon the giving of the notice of termination, Tenant shall surrender and vacate the Premises, and District may re-enter and take possession of the Premises and all the remaining improvements or property and eject Tenant or any person or persons claiming any right of occupancy under or through Tenant or eject some and not others or eject none. This Lease 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. In no event shall any one or more of the following actions by District constitute a termination of this Lease:

(a) maintenance and preservation of the Premises;

(b) efforts to relet the Premises;
(c) appointment of a receiver in order to protect District’s interest hereunder;

(d) consent to any subletting of the Premises or assignment of this Lease by Tenant, whether pursuant to provisions hereof concerning subletting and assignment or otherwise; or

(e) any other action by District or District’s agents intended to mitigate the adverse effects from any breach of this Lease by Tenant.

3. **Damages.** In the event this Lease is terminated pursuant to Section 12.B(2) above, or otherwise, District shall be entitled to damages in the following sums:

(a) the worth at the time of award of the unpaid rent which has been earned at the time of termination; plus,

(b) the worth at the time of award of the amount by which the unpaid rent 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,

(c) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; and,

(d) any other amount necessary to compensate District for all detriment proximately caused by Tenant’s failure to perform Tenant’s obligation under this Lease, or which in the ordinary course of things would be likely to result therefrom including, without limitation, the following: (i) expenses for cleaning, repairing or restoring the Premises; (ii) real estate broker’s fees, reasonable advertising costs and other expenses of reletting the Premises; (iii) costs of carrying the Premises and insurance premiums thereon, utilities and security precautions; (iv) expenses in retaking possession of the Premises; (v) reasonable attorneys’ fees and court costs; and, (vi) any unamortized real estate brokerage commission paid in connection with this Lease; and

(e) the “worth at the time of award” of the amounts referred to in subsections (a) and (b) 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 (c) 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%). The term “rent” as used in this section shall include all sums required to be paid by Tenant to District pursuant to the term of this Lease.
Section 13. Title to and Removal of Tenant’s Equipment.

A. Tenant’s Equipment. Title to equipment and/or improvements provided by Tenant ("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. Unless District requests that title to Tenant’s Equipment be vested in the District, on or before the expiration of this Lease, 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. Any and all fixtures installed on, at, or to the Premises by Tenant are considered attached to the Property and shall become part of the Property. On the expiration or earlier termination of the Lease, the fixtures shall remain on the Property, and Tenant shall not remove them from the Property unless District elects to direct Tenant to remove them.

B. Failure to Remove. In the event that Tenant fails to timely remove Tenant’s Equipment, or any fixtures of which District does not elect to take ownership, District, upon fifteen (15) days written notice, may, without liability on the part of District to Tenant or any person or entity claiming under Tenant, either (1) accept ownership of Tenant’s Equipment or fixtures at no cost to the District, or (2) remove and/or dispose of Tenant’s Equipment or fixtures at Tenant’s sole cost. In the event that the District chooses to accept ownership of Tenant’s Equipment or fixtures, Tenant shall execute any necessary documents to effectuate the change in ownership of Tenant’s Equipment or fixtures to District. If Tenant fails to execute any necessary documents to convey ownership of Tenant’s Equipment to District, Tenant hereby authorizes the Superintendent of District, as its attorney-in-fact to take all actions and execute all documents necessary to convey Tenant’s Equipment or fixtures to District. In the event that the District removes and/or disposes of Tenant’s Equipment or fixtures, Tenant shall pay all costs for the removal and/or disposal of Tenant’s Equipment or fixtures within thirty (30) days of receipt of an invoice.

Section 14. Destruction.

A. Uninsured Peril. In the event that any portion of the Premises are destroyed or damaged by an uninsured peril, District or Tenant may, upon written notice to the other, given within thirty (30) days after the occurrence of such damage or destruction, elect to terminate this Lease; provided, however, that either party may, within thirty (30) days after receipt of such notice, elect to make the required repairs and/or restoration at such party's sole cost and expense, in which event this Lease shall remain in full force and effect, and the party having made such election to restore or repair shall thereafter diligently proceed with such repairs and/or restoration.

B. Insured Peril. In the event the Premises are damaged or destroyed from any insured peril to the extent of seventy percent (70%) or more of the then replacement cost of the Premises, District or Tenant may, upon written notice, given to the other within thirty (30) days after the occurrence of such damage or destruction, elect to terminate this Lease. If neither party gives such notice in writing within such period, District shall be deemed to have elected to rebuild or restore the Premises, in which event District shall, at its expense, promptly rebuild or restore the Premises to their condition prior to the damage or destruction. In the event the Premises are
damaged or destroyed from any insured peril to the extent of less than seventy percent (70%) of the then replacement cost of the Premises, District shall at District’s expense, promptly rebuild or restore the Premises to their condition prior to the damage or destruction. Notwithstanding the foregoing, Tenant may upon written notice, given to District within thirty (30) days after the occurrence of such damage or destruction, elect to terminate this Lease if the Premises are damaged or destroyed to the extent of fifty percent (50%) or more of the then replacement cost of the Premises.

C.  Lease Termination. In the event that, pursuant to the foregoing provisions, District is to rebuild or restore the Premises, District shall, within thirty (30) days after the occurrence of such damage or destruction, provide Tenant with written notice of the time required for such repair or restoration. If such period is longer than one hundred twenty (120) days from the issuance of a building permit, Tenant may, within thirty (30) days of receipt of District’s notice, elect to terminate the Lease by giving written notice to District of such election, whereupon the Lease shall immediately terminate. The period of time for District to complete the repair or restoration shall be extended for delays caused by the fault or neglect of Tenant or because of acts of God, labor disputes, strikes, fires, freight embargoes, rainy or stormy weather, inability to obtain materials, suppliers or fuels, acts of contractors or subcontractors, or delays of contractors or subcontractors due to such causes or other contingencies beyond the control of District. District’s obligation to repair or restore the Premises shall not include restoration of Tenant’s trade fixtures, equipment, merchandise, or any improvements, alterations, or additions made by Tenant to the Premises.

D.  Abatement of Base Rent. Unless this Lease is terminated pursuant to the foregoing provisions, this Lease shall remain in full force and effect; provided, however, that during any period of repairs or restoration, Base Rent and all other amounts to be paid by Tenant shall be abated in proportion to the area of the Premises rendered not reasonably suitable for the conduct of Tenant’s business thereon.

Section 15.  Program Operations and Requirements.

A.  Due Authorization. Tenant represents that it is duly authorized to administer and operate the Program, and upon expiration of any license, permit, accreditation and/or certification and/or at District request, Tenant shall provide copies of relevant licenses, permits, accreditations, and/or certifications to District. Tenant shall be solely responsible for obtaining all necessary permits, licenses, and approvals from any and all applicable State, local or other regulatory agencies related to the operation of its Program or otherwise connected to Tenant’s use of the Premises, including without limitation, use permits and compliance with the California Environmental Quality Act (CEQA) as applicable.

B. Program Certifications. Tenant represents that it has observed all guidelines and requirements with respect to appropriate certifications and approvals for Tenant to operate its Program and to be located at the Premises, including the staff fingerprinting clearance and tuberculosis examination clearance requirements applicable to Tenant’s Program.
Section 16. **Good Neighbor.**

Tenant agrees to not use or permit the use of the Premises, the Property, or any part thereof for any purpose which is inimical or contrary to public morals and/or welfare or morally objectionable as unsuitable for its Program. Tenant agrees to respond immediately to concerns expressed by neighbors or District relating to the operation of the Program, Premises or use of the Premises and/or Property.

Section 17. **Hold Harmless/Indemnification.**

To the fullest extent permitted by California law, Tenant shall defend, indemnify, and hold harmless District, its Board and members of the Board, agents, representatives, officers, consultants, employees, trustees, and volunteers (the “Indemnified Parties”) from any and all losses, liabilities, claims, suits, damages, expenses, costs, recourses, and actions of any kind, nature, and description, including, but not limited to, attorneys’ fees and costs, directly or indirectly arising out of, connected with, or resulting from the performance of this Lease, or use/access to the Premises or Property, or from any activity, work, or thing done, permitted, or suffered by Tenant, its agents, contractors, employees, representatives, officers, servants, tenants, concessionaires, or volunteers in conjunction with the performance of this Lease unless caused wholly by the sole negligence or willful misconduct of the Indemnified Parties; and in case any action or proceeding be brought against any of the Indemnified Parties, Tenant, upon notice from District, shall defend the same at Tenant’s expense by counsel approved in writing by District.

Section 18. **Insurance.**

A. **General Liability Insurance and Auto Insurance.** Tenant shall, at Tenant's expense, obtain and keep in force during the Term of this Lease 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 Five Million Dollars ($5,000,000.00) for bodily injury or death and property damage as a result of any one occurrence and a Five Million Dollar ($5,000,000.00) general aggregate policy limit. In addition, Tenant shall obtain a products/completed operations aggregate policy in the amount of Two Million Dollars ($2,000,000.00) and a personal injury policy in the amount of One Million Dollars ($1,000,000.00). The insurance carrier, deductibles and/or self-insured retentions shall be approved by District. The deductible/occurrence for said insurance shall not exceed Five Thousand Dollars ($5,000.00) for any and all losses resulting from negligence, errors and omissions of the Tenant, its Board, officers, agents, employees, representatives, consultants, invitees and/or students.

B. **Fire Insurance.** During the Term of this Lease, Tenant 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 Premises as of the Effective Date. In the event of loss or damage to the buildings, the Premises or any contents, each of the Parties hereto, and all persons claiming under each of the Parties, shall look first to any insurance in its favor before making any claim against the other Party, and to the extent possible without adding additional costs, each Party shall obtain for each policy of insurance provisions permitting waiver of any claim against the other party.
for loss or damage within the scope of the insurance and each Party, to the extent permitted, for itself and its insurers, waives all such insurance claims against the other Party.

C. **Workers’ Compensation Insurance.** During the Term of this Lease, Tenant shall comply with all provisions of law applicable to Tenant with respect to obtaining and maintaining workers’ compensation insurance.

D. **Tenant’s Property Insurance.** Tenant acknowledges that any insurance to be maintained by District on the Premises will not insure any of Tenant’s buildings, property, personal property, or improvements made by or for Tenant. Accordingly, Tenant shall, at its own expense, maintain in full force and effect an insurance policy on all of its structures, 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.

E. **Certificates of Insurance and Endorsements.** As of the Effective 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:

1. not be canceled or altered without thirty (30) days prior written notice to District;
2. insure performance of the indemnity set forth in Section 17 (Hold Harmless/Indemnification), above;
3. state the coverage is primary and any coverage by District is in excess thereto;
4. contain a cross liability endorsement; and
5. include a separate endorsement naming District as an additional insured.

At least thirty (30) 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.

F. **Insurance Limits, Rating of Insurers and Certificates.** It is the intent of the Parties that policy limits set herein shall be raised from time to time during the Term of this Lease to account for (i) increases in Base Rent for the Premises, (ii) increases in the estimated full replacement cost of the Premises, and (iii) increases in the general marketplace insurance limits for tenancies as defined herein or subtenancies consistent with the provisions of this Lease. 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.

Section 19. **Notice.**

Any notice required or permitted to be given under this Lease 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, addressed as follows, and accompanied with a courtesy copy sent via e-mail:

If to District:

MT. PLEASANT ELEMENTARY SCHOOL
DISTRICT
Attn: Superintendent
3434 Marten Avenue
San Jose, CA 95148
E-mail: emacarthur@mpesd.org

If to Tenant:

Attn:__________________

_______________________

Email:__________________

Any notice personally given 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 20. Sublease and Assignment.

Tenant shall not assign its rights, duties or privileges under this Lease, nor shall Tenant sublease or attempt to confer any of its rights, duties or privileges under this Lease on any third party, without the prior written consent of the District in its sole discretion. Any such attempt without District written consent shall be void. Notwithstanding the foregoing, Tenant shall have the right, upon thirty (30) days’ written notice to the District, to assign the Lease to any entity created by merger, reorganization or recapitalization of or with Tenant, or to any purchaser of substantially all of Tenant’s assets, or to any entity providing the same educational services as Tenant, and provided that the assignee has annual earnings before interest, taxes, depreciation, and amortization ("EBITDA") of at least Five Million Dollars ($5,000,000.00), a net worth not less than Ten Million Dollars ($10,000,000.00), and has agreed unequivocally and in writing to assume all of Tenant’s obligations under this Lease, Tenant shall be released from all further obligations and liability under the Lease Agreement. For purposes of this provision, the calculation of “EBITDA” shall be based on the twelve (12) month period ending on the date of determination, the sum of such entity’s net income (loss) for such period plus, in each case to the extent previously deducted in calculating net income (loss): (i) income taxes, (ii) interest payments on all of its debt obligations (including any borrowings under short term credit facilities), (iii) all non-cash charges including depreciation and amortization, and (iv) Non-Recurring Items. “Non-Recurring Items” shall mean with respect to such entity, items of the sum (whether positive or negative) of revenue minus expenses that, in the reasonable judgment of District, are unusual in nature, occur infrequently and are not representative of the ongoing or future earnings or expenses of such entity.

Section 21. No Right to Encumber Leasehold.

At no time shall Tenant allow or suffer the encumbrance of its interest under this Lease by any creditor or institutional lender, whether by deed of trust, mortgage, or other security interest for any purpose or purposes, without the prior written consent of the District.

Section 22. Independent Status.

This Lease 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 23. Entire Agreement of Parties.

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

Section 24. California Law.

This Lease 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 Lease shall be maintained in Santa Clara County, California.

Section 25. Attorneys’ Fees.

In the event of any dispute under this Lease, or the default by any Party of that Party’s obligations hereunder, then the prevailing Party shall be entitled to recover, in addition to all other sums which may be due under the terms of this Lease, all costs of suit, including reasonable attorneys’ fees.

Section 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.

Section 27. Successors and Assigns.

This Lease shall be binding upon and inure to the benefit of the Parties and their respective heirs, legal representatives, successors, and assigns.

Section 28. Captions.

The captions contained in this Lease 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.

Section 29. Severability.

Should any provision of this Lease 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 30. Incorporation of Recitals and Exhibits.

The Recitals and each Exhibit attached to this Lease are incorporated into this Lease by reference.

Section 31. Non-Discrimination.

Tenant and its employees shall not discriminate against any person because of race, color, religion, ancestry, age, sex, sexual orientation, gender identification, national origin or physical handicap. Tenant shall not discriminate against any employee or applicant for
employment because of race, color, religion, ancestry, sex, sexual orientation, gender identification, age, national origin or physical handicap. Tenant covenants to meet all requirements of District pertaining to non-discrimination in employment. If Tenant is found in violation of the non-discrimination provisions of the State of California Fair Employment Practices Act or similar provisions of federal law or executive order in the conduct of its activities under this Lease by the State of California Fair Employment Practices Commission or the equivalent federal agency or officer, it shall thereby be found in default of this Lease.

Section 32. **Inspection of Premises.**

District’s employees and agents shall have the right at all reasonable times after school hours upon reasonable prior written notice to Tenant to inspect the Premises and all structures and improvements on the Premises to determine if Tenant is complying with the provisions of this Lease and to determine whether any repairs are necessary. Tenant shall have the right to have a representative accompany the person or persons conducting any such inspection.

Section 33. **Reservation of Rights.**

The Premises are accepted “as is” and “where is” by Tenant subject to any and all existing easements and encumbrances. District reserves the right to install, lay, construct, maintain, repair, and operate such sanitary sewers, drains, storm water sewers, pipelines, manholes, and connections; water, oil, and gas pipelines; telephone and telegram power lines; and the applications and appurtenances necessary or convenient for connection therewith, in, over, upon, through, across and along the Premises or any part thereof, and to enter the Premises for any and all such purposes after reasonable notice to and coordination with Tenant. District also reserves the right to grant franchises, easements, rights of way, and permits, in, over, upon, through, across, and along any and all portions of the Property, including the Premises, provided that no rights reserved by District in this clause shall be so exercised as to interfere unreasonably with or impair student safety or the use and operation of the Premises by Tenant as permitted under this Lease.

Section 34. **Construction Related Accessibility Standards.**

Pursuant to Civil Code section 1938, District states that the Property and the Premises rented hereunder have not undergone inspection by a Certified Access Specialist (CASp). A CASp can inspect the subject Premises and determine whether the Premises complies with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the Premises, District may not prohibit Tenant from obtaining a CASp inspection of the Premises for the occupancy or potential occupancy of Tenant, if requested by Tenant. The Parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the Premises. Tenant agrees to notify District prior to the tenth (10th) day following the Effective Date, if Tenant requests a CASp inspection, and further agrees that it voluntarily waives its right to request a CASp inspection after said date. If the Parties are unable to mutually agree on such arrangements within ten (10) days after Tenant’s notice, the Parties understand and agree that either Party has the right to terminate the Lease pursuant to the terms of this Lease.
Section 35. **Brokers.**

Each Party will each compensate its brokers and real estate agents, if any, by paying real estate commissions and brokers’ fees in accordance with any and all broker or commission agreements entered into by such Party relating to the Properties. Each Party will indemnify, defend and hold harmless each other Party from and against any claims for brokerage commissions, real estate commissions and/or finders’ fees based on the indemnifying Party’s alleged agreements, and this obligation shall survive the expiration of the Term.

Section 36. **Counterparts.**

This Lease and all amendments and supplements to it may be executed in counterparts and transmitted by facsimile or scanned and emailed pdf file, and all counterparts together, whether original, facsimile, or scanned and emailed pdf file, shall be construed as one document.

IN WITNESS WHEREOF, the Parties have executed this Lease on the dates written below.

ACCEPTED AND AGREED BY:

**DISTRICT:**
**MT. PLEASANT ELEMENTARY SCHOOL DISTRICT**

By: __________________________
Print Name: ____________________
Print Title: _____________________
Date: _________________________

**TENANT:**

By: __________________________
Print Name: ____________________
Print Title: _____________________
Date: _________________________
Exhibit A
The Premises

The Premises consists of the property located at 2400 Flint Avenue, San Jose, California 95148.