

THE SAN RAFAEL CITY ELEMENTARY SCHOOL DISTRICT
FACILITY USE AGREEMENT
150 LOVELL AVENUE

THIS AGREEMENT, entered into on the 18th day of April, 2016, between the SAN RAFAEL CITY SCHOOL DISTRICT (hereinafter "District") and ANOVA CENTER FOR EDUCATION/ACE (hereinafter "ACE").

WITNESSETH

WHEREAS, the District owns, operates and maintains certain property located at 150 Lovell Avenue, San Rafael, CA 94901; and

WHEREAS, the District is willing and ACE desires to use the property for administrative services and school purposes, as authorized by the Civic Center Act (Education Code section 38130, et seq.) and according to the terms and conditions stated herein.

NOW, THEREFORE DISTRICT AND ACE AGREE as follows:

1. **PREMISES:** The District hereby leases to ACE, and ACE hereby hires from the District the premises and facilities known as **150 Lovell Avenue, (A) classroom space (classrooms 5,6,7,26, 27), (B) administrative area (staff room, library, office, corridor, storage, small office, corridor, restroom and storage) for a total 8,650 square feet**, and located at 150 Lovell Avenue, San Rafael, CA, County of Marin, State of California (hereafter "Premises"). Included in this Agreement are the fixtures affixed to the Premises. It is understood that ACE has non-exclusive use of the restrooms (staff and students) that are included within the 8,650 square feet.

This agreement was amended March 28, 2011 to add two full size portables and one half size portable effective May 1, 2011 to the premises listed above which will increase the total overall square footage from 8,650 square feet to 11,050 square feet.

2. **TERM:** The amended term of this Agreement will be for a one (1) year period and shall commence on August 1, 2016 and shall terminate on July 31, 2017.

3. **TERMINATION:** Either party may terminate this Agreement for any reason with three (3) months' written notice of termination to the other party.

4. **RENT:** As rent for the Premises and fixtures, ACE shall pay the District the sum of twelve thousand one hundred ninety one dollars (\$12,191.00) per month from August 1, 2016 through July 31, 2017, based upon a rate of \$1.1033/square foot of leased space. The payment shall be made in the following manner: Payable in either one lump sum at the beginning of the Agreement, or in 12 monthly payments due in advance, on the 1st of each month during the term of this Agreement. The rent shall increase by 3% annually at the beginning of each fiscal year.

5. **USE OF PREMISES:** The Premises are leased to ACE for the purpose of providing behavior support services in accordance with the terms and conditions of this Agreement. ACE shall not use or permit the Premises to be used for any other purpose without the prior written consent of the District. ACE shall solely be responsible for the control and supervision of the Premises when being used by ACE. ACE shall maintain the Premises in a safe and clean condition. In the event that ACE or any of its employees, officers, agents, customers, guests or invitees cause destruction or damage to District's property, ACE shall be liable for the amount necessary to repair the damages, and such destruction or damage shall be grounds to terminate this Agreement at District's election.

ACE understands that its use of the Premises is not exclusive and is granted in joint with the District and/or other lessees, permittees, or invitees approved by the District. ACE further agrees that its use of the Premises will not cause interference with the use of 150 Lovell Avenue by District or other District-approved lessees, permittees, or invitees and that any interference by ACE, as determined by the District, shall be grounds for termination of this Agreement.

6. **TITLE TO PROPERTY:** The parties acknowledge that title to the Premises is held by the District and shall be unaffected by this Agreement.

7. **UTILITIES:** The District shall pay all water, gas, heat, light, power, and other utility services supplied to the Premises. On a quarterly basis, ACE shall pay its pro-rated share of utility costs, based upon its usage of the overall square footage.

8. **ACCESS:** The District reserves the right to enter and inspect the Premises at any time, provided however, that the District will give advance notice of its intent to enter whenever reasonably possible.

9. **PROGRAM STAFFING AND BACKGROUND VERIFICATION:** ACE represents that it is duly licensed to administer and operate its programs, and at District request, ACE shall provide copies of relevant certification(s). ACE shall be solely responsible for the administration and operation of its programs, including the hiring of all employees. ACE shall be responsible for verifying the qualifications, credentials, certificates, and licenses of its staff, agents, consultants and/or subcontractors who may provide services in conjunction with the ACE's activities on the Premises.

10. **FINGERPRINTING AND CRIMINAL BACKGROUND VERIFICATION:** Unless the District determines that the ACE, its employees, agents, subcontractors, invitees, and/or volunteers will have limited and/or no contact with District students, ACE shall be responsible for ensuring compliance with all applicable fingerprinting and criminal background investigation requirements described in Education Code section 45125.1, which may be met under the fingerprinting provisions of Title 22 of the California Code of Regulations and applicable provisions of the California Health and Safety Code relevant to

community care facility licensing (Health & Safety Code, § 1500 et seq.). ACE shall provide in writing verification of compliance with the aforementioned fingerprinting and criminal background investigation requirements to District prior to each individual's commencement of employment or participation in any ACE activity and prior to permitting contact with any pupils.

11. **MAINTENANCE AND REPAIRS:** ACE shall keep and maintain the Premises and fixtures reasonably clean and in good condition and repair at its own cost and expense, unless otherwise provided in Section 12 below. Additionally, ACE shall keep and maintain any leased fixtures and personal property in good condition and repair, at its own cost and expense as well as any exterior improvement to playground or gardens.

District shall assume full responsibility for all repair and maintenance costs relating to the roof maintenance. District shall be responsible for all other major structural maintenance such as boilers, major plumbing and electrical. District shall maintain the grounds in the same manner as the property of the District.

12. **SAFETY INSPECTIONS:** ACE shall conduct safety inspections as required by District or District's representative. ACE shall implement safety requirements as instructed by District or District's representative.

13. **CAPITAL IMPROVEMENTS AND MAJOR REPAIRS:** In the event the Premises are declared unfit for human occupancy or for the uses intended by this Agreement because of structural defects, or any other reasons, by any governmental agency, then the District may, at its election, make such repairs as may be necessary to bring the Premises into compliance. In the event that the repairs are not feasible or practicable, the parties may terminate the Agreement, and ACE shall be relieved of any further obligation under this Agreement effective on the date that ACE terminates its use of the Premises for the purposes stated in this paragraph.

14. **SURRENDER AT THE END OF TERM:** ACE agrees that, upon termination of this Agreement, it will surrender possession of the Premises, including any fixtures, to the District in a neat and clean condition, and in a good state of repair, excepting only for reasonable use and wear thereof, damage by fire, acts of nature, or the elements.

15. **ALTERATIONS AND MECHANICS LIENS:** ACE shall not make any alterations or additions to the Premises without the prior written consent of the District, and any permanent alterations or additions made to the Premises or fixtures shall become at once a part of the realty and belong to the District. ACE shall keep the Premises free from any liens arising out of any work performed, materials furnished, or obligations incurred by ACE.

16. **ACE'S PROPERTY:** The District shall have no duty or responsibility for the protection, safeguarding, care or storage of any personal property of ACE, nor shall District be liable for any damage to personal property used or left on the

Premises or any surrounding District property by ACE or ACE's employees, agents, contractors, customers, guests or invitees, including but not limited to damage caused by fire, earthquake, acts of nature, vandalism, or burglary.

17. **INDEMNITY:** It is agreed that ACE shall defend, hold harmless and indemnify the District, its Board of Education, the members of its Board of Education, its other officers, employees and agents from any and all claims for injuries or damages to persons and/or property which arise out of the terms and conditions of this Agreement and which result from the negligent acts or omissions of ACE, its officers, employees, customers, guests, or invitees.

The duty of ACE to indemnify and save harmless, as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

18. **INSURANCE:** ACE shall carry at its expense and shall provide the District with proof of public liability and property damage insurance in an amount satisfactory to District, provided that such insurance shall not be less than one million dollars (\$1,000,000.00) combined single limit for bodily injury and property damage. ACE shall be named as primary insured for the requested usage and the District, its Board of Education, the members of its Board of Education, officers, employees and agents, shall be named on as additional insured. ACE shall file Certificates of Insurance with the District prior to the use of the District's premises.

19. **ASSIGNMENT OR SUBLETTING:** ACE shall not assign this Agreement, or any interest therein, and shall not sublet the Premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person (the agents and servants of ACE excepted) to occupy or use the Premises, or any portion thereof, without the prior written consent of the District except as identified in exhibit "B".

20. **INDEPENDENT CONTRACTORS:** This Agreement is made between independent contractors. Nothing in this permit shall be deemed any employment, joint venture or any other agency relationship between the District and ACE.

21. **SURRENDER OF AGREEMENT NOT MERGER:** The voluntary or other surrender of this Agreement by ACE or mutual cancellation thereof, shall not work a merger, and shall, at the option of the District, terminate all or any existing subleases or sub tenancies, or may at the option of the District, operate as an assignment to them or any or all such subleases and sub tenancies.

22. **SIGNS:** Any sign or label placed on the Premises, fixtures or equipment shall be removed by ACE at the expiration of this Agreement, and any damage to the Premises caused by the removal or installation of the sign shall be paid by ACE.

23. **HOLDING OVER:** Any holding over after the expiration of the terms of this Agreement, with the consent of the District, shall be construed to be a tenancy from month to month on the same terms and conditions herein specified, including the same rental amount stated above, unless otherwise agreed by the parties in writing.

24. **NOTICES:** Any notices provided for herein shall be deemed delivered when delivered personally to the other party or when delivered by certified mail, return receipt requested, addressed as follows:

For District: San Rafael City School District
Business Office
310 Nova Albion Way
San Rafael, CA 94903

For ACE: ANOVA Center for Education
ACE School
2911 Cleveland Avenue
Santa Rosa, CA 95403

25. **ENTIRE AGREEMENT OF PARTIES:** This Agreement constitutes the entire agreement between the parties and supersedes all prior discussions, negotiations and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both parties.

26. **CALIFORNIA LAW:** This Agreement shall be governed by and the rights, duties and obligations of the parties shall be determined and enforced in accordance with the laws of the State of California. The parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in Marin County, California.

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

28. **WAIVER:** The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

29. **SUCCESSORS AND ASSIGNS:** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors, and assigns.

30. **COUNTERPARTS:** This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.

31. **CAPTIONS:** The captions contained in this Agreement are for convenience only and shall not in any way affect the meaning or interpretation hereof nor serve as evidence of the interpretation hereof, or of the intention of the parties hereto.

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

33. **INCORPORATION OF RECITALS AND EXHIBITS:** The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.

IN WITNESSETH WHEREOF, the parties through their duly authorized agents have affixed their hands,

SAN RAFAEL CITY SCHOOL DISTRICT

DATED: _____

BY: Rachel Kertz
President, Board of Education

ATTESTED:

BY: Christine Thomas
Chief Business Official
San Rafael City Schools

DATED: _____

BY: Andrew Bailey
Executive Director
Anova Center for Education

THIS AGREEMENT IS NOT VALID UNTIL SIGNED BY BOTH PARTIES.