

**FACILITIES USE AGREEMENT
BY AND BETWEEN
RAVENSWOOD CITY SCHOOL DISTRICT AND
ALL FIVE**

THIS AGREEMENT ("**the Agreement**") is made this 9th day of July, 2019 ("**the Effective Date**"), by and between the Ravenswood City School District, a public school district organized and existing under the laws of the State of California ("**the District**") and All Five, a non-profit public benefit corporation organized and existing under the law of the State of California ("**All Five**"). The District and All Five are collectively referred to herein as "**the Parties**". Each of the District and All Five is individually referred to herein as "**a Party**".

RECITALS

WHEREAS, All Five's mission is to empower all families to choose high quality early childhood education for their children; and

WHEREAS, the mission of the District's Belle Haven School is to work collaboratively in empowering the school community to reach its emotional, social and academic potential; and

WHEREAS, All Five and the District wish to form a collaboration in the interest of using best practices in early childhood education and supporting the development of all children; and

WHEREAS, the Parties agree that portable classrooms P17, P18 and P19 ("**the Classrooms**") owned by the District and located on the campus of the Belle Haven School ("**the Site**") are currently not usable by the District because they lack bathrooms and do not meet other applicable legal requirements;

WHEREAS, the Parties agree that the Classrooms and adjacent outdoor spaces described with particularity in red on Appendix A ("**the Outdoor Spaces**") and, together with the Classrooms, "**the Facilities**") are suitable for use by All Five if All Five makes the Improvements (as defined below) contemplated for by this Agreement; and

WHEREAS, California Education Code Section 47614 ("**Proposition 39**") requires that school districts make available, to all charter schools operating in their school district with projections of at least 80 units of average daily attendance (ADA), facilities that will sufficiently accommodate all of the charter's in-district students, and that facilities be "reasonably equivalent" to other classrooms, buildings, or facilities in the district ("**the Charter School Requirement**"); and

WHEREAS, while the District must comply with the Charter School Requirement it believes that the Classrooms, as they will be improved by All Five as contemplated herein, will never be reasonably equivalent to other classrooms in the District for kindergarten – 12th grade students, and, in the event the District receives an Initial Application (as hereinafter defined), the District shall use its best efforts to provide accommodations to a Charter School that do not

include the Facilities and, if the District provides accommodations to a Charter School for portions of the Site other than the Facilities, shall use its best efforts to take appropriate actions to ensure that All Five can continue to receive the benefits, protections, and use of the Facilities and the Site provided for in this Agreement as further described below; and

WHEREAS, All Five is willing to expend the time, energy, and resources to make the Improvements under the terms and on the conditions set forth in this Agreement and in reliance on the District's representations made in these Recitals; and

WHEREAS, the Parties desire to set forth the terms and conditions pursuant to which All Five will occupy and utilize the Facilities and portions of the Site; and

WHEREAS, pursuant to that certain Memorandum of Understanding by and between the Parties dated February 9, 2017, the District agreed to provide to All Five, *inter alia*, year-round, full-day exclusive use of classroom #P15 on the Belle Haven School campus (as the same may be amended from time to time, "**the MOU**"); and

WHEREAS, the Parties are concurrently amending the MOU to align the term of the MOU to the term of this Agreement.

NOW THEREFORE, in consideration of the covenants and agreements hereinafter set forth, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Section 1. Incorporation of Recitals. The foregoing Recitals are hereby incorporated into this Agreement as though set forth in full herein.

Section 2. Authorization. Subject to the terms and conditions of this Agreement, the District authorizes All Five to exclusively occupy and use the Facilities to operate an early childhood education program, as further described in Section 12. Additionally, All Five is authorized to use the Facilities for non-exclusive vehicular parking and ingress and egress in connection with the authorized use.

Section 3. Existing Encumbrances; Compliance with Law.

(a) Existing Encumbrances. This Agreement is made subject to all licenses, leases, easements, restrictions, conditions, covenants, encumbrances, liens and claims of title, if any, which may affect the Site.

(b) Compliance with Law – Generally. All Five acknowledges and agrees that this Agreement is subject and subordinate to the prior and continuing right and obligation of the District to use the Site as required by applicable law, including but not limited to Proposition 39 and the Civic Center Act.

(c) Proposition 39 Compliance. During the Term, the District hereby agrees to give notice to All Five within five (5) business days of receipt of an initial application from a

Charter School pursuant to Section 17078.53 of Article 6 of the California Charter Schools Act (“**an Initial Application**”) and continue to keep All Five informed on a timely basis of the process of such application. In the event that such application is accepted and a Charter School occupies one or more portions of the Site, the District shall impose upon said Charter School equivalent requirements on maintenance, restrictions on use of hazardous materials, the Shared Use Terms set forth in Appendix B, and compliance with applicable law, including but not limited to the provisions of the Civic Center Compliance Act that are imposed on All Five pursuant to this Agreement.

(d) Civic Center Act Compliance. All Five acknowledges that after 6:00 p.m. during the week and all day on weekends and holidays, the Site and the Facilities may be subject to use by the public to the extent and in the manner required by the Civic Center Act. Civic Center Act requests for use of the Site and/or the Outside Spaces by users other than All Five shall be evaluated and handled by the District in its reasonable discretion. Civic Center Act use requests for use of the Classrooms shall be subject to the prior written consent of All Five, such consent not to be unreasonably withheld, conditioned or delayed. All Five’s denial of consent shall not be deemed unreasonable if use of the Classrooms by users other may subject All Five to liability, loss, or damage unless the District or another party fully indemnifies All Five for any liability, loss, damage or cause of action arising from such use.

(e) Conflict between Agreement and District Rights and Proposition 39. Should any conflict arise between the terms of this Agreement and the District’s obligations to comply with applicable law (including Proposition 39 and the Civic Center Act), the Parties shall negotiate in good faith to amend this Agreement in a manner that preserves the original intent and the respective rights and obligations of the Parties to the maximum extent possible. If the Parties are unable to amend this Agreement in a manner mutually acceptable to both of them, then either Party may terminate this Agreement in accordance with Sections 7 and 8.

Section 4. Use of Site. Subject to Section 3, All Five shall have year-round, exclusive use of the Classrooms twenty four (24) hours per day seven (7) days per week. All Five shall have year-round, exclusive use of the Outdoor Spaces during its hours of operation (7:00 a.m. – 6:00 p.m., *Monday – Friday except holidays*). All Five shall have year-round, shared use of the shared adult bathrooms described on Attachment A (“**the Shared Adult Bathrooms**”) during its hours of operation. Prior to July 1 of each year, the Parties shall agree upon a shared use schedule of the Shared Adult Bathrooms outside those hours. All Five shall be allowed to place appropriate early education materials in the Outdoor Space and to place appropriate legal signage on the doors to the Facilities. The District shall provide keys for All Five to have access to the Site at the outside gate closest to the Facilities, and to the Shared Adult Bathrooms.

Section 5. Telecommunications. The responsibility to provide all communications equipment, including telephones, computer and related hardware, software, and all required

telecommunications services, shall be the responsibility of All Five, other than as set forth in Section 11.

Section 6. Term. This term of this Agreement (“**the Term**”) shall commence on the Effective Date and shall end on the one year anniversary of the Effective Date; provided, however, that for each Seventy Five Thousand Dollars (\$75,000.00) in District approved improvements that All Five makes to the Facilities pursuant to this Agreement (collectively, “**the Improvements**”), a year shall be added to the Term. For example, if All Five installs \$150,000.00 in Improvements, this Agreement shall have a two (2) year term, and would end on second anniversary of the Effective Date.

Section 7. Termination. This Agreement may be terminated by a Party for the following reasons, subject to such Party’s compliance with Section 8.

(a) **Termination for Cause by District.** The District shall have the right to terminate upon the failure by All Five to comply with the provisions of this Agreement where such failure to comply continues for forty-five (45) days following written notice from the District to All Five of the alleged breach; provided, however, that if the alleged breach is not susceptible to being cured within such forty-five (45) day period, All Five shall not be deemed to be in default so long as prior to the end of such forty-five (45) day period, All Five shall have taken all reasonable steps to initiate the cure and diligently prosecutes the same to completion. The occurrence of any one or more of the following events shall constitute breach of this Agreement by All Five:

- i. The failure by All Five to make timely payment of any rent or fees due under this Agreement.
- ii. The failure by All Five to observe or perform any of the material covenants, conditions or provisions of this Agreement to be observed or performed by All Five (including shared use terms, if applicable).
- iii. The failure by All Five to maintain from the State of California Department of Social Services such license(s) as required to operate an early childhood education program with Community Care Licensing.
- iv. The failure by All Five to utilize the Site and Facilities in accordance with Section 12.
- v. The failure by All Five to maintain insurance of the types and levels as required by this Agreement.

(b) **Termination to Comply with Law.** Subject to the requirements set forth in Section 3, the District shall have the right to terminate this Agreement with respect to all or any portion of the Facilities to the extent required to comply with applicable law by providing no less than six month’s notice to All Five.

(c) **Termination for Cause by All Five.** All Five shall have the right to terminate this Agreement upon the failure by the District to comply with the provisions of this Agreement where such failure to comply continues for forty-five (45) days following written notice from All Five to the District of the alleged breach; provided, however, that if the alleged breach is not susceptible to being cured within such forty-five (45) day period, the District shall not be deemed to be in default so long as prior to the end of such forty-five (45) day period, the District shall have taken all reasonable steps to initiate the cure and diligently prosecutes the same to completion. The occurrence of any one or more of the following events shall constitute a default and material breach of this Agreement by the District:

- i. The unreasonable denial, conditioning, or delay of any required consent or approval;
- ii. Unauthorized use of the Facilities in violation of Sections 3 or 4; or
- iii. Any failure by the District to perform its other obligations under this Agreement where such failure is not cured as set forth above; provided, however, in the case of an emergency, the District shall perform its obligations as promptly as feasible.

(d) **Termination for Convenience by All Five.** All Five shall also have the unilateral right to terminate this Agreement at any time, at its sole discretion, due to complications with the progress, quality, or cost of the Improvements, or if for any reason All Five is no longer able to achieve its mission as stated in the first Recital above, by providing forty-five (45) days' written notice to the District.

Section 8. **Effect of Termination.**

(a) **Ownership of Improvements; Completion of In-Progress Improvements.** Upon termination by either Party, the District shall own any and all completed, fixed Improvements made to the Facilities by All Five during the Term. If construction of any Improvements is incomplete, All Five shall use commercially reasonable efforts to remove construction materials and return the Facilities to a broom clean condition.

(b) **Payment to All Five for the Value of the Improvements.** In recognition of the substantial investment All Five will make in the Facilities for the long-term benefit of the District:

- (i) In the event of a termination pursuant to Section 7(b) or 7(c), the District shall pay to All Five, on the date of such termination, the value of all the Improvements less the accumulated depreciation, such depreciation to be determined according to the then-applicable depreciation schedules established by the Internal Revenue Service. The source of funds for the Reimbursement Payment shall be at the sole discretion of the District.

(ii) In the event of a termination pursuant to Section 7(a) or 7(d), the District shall use commercially reasonable efforts to use the Facilities or to rent the Facilities to a third party (whether public or private, profit or non-profit, and whether on a full-time or part-time basis, or in whole or in part), at a price no less than the fair market value of the applicable Facilities; shall promptly pay to All Five the gross rent received from such third party for its use of the Facilities; and shall pay monthly to All Five the fair market value of any Facilities used by the District, in each case until All Five has received the value of all the Improvements less the accumulated depreciation as of the termination date, as determined in accordance with paragraph (i).

(c) **Records.** All Five shall properly store and disclose records of the cost of Improvements made to the Facilities upon the District's request.

(d) **Survival.** This Section 8 shall survive the expiration or earlier termination of this Agreement.

Section 9. Monthly Rental. Pursuant to the MOU, the monthly rental for P15 portable is Eight Hundred Thirty Dollars (\$830.00). The monthly rental for each of P17, P18 and P19 portables shall be One Dollar (\$1.00). All Five shall pay to the District Eight Hundred Thirty-Three Dollars (\$833.00) as and for the combined monthly rental for P15, P17, P18 and P19 portables. Said amount shall be payable by check on or before the first day of the each full calendar month of the Term; provided, however, that the monthly rental for any period during the Term that is for less than one (1) month shall be prorated on a per diem basis, based upon a thirty (30) day month and, provided further, for all or any portion of the month that precedes the commencement date of the Term, All Five shall continue to pay monthly rental in the amount of Eight Hundred Thirty Dollars (\$830.00) as required by the MOU. In the event the District has not received the monthly fee by the 26th day of the month, the District shall immediately notify All Five in writing; whereupon All Five will endeavor to expedite payment. The uncured failure by All Five to pay rent is subject to termination pursuant to Section 7.

The monthly rental for P17, P18 and P19 portables was set by the District in consideration of its partnership with All Five and in recognition of the significant Improvements All Five will make to the Facilities to render them suitable for use. The Improvements will be made at the sole expense of All Five, and subject to the District's approval, such approval not to be unreasonably withheld, delayed or conditioned.

Said fee shall be paid to the District at:

2120 Euclid Avenue
East Palo Alto, CA 94303
Attn: Steven J. Eichman, CBO

or to such other person or at such other place as the District may from time to time designate in writing.

Section 10. Cost-of-Living Rent Adjustments. The monthly rental will increase annually, effective on July 1 for each succeeding year of this Agreement (each, an "**Adjustment Date**"); beginning on the first anniversary of the Effective Date, by an amount equal to the annual change in the Consumer Price Index. The indexes for computing the increase shall be the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index, San Francisco-Oakland-San Jose All Urban Consumers (CPI-U) as published for April of the current and previous year.

The increase shall be calculated by multiplying the then-current monthly rental multiplied by twelve (12) by a fraction, the numerator of which is the April index for the current year and the denominator of which is the index for April of the previous year. In no event shall the Annual Rent payable as of any such Adjustment Date be less than that applicable to the 12-month period immediately preceding such Adjustment Date. If the CPI index is no longer published, a successor or substitute index, published by a governmental agency and reflecting changes in consumer prices in the San Francisco Bay Area will be agreed upon by the Parties.

Section 11. Monthly Reimbursement of Network and Telephone. All Five shall have use of the existing telephone and network systems available in the Facilities. All Five will pay a flat monthly fee of Fifty Dollars (\$50.00) for Internet beginning on the Effective Date ("**the Internet Fee**"). The monthly Internet Fee shall be due and payable within forty-five (45) days of receipt of an invoice from the District. The cost of the Internet Fee will be adjusted each time the District's monthly cost increases, in an amount proportional to the increase. The District shall promptly provide evidence of such cost increases upon request by All Five. The Internet Fee is separate and distinct from the monthly rental set forth in Section 9 above. If All Five no longer desires to use the District's network system, it will provide written notice to the District. The District will no longer charge the Internet Fee after the date specified on All Five's written notice.

Section 12. Use. All Five shall use the Facilities exclusively for early childhood education purposes and shall not use or permit the Facilities to be used for any other purpose without the prior consent of the District, which consent shall not be unreasonably withheld, delayed or conditioned.

All Five shall operate the Facilities in a reasonable manner and shall comply with the requirements of Section 21 regarding hazardous materials. Upon notice from the District that All Five's actions or omissions (other than those contemplated by this Agreement) have a material adverse effect on the District's insurance rates or coverage, All Five shall take reasonable steps to mitigate such adverse effect.

All Five shall not permit the Facilities to be used for any unlawful purpose, nor shall All Five cause, maintain, or permit any nuisance in, on or about the Facilities. For purposes of the foregoing sentence, the noise arising from activities of the students of All Five shall not be deemed to be a nuisance. All Five shall not commit or suffer to be committed any waste in or upon the Facilities.

Without limiting the foregoing, All Five shall use commercially reasonable efforts to comply with the reasonable instructions of District representatives regarding the proper manner of protecting the Facilities and shall comply with the following specific requirements:

- (a) All Five's program operations in the Facilities shall be performed so as not endanger or unreasonably interfere with the District's activities on the Site. Approval by the District shall not constitute a warranty by the District that such program operations will meet applicable federal, state, and/or local codes and regulations.
- (b) All Five shall keep and maintain the Facilities in good order and condition.
- (c) All Five shall not pile or store any materials or park on the Site any equipment, when the same are not in use, except as approved by the District. The District is not responsible for any property or materials stored by All Five, its employees, agents, contractors and/or subcontractors.
- (d) All Five understands and agrees that the Site is an operating school administration complex and is not open or accessible to members of the public for any purpose without the express permission of the District. Notwithstanding the foregoing, the District expressly acknowledges that All Five shall have the right to have invitees on the Site in the conduct of its business and permission is hereby granted for that purpose.
- (e) The District retains the right to control parking or enforce all parking regulations or parking usage of the Property at all times. The District agrees not to charge All Five any fees for parking at the Facilities.

The District shall require comparable provisions from any third party using the Site.

Section 13. Utilities. The District shall furnish to the Facilities reasonable quantities of gas, water, sewer, electricity, and heating, as required for All Five's use of the Facilities. Such utilities and services shall be furnished to the Facilities at all times during the Term at no cost to All Five.

The District shall not be liable for failure to furnish utilities to the Facilities when the failure results from causes beyond the District's reasonable control but, in case of such failure, the District shall immediately take all reasonable steps to restore the interrupted utilities.

Section 14. Janitorial Services. All Five, at its sole expense, shall provide janitorial services sufficient to (a) maintain the Facilities and (b) in collaboration with any other user of the Shared Adult Bathrooms, maintain the Shared Adult Bathrooms in a clean well-maintained condition. All Five shall provide to the Facilities the same level of janitorial services as the District provides to its administrative offices and classrooms on the Site.

Section 15. Real Property Taxes Paid by District. The District shall pay or cause to be paid, before delinquency, all taxes and assessments levied against the Facilities, if applicable.

Section 16. Personal Property Taxes Paid by All Five. All Five shall pay, or cause to be paid, before delinquency, all taxes and assessments levied against All Five's personal property in the Facilities, if applicable.

Section 17. Maintenance and Repairs.

(a) During the Term, the District shall maintain the Facilities in good repair and tenantable condition, to minimize breakdowns and loss of All Five's use of the Facilities caused by deferred or inadequate maintenance, including, but not limited to:

- i. Maintaining the Facilities in good and operating condition and in appearance, including all landscaped areas.
- ii. Furnishing prompt, good quality repair of the Facilities, equipment and appurtenances.
- iii. Furnishing preventive maintenance, including but not limited to, manufacturer's recommended servicing of equipment such as electrical, heating and ventilating equipment, and fixtures.
- iv. Furnishing and promptly replacing fluorescent tubes, ballasts, starters, and filters for the heating, ventilating, and air conditioning equipment as required.
- v. Furnishing remedial painting as necessary to keep the Facilities in a neat, clean and orderly condition.
- vi. Annually testing and maintenance of all fire extinguishers and smoke detectors in or adjacent to the Facilities.
- vii. Repairing and replacing parking lot bumpers and paving as necessary, and removing water, etc. from parking and paved areas.

(b) The District shall provide prompt repair or correction of any damage except and to the extent of any damage arising from a willful or negligent act of All Five, its agents, employees or invitees.

(c) In event the District, after (5) days' notice from All Five requiring the District to comply with the requirements of this section in regard to a specified condition, shall fail, refuse or neglect to comply with such notice, or in the event of an emergency constituting a hazard to the health or safety of All Five, its students, parents, employees, invitees or the Facilities, All Five may perform such maintenance or make such repair at its own expense and, in addition to any other remedies All Five might have, All Five may deduct the amount thereof, including necessary costs incurred by All Five required for the administration of such maintenance and repairs, from the monthly rental that may then be or thereafter become due thereunder.

Section 18. Installation of Improvements. All Five shall not construct or install any improvements on the Site or Facilities or otherwise permanently alter the Site or Facilities without the prior written consent of the District, which consent shall not be unreasonably withheld, delayed or conditioned and, if required by Applicable Law, the Division of the State Architect, whose consent shall also not be withheld, delayed or conditioned. Prior to commencement of construction, All Five shall meet with the District to discuss the project and any issues related thereto.

The District's approval of any Improvements, including the construction schedule, work hours, and modifications, shall be at the District's reasonable discretion. Contractors retained by All Five with respect to the construction or installation of improvements shall be fully licensed and bonded as required by law and must maintain levels of casualty, liability and workers' compensation insurance and performance and payment bonds consistent with the District construction requirements. The all-risk property insurance and liability insurance policies shall name the District as an additional insured.

The construction or installation of the Improvements shall be performed in a workmanlike manner, in compliance with all laws applicable to public works construction for early childhood education programs, including, but not limited to, building codes, fingerprinting requirements, approval by the Division of the State Architect, California Environmental Quality Act, and competitive bidding requirements as required. If public funding is utilized, the procurement and construction of the Project shall be in full compliance with the California Public Contract Code.

All Five shall comply with the Americans with Disabilities Act of 1990 ("ADA"), as required by Community Care Licensing and the regulations promulgated thereunder, as amended from time to time. All responsibility for compliance with the ADA relating to the Facilities and the activities conducted by All Five within the Facilities shall be exclusively those of All Five and not of the District. Any alterations to the Site made by All Five for the purpose of complying with the ADA or which otherwise require compliance with the ADA shall be done in accordance with this Section 18; provided that the District's consent to such alterations shall not constitute either the District's assumption, in whole or in part, of All Five's responsibility for compliance with the ADA, or representation or confirmation by the District that such alterations comply with the provisions of the ADA.

The District or the District's agent shall have a continuing right at all times during the period that the Improvements are being constructed or installed to enter the Facilities and to inspect the work, provided that such entries and inspections do not unreasonably interfere with the progress of the construction or interrupt instruction to students. This provision shall apply to any signage established by All Five at the Site.

Section 19. Mutual Hold Harmless.

- (a) It is agreed that All Five shall defend, hold harmless and indemnify the District, its officers, agents and/or employees from all claims for injuries to persons and/or damage

to the Facilities, which arise from the negligent acts or omissions of All Five, its officers, agents and/or employees, in the performance of this Agreement.

(b) It is further agreed that the District shall defend, hold harmless and indemnify All Five, its officers, agents and/or employees from all claims for injuries to persons and/or damage to the Facilities, which result from the negligent acts or omissions of the District, its officers, agents and/or employees in the performance of this Agreement.

(c) In the event of the concurrent negligence of All Five, its officers, agents and/or employees, and the District, its officers, agents and/or employees, then the liability for any and all claims for injuries or damages which arise out of the performance of the terms and conditions of this Agreement shall be apportioned under "California's Theory of Comparative Negligence" as presently established, or as may be hereafter modified.

Section 20. Insurance. All Five shall, at its sole costs and expense, commencing as of the date of this Agreement, and during the entire Term hereof, procure, pay for and keep in full force and affect the following insurance:

(a) **Commercial General Liability Insurance.** General liability insurance with limits of liability of Two Million Dollars (\$2,000,000) aggregate and One Million Dollars (\$1,000,000) per occurrence for bodily injury, personal injury and Facilities damage. If any form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this location or the general aggregate limit shall be twice the required occurrence limit. This insurance shall include products and completed operations of the same limits as the policy limits. This insurance shall be endorsed to include the following: (i) the District, its officers, officials, employees, agents and volunteers as additional insureds; (ii) a waiver of any right to contributions from any other coverage purchased by, or on behalf of, the District; and (iii) a written notice to be mailed to the District 30 days prior to the effective date of a cancellation or non-renewal of such insurance.

(b) **Property Insurance.** All-Risk property insurance insuring real and personal property of the named insured with a blanket limit applying to the Facilities all property in the amount of One Million Dollars (\$1,000,000). Such insurance shall be endorsed to (i) include as additional insured and loss payee the District as its interests may appear; and (ii) provide a written notice mailed to the District at least 30 days prior to the effective date of a cancellation or non-renewal.

(c) **Workers' Compensation Insurance** as required by the State of California and Employer's Liability Insurance (for lessees with employees). This insurance shall be endorsed to include the following: (i) a waiver of any right to contributions from any other coverage purchased by, or on behalf of, the District; and (ii) a written notice to be mailed to the District 30 days prior to the effective date of a cancellation or non-renewal of such insurance.

All deductibles or self-insured retentions applicable to the above required insurance shall be specifically approved by the District prior to its application, except the All-Risks Property Insurance required above may include a deductible of not more than Ten Thousand Dollars (\$10,000) without the necessity of All Five's obtaining the District's prior approval.

The insurances required above shall be provided by a company or insurance joint powers authority with the consent of the District prior to commencement of such insurance.

All Five shall provide proof of such insurance prior to taking possession of the Site and Facilities, including copies of the endorsements specifically required above. All Five shall provide proof of renewal of any insurance required above, including any endorsements required, at least fifteen (15) days prior to the expiration of such insurance.

(d) **District's Insurance.** In the event that the District maintains, with respect to the Site, policies of All-Risk Property Insurance and/or Commercial General Liability insurance during all or any portion of the Term, said insurance shall be endorsed to include that All Five, its officers, officials, employees, agents and volunteers are named as additional insureds.

Section 21. Hazardous Materials Activity. All Five shall not store or generate hazardous materials/waste/underground tanks (excluding any ordinary office or cleaning supplies) on the Facilities, without the written consent of the District. In the event that All Five does store or generate hazardous materials on the Facilities without the District's consent, All Five shall be deemed to be in breach of this Agreement and shall be subject to such remedies as are available to the District under law, and as provided herein. Additionally, All Five shall be liable for the payment of all costs of investigation and remediation of hazardous materials on the Facilities that may be required in the event that All Five does store or generate hazardous materials on the Facilities, and shall relieve, indemnify, protect, and save harmless the District against any and all claims and liabilities, of any kind or nature whatsoever, arising out of the presence of any such hazardous materials introduced to the Facilities by All Five.

The term "Hazardous materials" means any material that, because of its quantity, concentration, or physical or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment if released into the workplace or the environment. Hazardous materials include, but are not limited to, hazardous substances, hazardous waste, and any material which a handler or the administering agency has a reasonable basis for believing that it would be injurious to the health and safety of persons or harmful to the environment if released into the workplace or the environment. Examples of such hazardous materials are, but are not limited to waste oil, solvents, gasoline and compressed gases.

Section 22. Compliance with Applicable Law. All Five, at its sole cost and expense, shall comply with all applicable laws, regulations, rules and orders regardless of when they become or became effective, with respect to its use and occupancy of the Facilities that arise after All Five takes possession of the Site and Facilities, including, without limitation, those

relating to health, safety, noise, environmental protection, waste disposal, and water and air quality.

In the event that allocation of the Site and Facilities or use or modification of the Site and Facilities by All Five triggers the application of and/or compliance with the California Environmental Quality Act or compliance with any existing environmental mitigation measures related to ongoing use of the Site, All Five shall comply with same. Should All Five engage in any activity on the Site that constitutes a "project" under CEQA, the cost of CEQA compliance shall be borne in full by All Five, but the District shall act as the lead agency for the purposes of such CEQA compliance. Should All Five fail to inform the District of activities that may require CEQA compliance in advance of engaging in such activities, All Five shall assume all liability for legal claims arising out of said failure.

Should any discharge, leakage, spillage, emission, or pollution of any type occur upon or from the Site in whole or in part as a result of All Five's use and occupancy thereof, All Five, at its expense, shall be obligated to clean all the property affected, to the satisfaction of the District and any governmental agencies having jurisdiction over the Site.

Section 23. Title to Property. The Parties acknowledge that title to the Site and Facilities is held by the District and shall remain in the District at all times.

Section 24. Fingerprinting. All Five shall be responsible for ensuring compliance with all applicable fingerprinting and criminal background investigation requirements described in Education Code section 45125.1.

Section 25. Access. All Five shall permit the District, its agents, representatives or employees, to enter upon the Facilities for the purpose of inspecting same or to make repairs, alterations, or additions to any portion of the Site required by this Agreement. The District shall give reasonable notice where practicable but shall not be obligated to do so in the event of emergency or imminent threat to health or safety of occupants.

Section 26. Compliance with Laws. All Five shall comply with all applicable laws, regulations, rules, and orders with respect to the use of the Facilities, regardless of when they become or became effective, including, without limitation, those relating to signage, health, safety, noise, environmental protection, hazardous materials, waste disposal, and water and air quality.

Section 27. Notice and Appointments. Each Party shall appoint a person to serve as the official contact and coordinate the activities of the Parties. The initial appointees are set forth below. Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served and received if given in writing and personally delivered or either deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service or facsimile transmission, or email or other electronic means of submission addressed to the appointees as set forth below. Unless otherwise

stated herein, notices shall be deemed sufficiently served five (5) days after the date of mailing or upon personal delivery.

If to All Five: Carol Thomsen
C/o All Five
1391 Chilco Street
Menlo Park, CA 94026
(650) 387-8268

If to the District: Interim Superintendent
Ms. Gina Sudaria
Ravenswood City School District
2120 Euclid Avenue
East Palo Alto, CA 94303

Any notice personally given or sent by facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective five (5) days after deposit in the United States mail.

Section 28. Good Faith Efforts to Agree; Disputes; Dispute Resolution. The Parties shall cooperate in good faith to agree on all matters arising under or pursuant to this Agreement. Each Party shall promptly notify the other Party of any dispute arising under or pursuant to this Agreement and shall negotiate in good faith to resolve such dispute in a timely, cooperative, and reasonable manner that, to the maximum extent possible in accordance with law, achieves the intended purposes of this Agreement and does not cause either Party to incur significant unanticipated cost or expense. The District agrees not to unreasonably withhold, condition, or delay any consent, approval, agreement, or other action required or contemplated by this Agreement.

Section 29. Subcontract and Assignment. Neither Party shall assign its rights, duties or privileges under this Agreement, nor shall a Party attempt to confer any of its rights, duties or privileges under this Agreement (including that of sublease) to any third party, without the written consent of the other Party. All Five shall not, without the express written consent of the District, sublease, pledge, encumber, mortgage or otherwise transfer or assign to any party whatsoever any interest in the Site or Facilities.

Section 30. Amendment to MOU. The Parties hereby agree that, concurrently with the Effective Date, the Parties shall execute an Amendment to the MOU, which Amendment will provide that, notwithstanding the July 14, 2020 expiration date set forth in the last paragraph of the MOU, said expiration date shall be extended to match the Term set forth in this Agreement (including any extensions).

Section 31. Independent Status. This Agreement is by and between two independent entities and is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, or association.

Section 32. Entire Agreement of Parties. This Agreement, and all its incorporated documents, constitute the entire agreement between the Parties with respect to the Facilities (excluding the P15 portable pursuant to the MOU) and supersede all prior discussions, negotiations and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by the Parties expressly indicating an intent to modify or amend this Agreement.

Section 33. 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 San Mateo County, California.

Section 34. Attorneys' Fees. This Agreement shall comply with the so-called "American Rule", which is the default rule in California, in which Parties to litigation must pay their own attorney fees.

Section 35. 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 36. 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-in-interest, and assigns.

Section 37. 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.

Section 38. No Smoking. All Five understands that smoking is prohibited on the Site at all times.

Section 39. Captions. The captions contained in this Agreement are for convenience only and shall not in any way affect the meaning or interpretation hereof nor serve as evidence of the interpretation hereof, or of the intention of the Parties hereto.

Section 40. Severability. Should any provision of this Agreement be determined to be invalid, illegal or unenforceable in any respect, such provision shall be severed, and the remaining provisions shall continue as valid, legal and enforceable.

Section 41. Integration. The Parties intend this Agreement to be an integrated agreement. Any modification of or addition to this Agreement must be by means of a written amendment signed by both Parties.

Section 42. Priority. All Five shall prioritize servicing children and families from the Ravenswood Community.

Section 43. Time. Time is of the essence hereof with respect to certain dates defined herein and to consents and approvals by the District and the State Architect.

Section 44. Implied Covenant. The Parties agree that the implied covenant of good faith and fair dealing under California law shall be an explicit part of this Agreement and incorporated herein.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first above written.

RAVENSWOOD CITY SCHOOL DISTRICT

By: _____

Title: _____

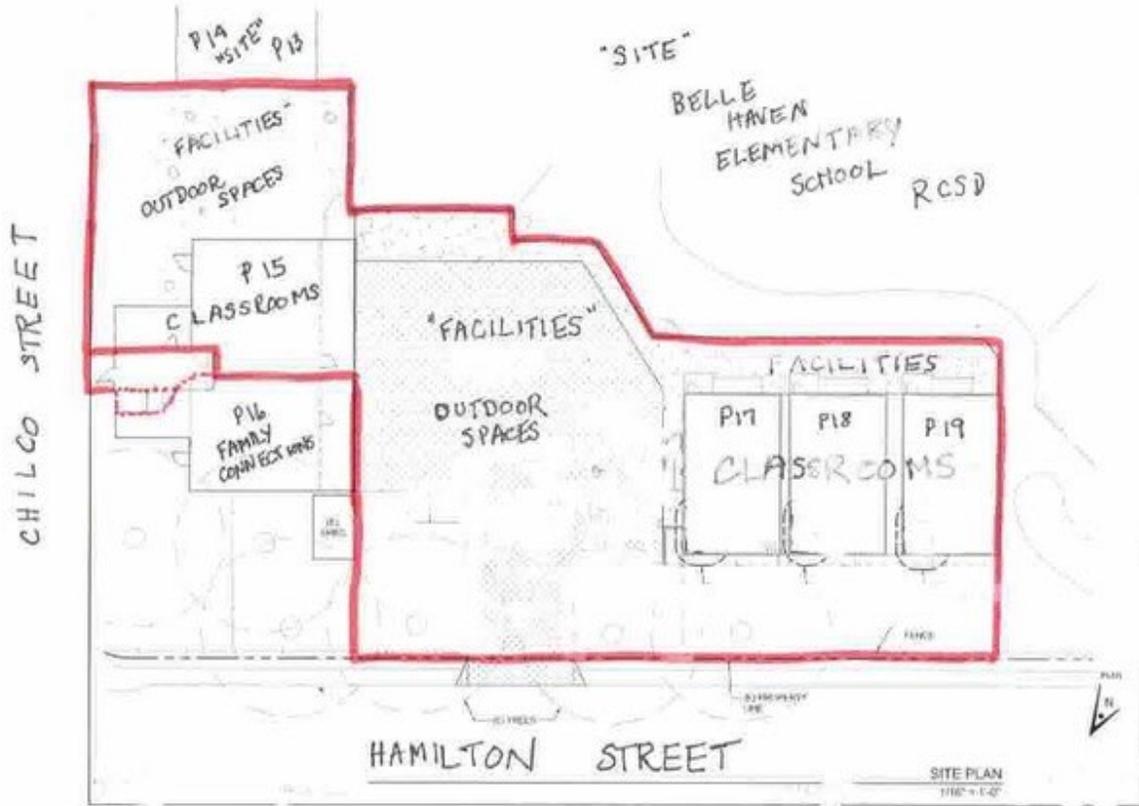
ALL FIVE

By: _____

Title: _____

APPENDIX A

MAP OF THE FACILITIES AND THE SITE



APPENDIX B

SHARED USED TERMS

The following terms and conditions supplement the terms outlined in the main body of this Agreement. In the event of any conflict between the terms and conditions in this **Appendix B** and the terms and conditions in the Agreement, the latter shall prevail.

1. Shared Use of Site. All Five shall share use of the Site with the Belle Haven School ("Co-Occupant") for the term of this Agreement. During the period of shared Site use, All Five shall enjoy exclusive use of the following Facilities:

Portable classrooms P15, P17, P18 and P19

All Five shall have shared use of the following other facilities located on the Site ("Shared Use Facilities"), pursuant to a shared use schedule to be developed between the All Five and the Co-Occupant, as described in Section 2 below:

Outdoor space and adult bathrooms

Upon the expiration of any period of shared use, the terms and obligations of this **Appendix B** shall no longer apply to All Five's use of the Site and Facilities.

2. Shared Use Schedule. All Five and its Co-Occupant shall develop, in conjunction with District staff and prior to All Five's occupancy of the Facilities, a schedule of use of the Shared Use Facilities. Shared Use Facilities may be allocated on a square footage basis, based on the proportion of each occupant's students to the total number of students on the Site, or based on a time percentage basis representing the same proportional breakdown. The Parties shall negotiate in good faith to develop a shared use schedule that recognizes the needs of students of both occupants, as well as issues related to staffing, school safety and student supervision. The District has the right to make all final decisions regarding the Shared Use Schedule, and any disputes arising out of the Shared Use Schedule.

All Shared Use Facilities are subject to the policies, regulations and control of the District for purposes of making use decisions under the Civic Center Act for times outside of All Five's regular school hours (7:00 a.m. – 6:00 p.m.).

3. Conduct and Control of All Five's Activities. It shall be the responsibility of All Five to maintain control and supervision of its students and staff at all times. All Five shall ensure that its students are adequately supervised at all times, including times during which All Five students are sharing common areas with its Co-Occupant. All Five agrees to report to the administration of its Co-Occupant as well as the District any problems related to student conduct, discipline and behavior where such problems

may have an impact on the Co-Occupant, its students, staff, activities or program, as applicable.

All Five shall indemnify, hold harmless, and defend the District, its Co-Occupant, and their respective trustees, officers, employees and agents against and from any and all claims, demands, actions, suits, losses, liability, expenses and costs for any injury, death or damage to any person or property occurring as a result of or arising from the will or neglect of All Five employees on the Site and from All Five's failure to provide adequate supervision of All Five's students on the Site and Facilities.

4. School Site Safety Plans and Emergency Plans. All Five agrees to adhere to the Belle Haven School Safety Plan, and the school's emergency and evacuation plans. The District shall provide copies of these plans to All Five. In addition, the District agrees to include representatives of All Five in any trainings that occur regarding School Site Emergency Preparedness plans.
5. Visitors/Invitees. All Five shall ensure that all visitors to All Five have registered at the administrative office of All Five, and if they will require access to Shared Use Facilities or common areas of the Site, that they are properly chaperoned or identifiable to the Co-Occupant's students, staff and faculty on the Site. All Five shall coordinate with the Co-Occupant's lead administrator on the Site with respect to visitors who will require extended or regular access to Shared Use Facilities.
6. Dispute Resolution. From time to time disputes may arise related to the Shared Use Facilities, the Shared Use Schedule, or the co-existence of All Five with its Co-Occupant on the Site. All Five shall immediately notify the District of all such disputes and shall negotiate in good faith with its Co-Occupant to resolve all such problems on a timely, cooperative and reasonable basis without incurring significant cost or expense to the District or All Five.

Subject to the District's obligations pursuant to the Agreement, the Agreement, the District reserves the right to make final decisions related to disputes on the Site related to shared use, and shall have the right to terminate All Five's use of the Site and Facilities as set forth in the Agreement. The District shall make all shared use decisions and enforce shared use terms and arrangements in a fair and objective manner as between all involved Parties.