

FACILITIES USE AGREEMENT
BETWEEN
CAMPBELL UNION SCHOOL DISTRICT
AND
ORION MONTESSORI SCHOOL

This Facilities Use Agreement ("Agreement") is made and entered into this 1st day of October, 2019 ("Effective Date"), by and between the CAMPBELL UNION SCHOOL DISTRICT, a public school district of the State of California ("District"), and Orion Montessori School, ("TENANT"), The TENANT and the District shall be individually referred to herein as a "Party" and collectively as the "Parties." This Agreement shall be enforceable only following execution by both Parties and ratification or approval by the governing boards of each of the Parties.

RECITALS

A. **WHEREAS**, the District is the owner of certain real property, and commonly described as Monroe Middle School, 1055 S. Monroe Street, San Jose, Santa Clara County, California (the "School Site"), which depicted in the Site Map as Exhibit A, attached to this Agreement and incorporated herein by reference; and

B. **WHEREAS**, the TENANT operates a private school known as the Orion Montessori School which provides the Montessori education for children from 2-12 years; and

C. **WHEREAS**, the Parties hereto agree that it is to their mutual benefit, and for the benefit of the citizenry of the District and other area families served by the TENANT, for the Parties to enter an agreement providing for the TENANT's use of a portion of the School Site for the operation of the private school, under the terms and conditions as set forth herein.

NOW, THEREFORE, in consideration of the covenants and conditions of this Agreement, including the Recitals hereof, which are incorporated herein by this reference, the Parties agree as follows:

1. Grant of Use of Facilities. The District grants to TENANT and TENANT accepts from District the use of certain facilities (hereinafter the "Facilities") located on a portion of the School Site for the operation of the private school. As used in this Agreement, "Facilities" means the following classrooms as described on the Site Map attached as Exhibit A:

- Use of Rooms 46, 47, 54, 55, 56, 57

2. Grant of Use of Portion of Grounds. The District hereby grants to TENANT and TENANT hereby further accepts from District the use of certain adjacent ground space ("Ground Space" and together with the Facilities, the "Property") located inside the fence line of Facilities located on the Site Map attached hereto as Exhibit A.

3. Permitted Uses.

- a. The Property is to be used only for the purpose of operating and maintaining the private school. No other uses shall be permitted without the prior written consent of the District.
- b. TENANT will need to apply for the proper licenses in order to operate their school.
- c. Any and all school fairs, carnivals, and similar activities sponsored by TENANT and held on the Property shall be conducted only after written approval by District obtained at least thirty (30) days prior to the event.
- d. TENANT shall maintain and restrict all use, operation, and activities that arise from this Agreement in compliance with all applicable City, County, and State laws.

4. Access to Property.

- a. TENANT, its officers, agents, employees, licensees, and invitees shall have a reasonable right of ingress and egress to and from the Property as necessary for its operation of the private school.
- b. TENANT shall not obstruct any sidewalks, entry passages, halls, or stairways and shall use the same only as passageways in accordance with the terms of this Agreement and all applicable laws, regulations, codes, and municipal ordinances.
- c. Because parking at the School Site is limited, Tenant cannot use any of School Site's parking.
- d. Usage of sport field, blacktop areas, and playground located on the School Site is not included in this agreement.
- e. Sport field, blacktop areas, and playground usage must be reserved by using the District Field Usage application process.
- f. At no time shall TENANT have sole or exclusive access to or use of the common areas at the School Site. TENANT shall have exclusive use only of any grant of use of Property. The District and its officers, agents, and employees shall have the right to enter the Property at reasonable times for the purpose of inspecting the same and making such alterations, repairs, or improvements to the Property as the District may deem necessary or desirable.

5. Prohibited Uses.

- a. Alcoholic beverages, unlawful drugs, tobacco and tobacco related products (vaping) shall not be possessed, used, served, consumed, or sold on the Property by any person.

- b. Vehicles, including but not limited to cars, trucks, campers, mobile homes, trailers, and/or portable buildings shall not be parked or stored on the Property for more than three (3) consecutive days, without the prior written consent of the District.
- c. No person shall engage in any gambling or other illegal activity on the Property.

6. Term of Agreement. The term of this Agreement shall be for a period of 21 months: eight months of preparation period and 13 months of the Property rental, commencing on October 1, 2019^t and ending on June 30, 2021. The standard annual agreement starts July 1st and will end on June 30th of the flowing year. TENANT must notify the District of their intent to renew the lease agreement by January 1 of each year.

7. Rent:

- a. There is a mandatory security deposit of \$14,225 due before October 1, 2019 when the preparation period begins.
- b. There will be a discounted monthly rent of \$6774 from October 1, 2019 through May 30 2020 during the anticipated preparation period.
- c. The full monthly rent will be \$14,225 from June 1, 2020 through June 30, 2021 while the Property is in full use.
- d. Rent is due on the 1st of the month. Rent can be delivered earlier; however, any late payments will incur an additional late fee charge of 5%.
- e. Unless terminated, the facilities use agreement will renew annually with a rent increase. The amount of increase will be either a 5% increase or determined by the consumer price index, whichever is greater.

8. Maintenance of the Property.

- a. TENANT acknowledges that the Property is in good repair and order at the commencement of the Agreement and further agrees that at the time of expiration or termination of this Agreement, the Property will be returned to the District in the same state of good repair and order, ordinary wear and tear excepted.
- b. TENANT will be responsible for the facility maintenance of any minor repairs. Minor maintenance and repairs of the Property are defined as any repair per occurrence that will be under \$5,000.
- c. The District shall provide for major repair and maintenance of buildings and grounds that would normally occur through operation of the Property. For the purposes of this Agreement, "major repairs and maintenance" shall mean any repairs to plumbing, heating, air conditioning, ventilating, electrical and lighting facilities and equipment, fixtures, interior and exterior walls,

ceilings, windows, doors and plate glass, roofs, foundations, blacktop areas, and grounds costing Five Thousand Dollars (\$5,000) or more per occurrence. All requests for major repairs and maintenance to the Property shall be submitted to the District for its written approval prior to the initiation of any work by TENANT, except as expressly stated herein.

- d. The repair expenses of vandalism and malicious mischief to the Property shall be at the cost of the Tenant
- e. Any misuse or abuse by TENANT of the District Property or contents thereof shall be repaired by TENANT

9. Custodial Obligations.

- a. TENANT shall, at its sole expense, provide custodial and grounds keeping services for the Property, which shall include, at a minimum, keeping all walkways and blacktop areas swept and clear of debris, the restrooms clean and odor free, rubbish deposited into dumpsters, and the entire Property free of litter.
- b. The TENANT shall designate in writing to the District an on-site representative of the TENANT who shall serve as liaison with the District and who shall be responsible for the day-to-day operations, maintenance, cleanliness, and general order at the Property.
- c. If District determines, in its sole and absolute discretion, that TENANT has failed to maintain the Property in a clean and safe condition, the District will notify the TENANT in writing of such failure, and shall include in such notice an itemized list of the deficiencies and the required manner and timeline for correcting each item. In the event that TENANT fails to correct the items listed by the District within the specified timeline, or another timeline, as mutually- agreed upon between the Parties, the District may make the corrections and invoice such costs to the TENANT, in accordance with the District's usual billing practices. Such costs shall include the cost of labor, materials, equipment, plus an administrative services fee of fifteen percent (15%). Payment for such costs will be made by TENANT within thirty (30) days of receipt of invoice.

10. Utilities. The District shall be responsible for providing water, gas, electric, and garbage services to the Property, until such time as the District may provide separate metering of water, gas and electric usage between the Property and the School Site. In the event that District provides separate metering, TENANT shall pay for those services to the Property. TENANT shall comply with all present and future water conservation programs required by federal, state or local laws.

Internet service can be provided by the District at the cost of \$125 per month.

11. Capital Improvements by TENANT.

- a. Prior to commencing any TENANT Improvements, or any other construction, improvements, or

alterations to the Property, the TENANT shall be responsible for obtaining the written approval of all final plans from the District and all applicable state and local agencies having jurisdiction over each TENANT Improvement, including but not limited to the Department of the State Architect ("DSA") and the planning and building departments of the City and County.

- b. All work performed on the Property shall be performed by an appropriately licensed contractor in compliance with all applicable state and local laws and regulations. Prior to commencing any work on any of the TENANT Improvements or any other construction, improvements, or alterations to the Property, TENANT shall obtain the written approval of the District, which approval shall not be unreasonably denied.
- c. The District shall have the right of access to all work sites on the Property at all times and shall have the right to inspect all work to ensure that it is performed in a manner consistent with all approvals and the quality is to the satisfaction of the District.
- d. TENANT shall be solely responsible for the costs of all TENANT Improvements, or any other construction, improvements, or alterations by TENANT to the Property.

12. Alterations to the Property.

- a. All additions, alterations, or improvements, including any and all fixtures, made to the Property by the TENANT are subject to prior review and approval by the District, which approval shall not be unreasonably withheld.
- b. All such additions, alterations, or improvements, including any and all fixtures, shall remain the property of the TENANT, who shall have the right to remove said additions, alterations, or improvements, including any and all fixtures, upon termination of this Agreement.
- c. The TENANT may, with the District's prior written approval; elect not to remove any or all additions, alterations, or improvements, including any and all fixtures, from the Property, in which case such additions, alterations, or improvements, including any and all fixtures, shall become the property of the District.

13. Mechanic's Liens.

- a. On any construction, repair, alteration, or improvements to the Property performed or initiated by the TENANT, the TENANT shall at all times indemnify and save the District harmless from all claims for labor or materials in connection with construction, repair, alteration, or improvements to the Property performed or initiated by TENANT and from the cost of defending against such claims, including attorney's fees. TENANT shall provide the District with at least ten (10) days written notice prior to commencement of any work on the Property, which could give rise to a mechanic's lien or stop notice. The District shall have the right to enter upon the Property for the purpose of posting Notices of Non-Responsibility.

- b. If a lien is imposed upon the Property as a result of any construction, repair, alteration, or improvements to the Property performed or initiated by the TENANT, the TENANT shall either:
 - 1) Record a valid release of lien; or
 - 2) Deposit sufficient cash with the District to cover the amount of the claim on the lien in question and authorize payment to the extent of said deposit to any subsequent judgment holder that may arise as a matter of public record from litigation with regard to lien holder claims; or
 - 3) Procure and record a bond in accordance with section 3143 of the Civil Code, which frees the Property from the claim of the lien from any action brought to foreclose the lien
- c. In the event that the TENANT fails to perform one of the above three options within fifteen (15) days after the filing of a lien, this Agreement shall be in default and shall be subject to termination. Failure of District to act in any way to advance or enforce its right to terminate the Agreement shall not be construed a waiver of District's right to do so at any future time.

14. Insurance.

- a. The District will obtain and maintain in full force during the term of this Agreement a policy or policies of property insurance for its buildings, its own fixtures and improvements on the School Site in an amount equal to 100% of its replacement cost. The TENANT shall obtain and maintain in full force during the term of this Agreement a policy or policies of insurance or self-insurance for all of the TENANT's personal property located on the Property equal to 100% of its replacement cost.
- b. TENANT shall maintain in full force throughout the term of this Agreement, at its own expense, a policy of comprehensive liability insurance, or equivalent self-insurance, satisfying all the requirements of the Use of District Facilities/Certificate of Insurance, and which will insure against liability for injury or death of persons and damage to the Property, arising from TENANT's use of the Property under this Agreement. The policy shall include coverage limits of not less than Two Million Dollars (\$2,000,000) per occurrence, for any one person injured or killed, and not less than Four Million Dollars (\$4,000,000) in the aggregate, and not less than Two Million Dollars (\$2,000,000) for property damage, and shall be maintained on an occurrence basis. The District shall be named as an additional insured on TENANT's comprehensive liability insurance policy, and a certificate of insurance shall be provided to the District on at least an annual basis, or upon any change to such policy. In addition to any other requirement, such insurance policy shall require a written thirty (30) day notice of cancellation to the District.

15. Indemnification.

- a. TENANT shall defend, indemnify, and hold harmless the District, its elected and appointed officials, officers, employees, agents, volunteers, and contractors from and against any and all claims, demands, causes of action, liabilities, losses, damages, or expenses of any kind or nature, including reasonable attorney's fees and costs, to the extent said claims, demands, causes of

action, liabilities, losses, damages, or expenses arise from TENANT' s intentional, negligent or willful act or omission related to this Agreement or use of the Property or other District facilities located on the School Site pursuant to this Agreement. This Section shall survive termination of the Agreement.

- b. The District shall defend, indemnify, and hold harmless the TENANT, its elected and appointed officials, officers, employees, agents, volunteers, and contractors from and against any and all claims, demands, causes of action, liabilities, losses, damages, or expenses of any kind or nature, including reasonable attorney's fees and costs, to the extent said claims, demands, causes of action, liabilities, losses, damages, or expenses arise from the District's intentional, negligent or willful act or omission related to this Agreement or use of the Property or other District facilities located on the School Site pursuant to this Agreement. This Section shall survive termination of the Agreement.

16. Taxes and Non-Use Payments.

- a. This Agreement may create a possessory interest which may be subject to the payment for property taxes levied on such interest. In the event that any tax or assessment whatsoever is levied on the Property or any possessory interest created by this Agreement, TENANT shall directly pay and discharge all taxes and assessments imposed by any authority, whether the same be assessed to the District or to TENANT. In the event that District pays any such taxes or assessments, TENANT shall be obligated to reimburse District within ten (10) days of demand for such reimbursement by District.
- b. If any non-use fee for the Property is imposed pursuant to the provisions of the Education Code, such fee shall be paid by TENANT.

17. Notices. Any notice which is required to be given under this Agreement or which either Party may desire to give to the other, shall be in writing, and may be personally delivered or given by depositing in the United States Postal Service certified mail, postage fully prepaid, to the addresses as stated herein below:

District:

Campbell Union School District
155 N. Third Street
Campbell CA 95008
Attention: Biling (Nelly) Yang

TENANT:

Orion Montessori School
1907 Bright Willow Circle
San Jose, 95131-3436
Attention: Shree Srinivas

18. Termination of Agreement. Either Party may terminate this Agreement at any time upon one hundred eighty (180) days' written notice to the other Party. Such termination automatically shall take effect on the 181st day following such notice, or on such later date as specified in the notice, or as the Parties may agree in writing. Upon termination of this Agreement for any reason, or at the expiration of the term hereof, TENANT shall remove all personal property from the Property and shall restore the

Property to the condition existing upon the Effective Date of this Agreement, excepting normal wear and tear.

Without the one hundred eighty days' notice, TENANT will be held liable for payment of the full term of the agreement.

19. Signage. TENANT shall not place any signage, advertisement, or notice on the School Site or on other District grounds without prior written consent of the District, which consent shall not be unreasonably withheld.

20. Actions to Enforce Agreement. In the event either Party brings an action against the other Party to enforce any of the terms of this Agreement or commences and judicial proceeding or action for the forfeiture of this Agreement and the possession of the Property, the prevailing Party shall be entitled to receive attorney's fees and costs from the other Party.

21. Compliance with District Rules and Regulations. TENANT shall be subject to such reasonable rules and regulations that may be adopted by the Governing Board of the Campbell Union School District from time to time that apply to the use of the Property.

22. Miscellaneous.

- a. This Agreement shall be governed by and interpreted under the laws of the State of California applicable to instruments, persons, transactions and subject matter which have legal contacts and relationships exclusively within the State of California. Any action or proceeding seeking any relief under or with respect to this Agreement shall be brought solely in the Superior Court of the State of California for Santa Clara County, subject to any transfer of venue as required by law.
- b. If any provision or any part of this Agreement is for any reason held to be invalid and/or unenforceable or contrary to public policy, law, statute, or ordinance by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby and shall remain valid and fully enforceable.
- c. Neither Party may assign or transfer any of its obligations, rights, or duties under this Agreement. Any such purported assignment or transfer shall be void, and shall constitute a breach of this Agreement.
- d. Each of the Parties acknowledges and agrees that this Agreement may be amended only by a writing signed by both the Parties and approved or ratified by the governing boards of both Parties.
- e. This Agreement constitutes the entire agreement between the Parties and there are no other promises or conditions in any other agreement whether oral or written with respect to TENANT's lease or use of the Property.

- f. The failure of either Party to enforce any provision of this Agreement will not be construed as a waiver or limitation of that Party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

Each of the Parties agrees to execute such further documents and take such further actions as may be reasonably necessary or appropriate to effectuate the terms of this Agreement.

- g. This Agreement may be executed in counterparts, each of which shall constitute an original of the Agreement. Electronic signature pages transmitted to either Party to this Agreement shall be deemed equivalent to original signatures on counterparts.
- h. Each of the persons signing this Agreement represents and warrants that such person has been duly authorized to sign this Agreement on behalf of the Party indicated, and each of the Parties by signing this Agreement warrants and represents that such Party is legally authorized and entitled to enter into this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date and year first written above.

CAMPBELL UNION SCHOOL DISTRICT

By:

Name: Shelly Viramontez

Title: Superintendent

Date:

ORION MONTESSORI SCHOOL

By:

Name:

Title:

Date:

