

AMENDED AND RESTATED FACILITY JOINT USE AGREEMENT
BETWEEN
MOUNTAIN VIEW WHISMAN SCHOOL DISTRICT
AND
GOOGLE INC.

This Amended and Restated Facility Joint Use Agreement ("Agreement") is entered as of this 22 day of February, 2017, by and between the Mountain View Whisman School District, hereinafter called "District," and Google Inc., hereinafter called "Facility User," referred to collectively as the Parties, for the use of classrooms and portables, located at 1625 San Luis Avenue, Mountain View, California, on the terms and conditions set forth hereafter.

RECITALS

WHEREAS, District owns that real property located at 1625 San Luis Avenue in the City of Mountain View, Santa Clara County, California commonly known as the Theuerkauf School site which is further described on Exhibit "A" attached hereto; and

WHEREAS, District and Facility User entered into that certain Facility Joint Use Agreement, dated December 2, 2004, as amended by that certain First Amendment dated September 8, 2006, that certain Second Amendment dated June 30, 2007, that certain Third Amendment dated July 1, 2008, and that certain Fourth Amendment dated July 1, 2013 (collectively, the "Original Joint Use Agreement"), wherein the Parties agreed to the joint use and lease of a portion of the Theuerkauf School Site; and

WHEREAS, the Parties desire to replace the Original Joint Use Agreement, and make other changes thereto, with this Agreement which hereby replaces all terms and conditions of the Original Joint Use Agreement with the new terms and conditions set forth herein, and the Original Joint Use Agreement shall henceforth be of no further force or effect; and

WHEREAS, Facility User acknowledges that, (i) District and the City of Mountain View have entered into an Agreement Between the City of Mountain View and the Mountain View School District, Santa Clara County, State of California for Joint Use of School Sites for Park and Recreation Purposes (hereinafter called the City Joint Use Agreement), attached hereto in Exhibit "E," for recreational facilities and fields located on the District owned land, (ii) District and the City of Mountain View have an interest in the continued public access to these facilities; and (iii) Facility User agrees to abide by the terms of the City Joint Use Agreement and Facility User agrees to cooperate with District and the City of Mountain View on Facility User's use of the recreational facilities and fields not specifically leased to Facility User; and

WHEREAS, Facility User desires to use District's approximately 6,336 square feet of buildings of the Theuerkauf School property not subject to the City Joint Use Agreement for the purpose of operating a private day care facility and District agrees for such premises to be so used by Facility User upon the terms and conditions set forth herein; and

WHEREAS, District, pursuant to section 17527(a) of the Education Code, is authorized “to enter into agreements to make vacant classrooms or other space in operating school buildings available for rent or lease to other school districts, educational agencies, except private educational institutions which maintain kindergarten or grades 1 to 2, inclusive, governmental units, nonprofit organizations, community agencies, professional agencies, commercial and noncommercial firms, corporations, partnerships, businesses, and individuals, including during normal school hours of the school is in session”; and

WHEREAS, District intends to utilize a portion of the School Site as an operating school building during the term of this Agreement; and

WHEREAS, District, pursuant to section 17529 of the Education Code, has determined that Facility User's use of the Premises will not (1) interfere with the educational programs or activities of any school or class conducted on the School Site, (2) unduly disrupt the residents in the surrounding neighborhood, or (3) jeopardize the safety of the children at the School Site;

WHEREAS, District, pursuant to section 17531, has determined that this Agreement is compatible with the educational purpose of the School Site;

NOW THEREFORE, in consideration of the covenants and agreements hereinafter set forth, District and Facility User agree as follows:

AGREEMENT

1. USE OF PROPERTY.

Upon commencement of this Agreement, District does hereby permit the Facility User to use a portion of the school site (the “Site”) located at 1625 San Luis Avenue, Mountain View, California, including the permanent structures and improvements indicated and those appurtenant grounds shown as the “Google” Premises in Exhibit “A” attached hereto and hereinafter referred to as “Premises,” to perform Facility User’s Activities as more fully described in Exhibit “B” attached hereto. Facility User shall have use of the Premises at all times to perform Facility User's Activities only, subject to mutually agreed upon modification by the Parties in writing, until the expiration date of this Agreement unless terminated sooner in accordance with the provisions in this Agreement. Portions of the Premises as identified on Exhibit “A” shall be subject to use by the public pursuant to the Civic Center Act, Education Code section 38131 et seq. upon the mutual agreement of the Parties.

2. CONDITION OF PREMISES.

The Premises are provided to Facility User on an “AS IS” basis. Except as expressly described in Section 11 below, District shall not be required to make or construct any alterations including structural changes, additions or improvements to the Premises. By entry and taking possession of the Premises pursuant to this Agreement, Facility User accepts the Premises in “AS IS” condition. Facility User 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 the Facility

User's business. Any agreements, warranties or representations not expressly contained herein shall in no way bind either District or Facility User, and District and Facility User expressly waive all claims for damages by reason of any statement, representation, warranty, promise or agreement, if any, not contained in this Agreement. Upon surrender of the Premises, Facility User shall deliver the Premises in the same condition as upon entry, normal wear and tear and approved alterations and improvements excepted.

3. TITLE TO SCHOOL SITE.

The Parties acknowledge that title to the School Site is held by District.

4. TERM.

A. The term of this Agreement ("Term") shall be for ten (10) years. The commencement date shall be July 1, 2018, and, unless sooner terminated under any provision hereof, this Agreement shall end on June 30, 2028.

B. District Option to Terminate.

1. Basic Termination Right. The District shall have the right, at any time during the Term, to terminate this Agreement by written notice to Facility User delivered at least two (2) years prior to the date of early termination.
2. Additional Termination Right. In addition to the termination right described in Section 4.B.1 above, if District determines either
 - (a) that it has a need for the Premises or a portion thereof to house District students; or
 - (b) that the repair cost of a structural element of the Premises for which District is responsible as described in Section 11 below, will exceed \$175,000 (and provided that Facility User is unwilling to bear the cost of such repair to the extent the cost exceeds \$175,000);

then District shall have the right to terminate this Agreement with respect to the portion of the Premises that is (a) required for District's use or (b) the subject of such required repairs, as the case may be. However, if District so terminates this Agreement with respect to a portion of the Premises, Facility User will have the right to terminate this Agreement with respect to the remainder of the Premises, effective concurrently with District's partial termination, if Facility User determines that the use of the remaining portion of the Premises will not be suitable for Facility User's needs. District's termination will be exercised by written notice delivered to Facility User at least six (6) months prior to the date of early termination. Facility User shall advise District of its intention to terminate the

Agreement with respect to the remainder of the Premises by written notice to District within thirty (30) days of Facility User's receipt of District's early termination notice. No termination fee will be payable. In the event of a termination with respect to a portion of the Premises (and provided Facility User does not elect to terminate this Agreement with respect to the remainder of the Premises as described above), District and Facility User will seek to amend this Agreement to provide for Facility User's continuing use of the remaining portion of the Premises.

3. Upon the date of early termination pursuant to the applicable notice period referenced above, Facility User's rights in the Premises shall terminate, Facility User shall surrender and vacate the Premises in the condition required under this Agreement, and District may re-enter and take possession of the Premises and all the remaining improvements or property and eject Facility User or any of Facility User's subtenants, assignees, or other person or persons claiming any right under or through Facility User or eject some and not others or eject none. This Agreement may also be terminated by a judgment specifically providing for termination. Any termination under this Section shall not release Facility User from the payment of any sum then due District or from any claim for damages or rent previously accrued or then accruing against Facility User.

C. Facility User Termination Right. Similarly, Facility User shall have the right, at any time during the Term, to terminate this Agreement by written notice delivered to District at least two (2) years prior to the date of early termination. No termination fee will be payable. Upon termination of this Agreement, Facility User shall be responsible to return the Premises to District in the condition required by the final sentence of Section 2 above.

D. Extension. If neither party exercises its termination right described above in clauses 4.B. and 4.C., Facility User shall not have a right to extend the Term; provided, however, that if District wishes to continue leasing all or a portion of the Premises (or potentially a greater portion of the Site) following the expiration of the Term and can comply with Education Code sections 17527, 17529 and 17531 with regard to continuing a Joint Use Agreement with Facility User, Facility User shall have the first right of refusal to lease any such space. In such event, the District shall notify Facility User of the District's desire to lease all or a portion of the Site, and Facility User will notify the District as to whether Facility User is interested in leasing such space following the expiration of the Term. If Facility User notifies the District of Facility User's interest in leasing such space, the parties shall, promptly and in good faith, meet and confer in an effort to reach mutual written agreement as to the terms of any such proposed extension of this Agreement with respect to the subject space.

5. CHARGES.

A. The annual payment for Facility User's right to occupy the Premises during the Term shall be in the amounts set forth below for Years 1 and 2, paid in equal monthly installments

and subject to annual increases for succeeding years as described below ("Payment"). Facility User shall pay promptly to District, the monthly Payment on the first day of each month in advance during the Term, without deduction, setoff, prior notice or demand. For example, Payment for the month of September 2018 shall be due on September 1, 2018.

Period	Annual Payment	Monthly Payment
Year 1 (2018 – 2019)	\$424,259	\$35,354.92
Year 2 (2019 - 2020)	\$453,911	\$37,825.92

B. The annual Payment and corresponding monthly installments due under this Agreement shall increase annually by three per cent (3%) over the previous year's Payment. This annual increase shall be first effective commencing in Year 3, on July 1, 2020, and following annual increases shall be effective on July 1 of each succeeding year.

C. Facility User acknowledges that late payment by Facility User to District of the monthly Payment and other sums due hereunder will cause District to incur costs not contemplated by this Agreement, the exact amount of which will be extremely difficult to ascertain. Accordingly, if any installment of Payment or any other sum due from Facility User shall not be received by District by 4:00 p.m. within ten (10) days after such amount shall be due, Facility User shall pay to District, as Additional Payment, a late charge equal to five percent (5%) of such overdue amount or the maximum amount allowed by law, whichever is less; provided that Facility User will be entitled to notice of past-due payment prior to the commencement of such ten (10) day period and imposition of such late charge with respect to the first (1st) late payment in any twelve (12) month period. 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 Facility User. Acceptance of such late charge by District shall in no event constitute a waiver of Facility User's default with respect to such overdue amount, nor prevent District from exercising any of its other rights and remedies granted hereunder.

D. Taxes, late charges, costs and expenses which Facility User is required to pay hereunder, together with all interest and penalties that may accrue thereon in the event of Facility User'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 Facility User or failure on Facility User's part to comply with the terms of this Agreement, shall be deemed to be additional Payment ("Additional Payment") and, in the event of nonpayment by Facility User, District shall have all of the rights and remedies with respect thereto as District has for the nonpayment of the monthly Payment.

6. SECURITY DEPOSIT.

A. Upon execution of this Agreement, Facility User will have deposited with District Nine Thousand Six Hundred Thirty Dollars (\$9,630) which is hereafter referred to as "Security Deposit."

B. Said Security Deposit shall secure the timely, full and faithful performance by

Facility User of each term, covenant and condition of this Agreement. If, at any time, Facility User 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 Agreement, District may, but shall not be obligated to, without waiving or releasing Facility User from any obligation under this Agreement, 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 Facility User's behalf; or, (c) to compensate District for any loss, damage, attorneys' fees or expense sustained by District due to Facility User's default. In such event, Facility User shall, within ten (10) business 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 Facility User comply with all the terms, covenants, and conditions of this Agreement and at the end of the term of this Agreement leave the Premises in the condition required by this Agreement, then said Security Deposit, less any sums owing to District, shall be returned to Facility User within thirty (30) days after the termination of this Agreement and vacation of the Premises by Facility User.

7. USE OF PREMISES.

A. Facility User shall use the Premises solely for its Activities during the hours of 7:00 a.m. to 6:00 p.m., Monday through Friday, except on days that the School Site is closed, and during such times Facility User will have exclusive use of the Premises (subject to District's rights of entry described herein or as otherwise mutually agreed by the Parties). Facility User shall be responsible for obtaining any use permits, licenses or other permission for its Activities from the City of Mountain View or other governmental agencies having jurisdiction. Facility User represents that it is qualified to administer and operate its Activities. Facility User shall be solely responsible for the administration and operation of its Activities, including the hiring of all employees. Facility User 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 Facility User's Activities on the Premises.

B. Fingerprinting and Criminal Background Investigation. Facility User 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.). Facility User 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 Facility User activity and prior to permitting contact with any pupils.

C. Unusual use of the Premises, i.e., fairs, carnivals, etc., shall be with the written approval of District. For purposes of this section, "unusual use" means any events not consistent with normal operations of Facility User's Activities. Request for approval for unusual use shall be submitted in writing 30 days prior to the event's occurrence.

D. The sale or serving of alcoholic beverages shall not be permitted on the Premises

and Facility User shall comply with the District-wide policy prohibiting the use of tobacco products on the Premises at all times.

E. Facility User shall not permit anything to be done in or about the Premises, which will increase the existing rate of insurance upon the Premises or cause the cancellation of any insurance policy covering said Premises.

F. Access to Facilities. Facility User, its agents, employees, licensees and invitees, shall have all rights of ingress and egress to and from the Premises over such other portions of District's property at the school as may reasonably be necessary for the use of the facilities. Facility User acknowledges that the Site is a public school site and that the adjacent fields are under a shared City Joint Use Agreement with the City of Mountain View for community sports activities. Use of the Premises under this Agreement shall not interfere with the operation of the field activities. The scheduling of arrival and drop off times and "special events", such as open houses, shall be coordinated with the District and field use calendar to prevent interference with planned activities.

8. PERMITS AND LICENSES.

Facility User shall be solely responsible for obtaining all necessary permits or licenses for Facility User's Activities.

9. SECURITY AND SUPERVISION.

The school building administrator or CFO is authorized to require appropriate security and supervision of all activities held in District facilities. District will retain the security alarm system at the Site and bill Facility User for its prorated share of monthly security fees unless otherwise negotiated. Facility User agrees to cooperate with District in maintaining and responding to said security system.

10. OTHER CHARGES/UTILITIES.

District shall provide utilities to the Premises including water, gas, electricity, refuse, sewer, and fire alarm at no additional cost to Facility User. Up to three bags of trash may be deposited daily in the school dumpster by Facility User. Custodial services, property taxes, and Contents & Liability Insurance are the responsibility of Facility User.

11. MAINTENANCE AND REPAIR.

A. Facility User shall maintain, at its cost, the Premises in a good condition consistent with the condition existing at the time of delivery. Facility User acknowledges and accepts that the Premises are provided in "AS IS" condition. District shall be responsible for the major maintenance of the building, i.e., roof, boilers, lighting or heating systems, sewers, parking areas and grounds, unless a state of disrepair is due to willful or negligent actions of Facility User, its agents or clients, in which case subject to District's insurance coverage, necessary repairs or replacement shall be charged to Facility User on a time and materials basis. Notwithstanding the

foregoing to the contrary, if District fails to commence any major maintenance of any portion of the Premises within ten (10) days following request by Facility User that such repair be made, Facility User will have the right to perform the repairs, in which event District will reimburse Facility User for the reasonable cost of the repairs.

B. Re-keying shall be the responsibility of the District. District reserves the right to key control and issuing duplicate keys. A reasonable cost for duplicate keys will be assessed the Facility User. Portable keys must remain in the possession of the authorized Facility User representative as approved by the CFO. Buildings shall not be left unattended, and shall be opened and closed and locked by the authorized representative.

C. District shall have no maintenance or repair obligations with respect to the Premises except as expressly provided in this section. Facility User hereby expressly waives the provisions of Section 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.

D. District makes no representations or warranties for the structure of the building(s) as they exist. As described in Section 4.B.2 above, District may terminate this Agreement if the repair cost for structural elements exceeds One Hundred Seventy-Five Thousand Dollars (\$175,000) per incident; provided, however, that if District elects not to perform a repair which cost exceeds One Hundred Seventy-Five Thousand Dollars (\$175,000), then Facility User may elect to remain in possession of the Premises and pay the cost of the repair to the extent such cost exceeds One Hundred Seventy-Five Thousand Dollars (\$175,000), in which event District will not have the right to terminate this Agreement. If Facility User's quiet enjoyment and use of the Premises is reduced, Payment may be changed through mutual agreement of the parties or Facility User may elect to terminate this Agreement. As used in this Agreement, the term "structural elements of a building" is defined as and shall be limited to the foundation, footings, floor slab but not flooring, structural walls excluding glass and doors, and the roof including roof membrane, including skylights. Plumbing, electrical, and heating systems shall be considered structural elements of the building.

12. ALTERATIONS, ADDITIONS, AND IMPROVEMENTS.

A. No structures, improvements, alterations or facilities, including painting, ("Facility User's Facilities" or "Improvements") shall be constructed, erected, altered or made on or within the Premises without the prior written consent of District (which will not be unreasonably withheld, conditioned or delayed) and without full compliance with all provisions of this Agreement including, without limitation, Exhibit "C" (Terms and Conditions for Facility User Improvements). Facility User's proposed Improvements shall be shown to the District to be necessary to the operation of Facility User's business and shall be subject to prior local site, zoning, design review and other required approvals in addition to prior District approval. Facility User shall obtain any and all necessary permits, including approval from the Division of the State Architect (DSA), which shall be required by statute, law, ordinance or regulation of any agency having legal jurisdiction, prior to any construction of improvements or alterations. Any conditions relating to the manner, method, design and construction of said structures, improvements or facilities fixed by District shall be conditions hereof as though originally stated herein. All

Improvements constructed by Facility User within the Premises shall be constructed in strict compliance with detailed plans and specifications approved by District.

B. Facility User shall, prior to construction, major repair, renovation or demolition of any Improvements, obtain the prior written consent of District and the Division of the State Architect (DSA) of the final plans, specifications and schedule for completion thereof before Facility User commences any such Improvements. District and Facility User recognize that such approvals may be completed in phases, such that Facility User initially requests conceptual approval and, if approved by District, then proceeds to draw the plans and specifications. If District approves the Improvements then Facility User must proceed to obtain the Division of the State Architect's, or its successor's approval. Facility User agrees to deliver DSA's written approval to District within 10 days after Facility User's receipt. Facility User agrees not to proceed with any construction of Improvements until Facility User has obtained District's and DSA's written approvals. As a condition of such approval, District may require that Facility User agree to remove certain Improvements and restore the Premises to its original condition upon expiration or earlier termination of this Agreement, and/or provide District with adequate security for such removal. Facility User to the satisfaction of District shall maintain all Improvements of any kind, which may be erected or installed by the Facility User, in good condition and substantial repair.

C. Facility User shall at all times indemnify and save District harmless from all claims for labor or materials in connection with construction, repair, alteration, or installation of structures, improvements, equipment or facilities within the Premises, and from the cost of defending against such claims, including attorneys' fees. Facility User shall provide District with at least 15 days' written notice prior to commencement of any work which could give rise to a mechanic's lien or stop notice.

D. All buildings, improvements, and facilities, exclusive of trade fixtures, constructed or placed within the Premises by Facility User must, upon completion, be free and clear of all liens, claims or liability for labor or material and at District's option shall become the property of District at the expiration of this Agreement or upon earlier termination thereof. District retains the right to require Facility User, at Facility User's cost, to remove all Facility User's improvements located on the Premises at the expiration or termination of this Agreement.

13. CASUALTY DAMAGE.

A. In the event that any portion of the Premises are destroyed or damaged by an uninsured peril which repair cost would be in excess of the dollar amount named in Section 11 B, Maintenance and Repairs, District or Facility User may, upon written notice to the other, given within thirty (30) days after the occurrence of such damage or destruction, elect to terminate this Agreement; provided, however, that either party may, within thirty (30) days after receipt of such notice, elect to make the required repairs and/or restoration, in which event this Agreement 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. If District elects to make the required repairs, District shall do so at District's sole cost and expense in conformance with Section 11 Maintenance and Repairs of this Agreement. If Facility User elects to make the required repairs, Facility User shall do so at Facility User's sole cost and expense. Notwithstanding whichever party

elects to make the repairs, a reasonable repair or restoration period shall be determined by an architect or contractor selected by District and approved by Facility User such approval not to be unreasonably withheld. Facility User's Payment may be prorated during the "repair" period. Such pro-ration shall be based upon the portion of the Premises that remain habitable and usable by Facility User. If Facility User's quiet enjoyment of the habitable portion of the Premises is reduced, the Payment may be changed through mutual agreement of the parties.

B. 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 Facility User may, upon written notice, given to the other within thirty (30) days after the occurrence of such damage or destruction, elect to terminate this Agreement. 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, Facility User may terminate this Agreement 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. 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 Facility User 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, Facility User may, within thirty (30) days of receipt of District's notice, elect to terminate this Agreement by giving written notice to District of such election, whereupon the Agreement 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 Facility User 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 Facility User's trade fixtures, equipment, merchandise, or any improvements, alterations, or additions made by Facility User to the Premises.

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

14. RIGHT OF INSPECTION.

District and/or its agents or employees shall have the right to enter upon the Premises at all reasonable times to inspect the same or to access the Premises for maintenance purposes and to post reasonable signs or notices to protect the right of the District. District shall provide Facility

User written notice in advance of such intended entry when feasible to do so.

15. INDEMNIFICATION.

Facility User shall indemnify, defend and hold harmless District, its trustees, employees, consultants and agents from and against any and all third-party claims, suits, verdicts, judgments, costs and liability of any nature or kind, including attorneys' fees, arising from or in any way connected with the conduct of Facility User's business or operations or from any activity, work or things done, permitted or suffered by Facility User, its officers, agents, contractors, or employees in or about the Premises or elsewhere including from and against any damages, injury or death of or to any person or the property of any person; and from and against any and all claims, costs and liability, including attorneys' fees, arising from a breach or default in the performance of any obligation on Facility User's part to be performed under the terms of this Agreement or arising from any negligence of Facility User and from any and all costs, attorneys' fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon ("Claims") unless such Claims are caused solely by the negligence or intentional acts of District or District's employees, contractors, consultants or agents; and if any Claims be brought against District, Facility User shall defend the same at Facility User's expense, provided that District promptly notifies Facility User of any such claim, judgment or proceeding in writing and tenders it to Facility User. District agrees to cooperate with Facility User as may be reasonably necessary in settlement or defense of any such claim, judgment or proceeding.

16. INSURANCE.

A. Insurance is to be placed by Facility User with insurers subject to the approval of District, such approval not to be unreasonably withheld. Facility User shall furnish District with the original certificates and amendatory endorsements effecting coverage required.

B. Facility User shall, at Facility User's expense, obtain and keep in force at all times during the term of this Agreement a policy of commercial general liability insurance and a comprehensive auto liability policy insuring against claims and liabilities arising out of the operation, condition, use, or occupancy of the Premises and all areas appurtenant thereto, including parking areas. Facility User's comprehensive auto liability policy shall insure all vehicle(s), whether hired, owned or non-owned. Facility User'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 Two Million dollars (\$2,000,000) for bodily injury or death and property damage as a result of any one occurrence and a Two Million dollar (\$2,000,000) general aggregate policy limit. In addition, Facility User shall obtain a products/completed operations aggregate policy in the amount of Two Million dollars (\$2,000,000). Prior to occupancy by Facility User, Facility User 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. Include a separate endorsement, naming District as an additional insured;
2. State the coverage is primary and any coverage by District is in excess thereto;

3. Contain a cross liability provision;

At least ten (10) days prior to the expiration of each certificate and every subsequent certificate, Facility User shall deliver to District a new certificate of insurance consistent with all of the terms and conditions required in connections with the original certificate of insurance as described above.

C. The procuring of such required policy or policies of insurance shall not be construed to limit Facility User's liability hereunder nor to fulfill the indemnification provision and requirements of this Agreement. Notwithstanding said policy or policies of insurance, Facility User shall be obligated for the full and total amount of damage, injury, or loss caused by negligence or neglect connected with this Agreement or with use or occupancy of the Premises.

D. During the term of this Agreement, District shall maintain at its cost a policy of standard fire insurance limited to the value of the buildings and improvements located on the Site as of the date of delivery of Premises. In the event of loss or damage to the Site, 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.

E. District's insurance for contents (personal property) shall be to the extent of the District's interest. Facility User shall be responsible for procuring insurance contents (personal property) belonging to it. Facility User acknowledges that the insurance to be maintained by District on the Premises will not insure any of Facility User's property or Improvements made by Facility User.

F. During the term of this Agreement, Facility User shall comply with all provisions of law applicable to Facility User with respect to obtaining and maintaining workers' compensation insurance. Prior to the commencement and any renewal of this Agreement and Facility User's occupancy of the Premises, Facility User shall provide District, as evidence of this required coverage, a certificate in a form satisfactory to District on or before the commencement or renewal date, providing that insurance coverage shall not be canceled or reduced without thirty (30) days prior written notice to District.

17. ASSIGNMENT, SUBLETTING AND SUBCONTRACTING.

Facility User shall not voluntarily or by operation of law assign, license, transfer, mortgage, sublet or otherwise encumber all or any part of Facility User's interest, rights, duties, or privileges in this Agreement or in the Premises without obtaining the prior written consent of District in each instance, and any attempt to do so without such consent being first had and obtained shall be wholly void and, at the option of District, shall immediately terminate this Agreement; provided, however, that District shall not unreasonably withhold, condition or delay its consent. Notwithstanding the

foregoing, no assignment which violates the use provisions of this Agreement will be approved. No subcontracting, subletting or assignment, even with consent of District, shall relieve Facility User of its obligation to make payments and to perform all of the other obligations to be performed by Facility User hereunder. The acceptance of payment by District from any other person shall not be deemed to be a waiver by District of any provisions of this Agreement or to be a consent of any assignment, subletting, subcontracting or other transfer. Consent to one assignment, subletting, subcontracting, or other transfer shall not be deemed to constitute consent to any subsequent assignment, subletting, subcontracting or other transfer. Notwithstanding the foregoing, Facility User may assign or sublet the Premises, or any part thereof, to any entity controlling Facility User, controlled by Facility User or under common control with Facility User without the prior written consent of District.

18. TAXES AND ASSESSMENTS.

Should any possessory interest tax, other personal property or real property tax, or assessment whatsoever be assessed against the District as a result of this Agreement, the Facility User agrees to and shall pay all such foregoing taxes and assessments and charges not less than twenty (20) days prior to the date of delinquency thereof and give written notice of such payment to the District within five (5) days after such payment is made.

19. ACTION AGAINST FACILITY USER.

In the event either party brings an action against the other to enforce any of the terms hereof or commences a summary action under the Unlawful Detainer Act of the State of California for the forfeiture of this Agreement and the possession of said Premises, the prevailing party shall be entitled to receive such attorney's fees and expenses from the other party as the Court may deem reasonable.

20. BANKRUPTCY OR INSOLVENCY.

To the extent permitted by law, this Agreement, at the option of District, shall immediately cease and terminate upon the happening of any of the following events:

A. The filing of a petition for any proceeding under the Bankruptcy Act or any amendment thereto by Facility User or any person against Facility User.

B. A finding or judgment of insolvency of Facility User.

C. An assignment for the benefit of creditors by Facility User.

D. The levying of a writ of execution on the business of Facility User or on the assets of Facility User located on the Premises, which is not discharged within five (5) days after the date of said levying.

E. The appointment of a receiver to take possession of the Premises or assets of Facility User.

F. The failure of the Facility User to obtain insurance coverage in the amount specified and/or the cancellation of the Facility User's insurance coverage as specified in 11 above.

21. DEFAULT.

Facility User will be in default under this Agreement if (i) Facility User fails to make any Payment or Additional Payment within ten (10) days after notice from District that the same is past due or (ii) Facility User fails to comply with any other provisions of this Agreement within thirty (30) days following notice from District.

If Facility User should become in default under this Agreement, District, at its own option and without notice:

A. May terminate this Agreement, take possession of the Premises and relet the Premises at any payment obtainable, recovering from Facility User in successive actions or a single action any deficit between the payment received or to be received and the payment provided to be paid under this Agreement, plus all expenses, including attorney's fees incurred in the taking of possession and reletting; or

B. Without attempting to relet the Premises and with or without terminating this Agreement, may:

1. Sue at regular or irregular intervals and in successive suits, to recover unpaid installments of payment,
2. Bring a single action to recover the unpaid payment for the remaining term of this Agreement.
3. Sue for general and special damages, but expressly excluding consequential damages.

If District should take possession of the Premises under the provisions of this paragraph or at the end of the term, District may remove to any place of storage or any dumping ground, at Facility User's risk and expense without incurring any responsibility to District for loss, damage or theft, all property in or about the Agreement belonging to or in the custody of Facility User. The remedies provided in this paragraph are cumulative and may be exercised simultaneously with, in addition to or independently of, any other remedies provided to District by laws of the State of California.

22. SIGNS.

Facility User shall at Facility User's cost have the right and entitlement to place Facility User's signs on the Premises, and otherwise to advertise its services, provided Facility User obtains the approval and consent of District. The approval and consent shall not be unreasonably withheld. Any signs shall be at Facility User's cost and in compliance with the local ordinances pertaining

thereto. In connection with the placement of such signs, District agrees to cooperate with Facility User in obtaining any governmental permits that may be necessary. Throughout the Term of this Agreement Facility User shall, at its sole cost and expense, maintain the signage and all appurtenances in good condition and repair. At the termination of this Agreement, Facility User shall remove any signs that it has placed on the School Site in which the Premises are located, and shall repair any damage caused by the installation or removal of those signs.

23. NOTICES.

All notices or demands of any kind required or desired to be given by District or Facility User hereunder shall be in writing and shall be deemed delivered five (5) days after depositing the notice or demand in the United State mail, certified or registered, postage prepaid, addressed to the District or Facility User, respectively, at the address set forth after their signatures at the end of this Agreement.

24. CERTAIN RIGHTS RESERVED TO DISTRICT.

District reserves the following rights, exercisable without liability to Facility User for (a) damage or injury to property, person or business, (b) causing an actual or constructive eviction from the Premises, or (c) disturbing Facility User's use or possession of the Premises:

A. To have pass keys to the Premises and all doors within the Premises, excluding Facility User's vaults and safes.

B. At any time during the term, and on reasonable prior notice to Facility User, to inspect the Premises and during the last six (6) months of the term, to show the Premises to prospective tenants or to others having an interest in the property.

C. Following reasonable prior notice to Facility User, to enter the Premises for the purposes of making inspections, repairs, alterations, additions or improvements to the Premises (including, without limitation, checking, calibrating, adjusting or balancing controls and other parts of the HVAC system, security system or fire alarm system), and to take all steps as may be necessary or desirable for the safety, protection, protection, maintenance or preservation of the Premises, or as may be necessary or desirable, for the operation or improvement of the property, or as may be necessary or desirable for the operation or improvement of the buildings or in order to comply with laws, orders or requirements of governmental or other authority. District agrees to use its best efforts (except in an emergency) to minimize interference with Facility User's business in the Premises in the course of any such entry.

25. JOINT AND SEVERAL LIABILITY.

If Facility User is more than one person or entity, each such person or entity shall be jointly and severally liable for the obligations of Facility User hereunder.

26. INDEPENDENT CONTRACTOR 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.

27. 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.

28. 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 Santa Clara County, California.

29. COMPLIANCE WITH ALL LAWS.

A. Except for District's maintenance obligations hereunder, Facility User shall at Facility User's expense comply with all requirements of all governmental authorities, in force either now or in the future, affecting the Premises, and shall faithfully observe in Facility User's use of the Premises all laws, regulations and ordinances of these authorities, in force either now or in the future including, without limitation, all applicable federal, state and local laws, regulations, and ordinances pertaining to air and water quality, hazardous material, waste disposal, air emission and other environmental matters (including the California Environmental Quality Act ("CEQA") and its implementing regulations in its use of the Premises), and all District policies, rules and regulations. The local agency with jurisdiction over Facility User's use of the Premises shall be the lead agency for all CEQA matters related to Facility User's use of the Premises.

B. The judgment of a court of competent jurisdiction, or Facility User's admission in an action or a proceeding against Facility User, whether the District be a party to it or not, that Facility User has violated any law or regulation or ordinance in Facility User's use of the Premises shall be considered conclusive evidence of that fact as between the District and Facility User. If Facility User fails to comply with any such law, regulation or ordinance, the District reserves the right to take necessary remedial measures at Facility User's expense, for which Facility User agrees to reimburse the District on demand.

C. Facility User shall not cause or permit any Hazardous Material to be generated, brought onto, used, stored, or disposed of in or about the Premises and any improvements by Facility User or its agents, employees, contractors, subtenants, or invitees, except for limited quantities of standard office, classroom and janitorial supplies (which shall be used and stored in strict compliance with Environmental Laws). Facility User shall comply with all Environmental Laws. 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 "hazardous waste" pursuant to section (14) of the federal Resource Conservation and Recovery Act, 42 U.S.C. 6901 et. seq. (42 U.S.C.6903), or (iii) defined as a "hazardous substance" pursuant to section 10 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et. seq. (42 U.S.C. 9601). As used herein, the term "Hazardous Materials Law" shall mean any statute, law, ordinance, or regulation of any governmental body or agency (including the U.S. Environmental Protection Agency, the California Regional Water Quality Control Board, and the California Department of Health Services) which regulates the use, storage, release or disposal of any Hazardous Material.

30. COOPERATION WITH OTHER OCCUPANTS OF THE PROPERTY.

It is understood and recognized by Facility User that the School Site, of which the Premises is a part, will be used by other parties, including District and City of Mountain View, and Facility User shall cooperate with the other parties in reaching amicable arrangements concerning such matters as use of the parking areas, playgrounds, policing of common areas, custodial services, and security measures. Facility User agrees to promptly respond to concerns relating to use of the Premises expressed by District, City of Mountain View, or neighbors of the School Site.

31. DISCRIMINATION.

Facility User agrees not to discriminate against anyone on any basis protected under California and/or Federal law.

32. 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.

33. 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.

34. COUNTERPARTS.

This Agreement and all amendments and supplements to it may be executed by the parties in counterparts, and all counterparts together shall be construed as one document and an original copy.

35. 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.

36. 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.


37. INCORPORATION OF RECITALS AND EXHIBITS.

The Recitals and each Exhibit attached hereto are hereby incorporated herein by reference.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the District and Facility User have executed this Agreement on this 22 Day of February, 2017.

DISTRICT:


Ayindé Rudolph Ed.D.
Superintendent
Mountain View Whisman School District

FACILITY USER:


David Radcliffe
VP Real Estate
Google Inc.



Addresses for notices:

Superintendent
Mountain View Whisman School District
750-A San Pierre Way
Mountain View, CA 94043
Phone: 650-526-3552

GOOGLE INC.
1600 Amphitheatre Parkway
Mountain View, California 94043
Attention: Lease Administration

with a copy to:

GOOGLE INC.
1600 Amphitheatre Parkway
Mountain View, California 94043
Attention: Legal Department / RE Matters



Exhibits

Exhibit A Description of Premises and Site Map
Exhibit B Description of Facility User's Activities
Exhibit C Terms and Conditions for Facility User Improvements
Exhibit D Site Service Contracts
Exhibit E City Joint Use Agreement

IN WITNESS WHEREOF, the District and Facility User have executed this Agreement on this ____ Day of _____, 20__.

DISTRICT:



Ayindé Rudolph Ed.D.
Superintendent
Mountain View Whisman School District

FACILITY USER:

David Radcliffe
VP Real Estate
Google Inc.

Addresses for notices:

Superintendent
Mountain View Whisman School District
750-A San Pierre Way
Mountain View, CA 94043
Phone: 650-526-3552

GOOGLE INC.
1600 Amphitheatre Parkway
Mountain View, California 94043
Attention: Lease Administration

with a copy to:

GOOGLE INC.
1600 Amphitheatre Parkway
Mountain View, California 94043
Attention: Legal Department / RE Matters

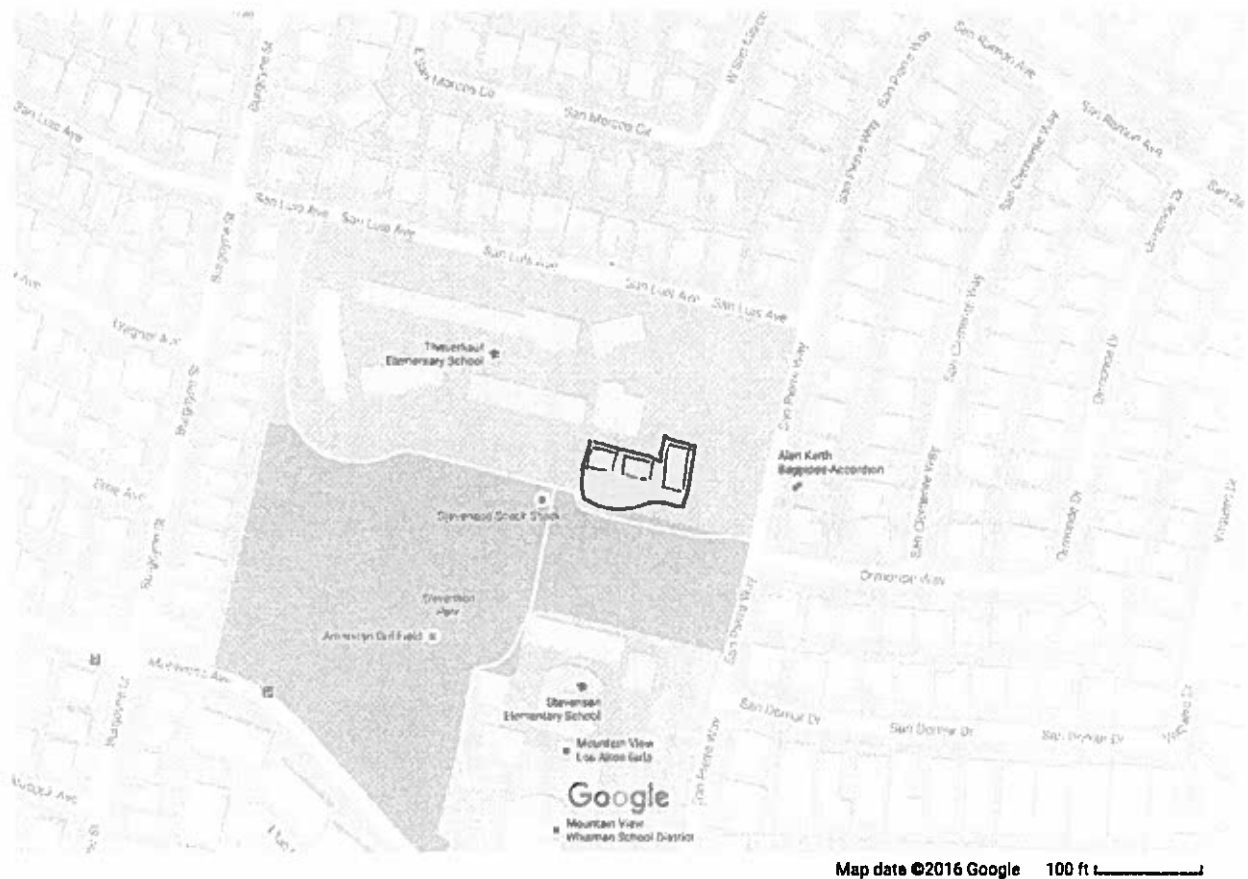
Exhibits

- Exhibit A Description of Premises and Site Map
- Exhibit B Description of Facility User's Activities
- Exhibit C Terms and Conditions for Facility User Improvements
- Exhibit D Site Service Contracts
- Exhibit E City Joint Use Agreement

EXHIBIT “A”

Description of Premises and Site Map

Google Maps Theuerkauf - Google Property Lease (three buildings plus yard space)



The leased Premises include three (3) portable buildings plus outdoor space for a total of 6,336 square feet. The terms of this Agreement do not change the space originally provided for by the Original Joint Use Agreement.

EXHIBIT “B”

Description of Facility User's Activities

The “Activities” for which Facility User is permitted to use the Premises are limited to the following activities only, pursuant to Education Code Section 17458. Any additional activities shall only be permitted with the prior express written approval and consent of the District.

1. Operation of child care and development services including extended day care.
2. Administrative functions directly-related to the operation of child care and development services including extended day care.
3. Other child care programs (summer day camps) as reasonably deemed appropriate or desirable by Facility User.

EXHIBIT "C"

Terms and Conditions for Facility User Improvements

If Facility User constructs or causes to be constructed on the Premises any improvements ("Facility User's Facilities" or "Improvements"), it must receive express prior written consent from the District and comply with all provisions of the Agreement including, without limitation, the following:

1. **Permits and Approvals.** Facility User shall be solely responsible for obtaining all necessary state and local permits and approvals prior to constructing and installing the Improvements on the Premises, including, without limitation, all permits and approvals required by the City of Mountain View, the County of Santa Clara, and the State of California and their subdivisions including, if applicable, the Division of the State Architect ("DSA"). Facility User shall provide copies of the permits and approvals to District prior to constructing and installing the Improvements on the Premises. The District shall cooperate with the Facility User and take all reasonable actions necessary to assist the Facility User in obtaining all permits and approvals.
2. **Design of Improvements.** Facility User shall prepare complete plans and specifications for the Improvements in accordance with District standards, and in compliance with all legal requirements, including without limitation, review and approval by the DSA, if applicable. Facility User must receive District's approval, which shall not be unreasonably withheld, of the final plans and specifications before constructing and/or installing any Improvements.
3. **Construction of Improvements.**
 - 3.1. Facility User agrees, at its sole cost and expense, to purchase, construct, or cause to be constructed the Improvements in a timely manner and pursuant to the District-approved plans and specifications subject to local site, zoning, and design review and all other required approvals.
 - 3.2. Facility User shall purchase, construct, or cause to be constructed the Improvements in accordance with all applicable local, state and federal laws, regulations and rules including public bidding requirements, if applicable.
 - 3.3. Facility User shall comply with all applicable requirements of the California Environmental Quality Act ("CEQA") and its implementing regulations in its use of any of the Premises. Facility User specifically acknowledges that, pursuant to the indemnification provision in this Agreement, the Facility User shall protect, defend, indemnify and hold harmless the District in any CEQA-related issues, lawsuits, or actions of any kind. Facility User agrees to pay District all costs, fees, and expenses incurred by the District that are related, in any way, to CEQA.

- 3.4. Not less than fifteen (15) days prior to the construction, major repair, renovation, or demolition of any Improvements, Facility User shall provide District with the following:
 - 3.4.1. Information regarding the contractor(s)' financial condition;
 - 3.4.2. Certificates of insurance and endorsement naming the District as an additional insured on all contractor(s)' insurance policies; and
 - 3.4.3. A performance bond and payment bond, each for one hundred percent (100%) of the contractor(s)' contract price; and
 - 3.4.4. Evidence to District's reasonable 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 completion guarantee.
- 3.5. No construction shall commence until District has given Facility User written acceptance of all information and assurances, which written acceptance shall not be unreasonably withheld, conditioned, or delayed.
- 3.6. Facility User shall provide District with at least 15 days' written notice prior to commencement of any work on the Premises which could give rise to a mechanic's lien or stop notice so that District may post such notices of non-responsibility with respect thereto as District may deem appropriate. Not less than 15 days prior to any work on any Improvements, Facility User shall provide District with sufficient evidence that it has obtained all required approvals and permits for the work and that Facility User or Facility User's contractor(s) has in effect, with premiums paid, adequate casualty and liability insurance (including builder's risk) coverage and workers' compensation. District has the right to enter upon the Premises for the purpose of posting Notice of Non-Responsibility.
- 3.7. In the event a lien is imposed upon the Premises as a result of any work on the Premises on behalf of Facility User, Facility User shall either:
 - 3.7.1. Record a valid release of lien, or
 - 3.7.2. Deposit sufficient cash with District to cover the amount of the claim of the lien in question and authorize payment to the extent of said deposit to any subsequent judgment holder that might arise as a matter of public record from litigation with regard to lien-holder claim, or
 - 3.7.3. Procure and record a bond in accordance with Section 3134 of the Civil Code which frees the demised premises from the claim of the lien from an action brought to foreclose the lien.

- 3.8. Upon commencement of construction of the Improvements, Facility User 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 fire, supply shortages, strikes, sabotage, vandalism, acts of God, or unusual delays to deliveries which could not be reasonably foreseen or prevented by the Facility User.
- 3.9. All work on the Improvements shall be performed in a sound and workmanlike manner, in compliance with the 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.
- 3.10. District or District's agent shall have a continuing right at all times during the period that the Improvements are being constructed on the Premises to enter the Premises and to inspect the work. Facility User shall require its contractor(s) who construct the Improvements to reasonably cooperate with District or its agent in such inspections.
- 3.11. Within ninety (90) days after completion of construction of the Improvements, Facility User shall deliver to District two (2) full and complete sets of as-built plans for the work as completed.
- 3.12. District shall cooperate with Facility User by executing and, if necessary, recording any required applications for zoning or use permits necessary for the operation of Improvements as may be reasonably required to complete the Improvements, however, no costs shall accrue to or be borne by District.
4. **Cost of Improvements.** Facility User shall pay for the total cost of Improvements, which shall include, without limitation:
 - 4.1. All costs attributable to the purchase and installation of the Improvements, including the actual cost incurred by Facility User for all labor and materials required for the purchase and installation of the Improvements;
 - 4.2. All costs related to procuring permits, inspections, and/or environmental clearance;
 - 4.3. Maintenance of the Improvements; and
 - 4.4. Facility User's costs for overhead; staffing, and/or all other indirect expenses incurred pursuant to this Agreement.

EXHIBIT “D”

School Site Service Contracts

Pacific Gas and Electric (PG&E)
City of Mountain View Utilities - Water and Trash
Sonitrol – Security System
Sound and Signal - Fire Alarm System
Syserco, Inc. - Energy Management System
Maintenance Contract for Heaters (currently MVWSD)

EXHIBIT "E"

City Joint Use Agreement