

**FACILITY USE LEASE AGREEMENT  
BY AND BETWEEN THE MOUNTAIN VIEW-WHISMAN SCHOOL DISTRICT  
AND YMCA OF SILICON VALLEY**

**THIS FACILITY USE LEASE AGREEMENT** (“Agreement”) is made on this [REDACTED] day of [REDACTED], 2024 by and between **MOUNTAIN VIEW-WHISMAN SCHOOL DISTRICT** (“District”), a public school district duly organized and existing under the laws of the state of California, and the **YMCA OF SILICON VALLEY** (“YMCA”), non-profit organization. The District and YMCA may be referred to herein individually as a “Party” or collectively as the “Parties”.

**RECITALS**

**WHEREAS**, California Code of Education (“Education Code”) sections 10900 et seq. (“Community Recreation Act”), authorize the District to organize, promote, and conduct programs for community recreation and to cooperate in providing community recreation programs and facilities that will contribute to general recreational and educational objectives for children and adults of the State; and

**WHEREAS**, pursuant to Education Code section 17527(a), the District Board of Trustees (“Board”) 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 12, inclusive, governmental units, nonprofit organizations, community agencies, professional agencies, commercial and noncommercial firms, corporations, partnerships, businesses, and individuals, including during normal school hours if the school is in session”; and

**WHEREAS**, the District owns and operates multiple schools, school sites, and facilities, including recreational and classroom instruction facilities (“School Sites”); and

**WHEREAS**, the District’s School Sites include portable buildings, playgrounds, recreational playfields, parking, and ancillary facilities (“Premises”), identified in **EXHIBIT A**, attached hereto, and incorporated herein; and

**WHEREAS**, YMCA, a non-profit organization dedicated to providing fitness, health, and wellness activities, along with childcare and development services to the local community, shares a strong commitment with the District to meet community and student needs and enhance future programs, including through partnership opportunities, to ensure accessibility to all students; and

**WHEREAS**, on May 27, 2004, the District and YMCA of the Mid Peninsula, El Camino Branch, entered into the YMCA Facility Use Lease Agreement (“Original Agreement”), permitting YMCA to utilize certain facilities on six District School Sites for a term of fifty-six (56) months to provide childcare services and operate an extended day care; and

**WHEREAS**, since execution of the Original Agreement in May 2004, the Parties have executed eleven amendments; and

**WHEREAS**, over eleven iterations of the Original Agreement, the Parties have adjusted the monthly rental payment, replaced the YMCA of the Mid Peninsula, El Camino Branch with its successor in interest, YMCA OF SILICON VALLEY, modified the total number of District facilities leased/used by YMCA, and extended the Original Agreement term multiple times, with the most recent amendment executed on August 17, 2023, extending the term through June 30, 2024; and

**WHEREAS**, District and YMCA now desire to execute this new Agreement for YMCA’s use of District facilities for the purpose of providing child care services and operating an extended day care program (“Program”), detailed in **EXHIBIT B**, attached hereto, and incorporated herein; and

**WHEREAS**, the Parties have negotiated this Agreement for YMCA to provide \$36,943.24 monthly to the District for its continued use of the facilities (“Rent”) and its operation of the Program on District Premises; and

**WHEREAS**, pursuant to Education Code section 17529, the District has determined, by approving this Agreement, that YMCA’s use of District Premises will not (1) interfere with any educational programs or activities of any school or class conducted on the Premises, (2) unduly disrupt the residents in the surrounding neighborhood, or (3) jeopardize the safety of any children at the Premises; and

**NOW THEREFORE**, it is mutually agreed by and between the undersigned Parties as follows:

## **AGREEMENT**

1. **AGREEMENT TO COOPERATE.** The Parties hereby agree to cooperate in coordinating their respective rights and responsibilities under this Agreement.
  - 1.1. The Parties shall promptly respond to concerns relating to use of the Premises expressed by the other Party or neighbors. The response shall include, without limitation, acknowledging receipt of the concerns raised, taking steps to investigate the concern, engaging in a dialogue with the other Party, and addressing the concerns.
  - 1.2. The Parties, at their sole cost and expense, shall provide the necessary personnel, equipment, or other property to perform their obligations herein.
2. **PREMISES.** The District owns and operates Premises, identified in **EXHIBIT A**, suitable for YMCA to operate its daycare Program, as specified in this Agreement and the attached exhibits, and in the District's sole discretion.
3. **TITLE TO SCHOOL SITE AND PREMISES.** Nothing in this Agreement shall in any way alter the District's fee title ownership interest in its School Sites or Premises. Nothing herein shall be construed as creating an easement or any other interest in the School Site or Premises except a defined-term nonexclusive facility use license.
4. **TERM.** The term of this Agreement shall commence on July 1, 2024 ("Effective Date"), following District Board approval, and shall be for **two (2) years** from the Effective Date ("Initial Term"), unless sooner terminated under any provision hereof.
  - 4.1. **Renewal Terms.** At the conclusion of the Initial Term, this Agreement may be renewed for additional **two (2) year** terms by mutual, fully-executed written amendment hereto ("Renewal Term"), subject to the terms and conditions contained herein and the approval of both Parties. The Initial Term and any Renewal Term shall be collectively referred to herein as the "Term."
  - 4.2. **Extension of Term.**
    - 4.2.1. To renew the Agreement Term, the Parties shall negotiate the terms of renewal in good faith and execute a written amendment hereto prior to the expiration of the proceeding Term.
    - 4.2.2. The decision to approve or reject renewal of the Agreement Term shall be in the sole and complete discretion of the District Board. Any Renewal Terms shall comply with all applicable legal requirements, and are subject to the District Board making the findings required under Education Code section 17527 et seq.
5. **LEASE PAYMENTS, TAXES, AND ASSESSMENTS.**
  - 5.1. **Lease Payments.** For and in consideration of the use of the Premises for the Term, YMCA agrees to pay a fixed amount to the District on a monthly basis ("Rent"). Beginning on the Effective Date of this Agreement, YMCA shall pay the District **thirty-six thousand nine hundred forty-three dollars and twenty-four cents (\$36,943.24)** per month ("Base Rent").
  - 5.2. **Payment Structure.** The first payment of Base Rent shall be due upon the Effective Date of this Agreement. Thereafter, Rent shall be due to the District, in advance and without deduction, setoff, prior notice, or demand, on the first day of each month ("Rent Due Date"), until the expiration or termination of this Agreement.

5.2.1. **Base Rent Adjustment.**

5.2.1.1. During the Agreement Term and any extensions thereof, the Base Rent shall be subject to an annual increase on the anniversary date of the Effective Date (“Increase Date”). This increase shall amount to three percent (3%) of the previous year’s Base Rent.

5.2.1.2. In the event that the Parties wish to renew the Term of this Agreement beyond the Initial Term, a fair market value rental analysis and appraisal shall be conducted by the District prior to entering into any additional Term, the amount of which shall be the basis of the new monthly Rent for the Renewal Term, provided that the Renewal Term’s monthly lease payment shall not be lower than the prior Term’s Rent.

5.2.2. **Late Payment.** YMCA acknowledges that past due payment of moneys due to the District hereunder will cause District to incur costs not contemplated by this Agreement, the exact amount of which will be extremely difficult to ascertain.

5.2.2.1. **Late Charges.** In the event that the District does not receive a then-due Base Rent payment, or any other sum due from YMCA, by 4:00 p.m. on the tenth (10th) day of the month, the then-due payment shall be deemed overdue (“Overdue Payment”). YMCA shall pay the District, as additional sums due, a late charge equal to five percent (5%) of the Overdue Payment amount or the maximum amount allowed by law, whichever is less (“Late Charge”).

5.2.2.2. **Interest.** Any Overdue Payment not paid to the District when due shall bear interest at one and one-half percent (1.5%) per month commencing thirty (30) days after the due date, but not to exceed the maximum rate permitted by law (“Interest”). Payment of Interest shall be in addition to any Late Charges owed pursuant to this Agreement and shall not excuse any default by YMCA under this Agreement.

5.2.2.3. **Additional Rent.** The Parties hereby agree that the Late Charges and accrued Interest represent a fair and reasonable estimate of the costs District would incur by reason of Overdue Payments. The District’s acceptance of the Overdue Payment shall not constitute a waiver of any default with respect to any overdue amount, nor prohibit the District from exercising any of its other rights and remedies granted hereunder. Late Charges and accrued Interest shall be referred to collectively herein as “Additional Rent.”

5.3. **Taxes and Assessments.** Any possessory interest tax, other personal or real property tax, or assessment whatsoever assessed against the District as a result of this Agreement, YMCA 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.

6. **ROLES AND RESPONSIBILITIES.**

6.1. **YMCA Responsibilities.**

6.1.1. YMCA shall assume all aspects of its Program design, implementation, and achievement objectives.

6.1.2. YMCA shall adhere to, and enforce, all applicable District Board Policies and Administrative Procedures during YMCA’s implementation of the Program.

- 6.1.3. YMCA shall supply, provide, establish, maintain, and operate safety/security measures, protocols, personnel, or systems while operating the Program.
- 6.1.4. YMCA shall develop and document clearly defined, measurable goals for the Program.
- 6.1.5. YMCA shall be solely responsible for all hiring, training, directing, paying, and managing its own Program staff.
- 6.1.6. YMCA shall provide an inclusive and welcoming environment, free from discrimination based on race, color, religion, sex, national origin, disability, age, gender identity, sexual orientation, or any other protected characteristic. YMCA shall not tolerate harassing or bullying behavior, shall thoroughly investigate all complaints, and shall take appropriate action.
- 6.1.7. YMCA shall provide an adequate number of competent personnel to supervise all Program activities including, without limitation, all activities performed on District Premises.
- 6.1.8. YMCA shall ensure the Premises are properly used and YMCA personnel and invitees as well as Program participants stay within the designated area and do not stray into adjacent areas not subject to use. YMCA shall enforce all District rules, regulations, and policies while operating and supervising the Program and general activities on District Premises.

6.2. **District Responsibilities.**

- 6.2.1. The District shall provide, at the District’s sole discretion, District Premises such as classrooms, schoolyard space, bathrooms for YMCA personnel operating the Program and District students participating in the Program, as well as other accommodations related to youth and YMCA personnel safety.

7. **USE OF PREMISES.** YMCA is authorized to use the Premises during the times identified in **EXHIBIT A** to operate the Program described in **EXHIBIT B**, attached hereto, pursuant to the terms of this Agreement and in accordance with all applicable federal, state, and local laws and regulations, as well as the District Board Policies and Administrative Procedures relating to the Premises and to YMCA’s use thereof. YMCA shall not use the Premises for any use other than that specified in this Agreement without the prior written consent of the District.

7.1. **Program Performance.** YMCA shall have nonexclusive use of the Premises to operate its Program.

- 7.1.1. YMCA represents that it is qualified to administer and operate the Program.
- 7.1.2. YMCA shall be solely responsible for the administration and operation of the Program
- 7.1.3. YMCA 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 YMCA’s Program on the Premises.
- 7.1.4. YMCA shall use the Premises during the dates and times specified in **EXHIBIT B** attached hereto, or as otherwise mutually agreed on by the Parties.

7.2. **Personnel and Equipment.**

- 7.2.1. Except as stated herein, the District shall not provide any special equipment to support the Program.
- 7.2.2. Except as identified herein, YMCA, at its sole cost and expense, shall provide all personnel, equipment, and other property necessary to perform its obligations herein.

- 7.2.3. Except as identified herein, YMCA shall furnish its own equipment and any other property needed to conduct the Program at its sole expense.
- 7.2.4. YMCA shall be responsible for providing, maintaining, and repairing equipment and property necessary to operate the Program.
- 7.2.5. All personnel hired by a Party shall be employees or independent contractors of that Party and shall not be construed as employees or independent contractors of the other Party for any purpose whatsoever.
- 7.3. **Utilities.** The District shall provide all necessary utilities, including electrical, natural gas, sewer, waste disposal/recycling, water services, all telephone or technology communication services/systems (e.g., internet services), and pest control (collectively "Utilities"), to the Premises.
  - 7.3.1. The District's failure to furnish Utilities, or cause Utilities to be furnished, when the failure is caused by (i) acts beyond the reasonable control of the District; (ii) strikes, lockouts, labor disturbances or labor disputes of any kind; (iii) any laws, rules, orders, ordinances, regulations, requirements, or any other action by federal, state, county, or municipal authority; (iv) any event contemplated in the section titled "Force Majeure" contained herein, or (v) acts of any other unavoidable delay, shall not cause the District to be in default of the Agreement and shall not result in any liability to the District.
- 7.4. **Maintenance and Repairs.** The District shall maintain and operate the Premises in good condition throughout the life of this Agreement. District's responsibility extends to all major maintenance of the buildings comprising the Premises, including roof, boilers, lighting or heating systems, sewers, parking areas and grounds, unless the state or disrepair is due to willful or negligent actions of YMCA, its agents, or clients, in which case necessary repairs or replacement shall be charged to YMCA on a time and materials basis and for additional rent.
  - 7.4.1. YMCA shall provide for its own custodial services.
  - 7.4.2. The cost of re-keying shall be the responsibility of the District. District reserves the right to key control and issuing duplicate keys.
  - 7.4.3. YMCA shall not paint or repaint the interior or exterior walls during the term of this Agreement. Any painting which may be desired by YMCA shall be done by and at the expense of YMCA, subject to written approval by District.
  - 7.4.4. YMCA expressly waives the provisions of 1941 and 1942 of the California Civil Code, allowing YMCA to make repairs on the demised premises at the expense of District.
- 7.5. **Signage.** For the purpose of this Agreement, "Signage" and "Signs" shall refer to any visual display, structure, or device intended to convey information, messages, or advertisements to the public, whether affixed, permanent, semi-permanent, or temporary in nature. This includes but is not limited to banners, posters, placards, billboards, electronic displays, and any other similar means of communication.
  - 7.5.1. YMCA may place temporary Signs on the Premises to share Program related information with participating students and their parents or guardians ("Temporary Signs"). These Temporary Signs shall be subject to prior written approval by the District and shall be limited in size, duration, and location as determined by the District.
  - 7.5.2. Any Signs shall be at the YMCA' sole cost and expense.
  - 7.5.3. District approval and consent is in its sole discretion but shall not be unreasonably withheld.

- 7.5.4. The Parties agree to cooperate in obtaining any governmental permits necessary in connection with the placement of the YMCA' Signage.
  - 7.5.5. Signs shall comply with all applicable governmental authorities having jurisdiction, including, without limitation, local ordinances and state laws.
  - 7.5.6. Throughout the Term of this Agreement, YMCA shall, at their sole cost and expense, maintain the Signage, and all appurtenances, in good condition and repair.
  - 7.5.7. At the termination of this Agreement, YMCA shall remove all Signs YMCA placed on the Premises and shall repair any damage caused by Sign installation or removal.
- 7.6. **District Rules and Regulations.** YMCA's use of the Premises shall be pursuant to the District's then existing Policies and Regulations for use of District property ("District Use Rules"), as may be amended from time to time.
- 7.6.1. The Parties agree, the District does not permit possession, use, sale, or consumption of tobacco, cannabis, or of any controlled substance on all District property.
  - 7.6.2. The Parties agree, any uses which involve the serving and/or sale of alcoholic beverages and the conducting of games of chance are prohibited on all District property.
  - 7.6.3. All use of the Premises shall align with State of California and local governmental orders regarding public health including, without limitation, play, activities, physical distancing measures, maximum occupancy, face covering, reporting, and contact tracing requirements and protocols.
  - 7.6.4. Any violation of this section may, at the District's sole discretion, result in termination of this Agreement pursuant to the terms herein.

8. **CONDITION OF PREMISES.**

- 8.1. **"AS-IS" Condition.** The Premises are offered to YMCA for use on an "AS IS" basis. The District shall not be required to make or construct any alterations including structural changes, additions, or improvements to the Premises. By execution of this Agreement YMCA hereby accepts the Premises in "AS IS" condition.
- 8.2. **Representations and Warranties.** YMCA acknowledges that the District has not made any representations or warranties as to the suitability of the Premises for YMCA's intended use or Program. Any agreements, warranties, or representations not expressly contained in this Agreement shall in no way bind the Parties, and the Parties expressly waive all claims for damages by reason of any statement, representation, warranty, promise or agreement, if any, not contained in this Agreement.
  - 8.2.1. YMCA is responsible for making such improvements to the Premises as it deems necessary to make the Premises suitable for its intended use, subject to compliance with the "Alterations and Improvements" and "Maintenance and Repairs" provisions contained herein.
- 8.3. **Unsafe Conditions.** YMCA shall not cause or permit any Hazardous Materials (defined below) or Dangerous Condition (defined below) to exist on the Premises. YMCA shall promptly provide notice to the District, pursuant to the "Compliance with All Laws" section of this Agreement, if YMCA becomes aware of any Hazardous Materials on the Premises. YMCA shall promptly provide notice to the District, pursuant to the "Accident/ Incident Reporting" section of this Agreement, if YMCA becomes aware of any Dangerous Condition the Premises.

- 8.3.1. **Dangerous Condition.** “Dangerous Condition”, as defined in Government Code Section 830(a), “means a condition of property that creates a substantial (as distinguished from a minor, trivial or insignificant) risk of injury when such property or adjacent property is used with due care in a manner in which it is reasonably foreseeable that it will be used.”

9. **ALTERATIONS AND IMPROVEMENTS.**

- 9.1. YMCA shall not make any alterations, renovations, improvements, repairs, or otherwise demolish or remove all or any part of the Premises or any improvements or any installations in, on, or to the Premises or any part thereof (including, without limitation, any structural alterations, removal of walls or ceilings, or any cutting or drilling into any part of the Premises) (collectively “Alterations”) without the prior written consent of the District.

10. **ACCIDENT/INCIDENT REPORTING.** YMCA shall submit written accident/incident reports to the District as soon as practicable, but not more than twenty-four (24) hours, after the occurrence of or YMCA’s receipt of information or notice regarding any accident or incident that occurs on the Premises including, without limitation, related claims, arrest or criminal charges associated with the rights and responsibilities of YMCA or its personnel pursuant to this Agreement. Submission of written accident/incident reports shall be made pursuant to the section entitled “Notice”. Accident/injury reports shall also be verbally reported to the District’s primary point of contact during normal business hours and to the District’s contact identified below during non-business hours.

10.1. District contact during non-business hours: [REDACTED].

10.2. YMCA contact during non-business hours: [REDACTED].

11. **PREMISES DAMAGE AND REPAIR.**

- 11.1. YMCA shall, at its sole cost, be responsible for repairing all damage attributable to its use of District Premises.
- 11.2. The District may undertake such repairs of damage caused by the YMCA and provide YMCA with an itemized invoice for the costs. YMCA shall pay the invoice within (30) days of receipt.
- 11.3. If there is a dispute regarding the cause of the damage, the Parties shall promptly meet and confer and, if so agreed, share the cost of repairs.

12. **INDEMNIFICATION.**

- 12.1. **YMCA Indemnification of the District.** To the fullest extent permitted by California law, YMCA shall defend (by counsel reasonably approved in writing by the District), protect, indemnify, and hold harmless the District, District board members, representatives, officers, consultants, employees, trustees, members, agents, and volunteers (“Indemnified District Parties”) from and against all loss, liability, claims, suits, damage, expense, and action of any kind, nature, and description including, without limitation, attorneys’ fees and costs; direct, indirect and consequential losses; liability, damage, and expense for injuries and death to persons and damage to property (collectively “District Claims”), arising out of or in connection with the Program or YMCA’s use, conduct, operation, condition, occupancy of the Premises, and all areas appurtenant thereto, and activities of YMCA Personnel related to this Agreement, regardless of who was responsible for such injuries or death, excepting instances of Willful Misconduct (defined below) by the Indemnified District Parties. YMCA’s obligation to indemnify, defend, and hold the District harmless shall exist regardless of the Indemnified District Parties’ negligence. YMCA shall defend the Indemnified District Parties at YMCA’s sole expense.

- 12.2. **District Indemnification of the YMCA.** To the fullest extent permitted by California law, district shall defend (by counsel reasonably approved in writing by the YMCA), protect, indemnify, and hold harmless the YMCA,

YMCA board members, representatives, officers, consultants, employees, trustees, members, agents, and volunteers (“Indemnified District Parties”) from and against all loss, liability, claims, suits, damage, expense, and action of any kind, nature, and description including, without limitation, attorneys’ fees and costs; direct, indirect and consequential losses; liability, damage, and expense for injuries and death to persons and damage to property (collectively “District Claims”), arising out of or in connection with the Program or District’s use, conduct, operation, condition, occupancy of the Premises, and all areas appurtenant thereto, and activities of District Personnel related to this Agreement, regardless of who was responsible for such injuries or death, excepting instances of Willful Misconduct (defined below) by the Indemnified District Parties. District’s obligation to indemnify, defend, and hold the YMCA harmless shall exist regardless of the Indemnified District Parties’ negligence. District shall defend the Indemnified YMCA Parties at District’s sole expense.

12.2.1. **Willful Misconduct.** “Willful Misconduct” is an intentional action so unreasonable or dangerous that the individual performing the action knows or should know it is highly probable to result in harm.

12.3. **Survival of Indemnities.** This section shall survive the expiration or termination of this Agreement.

13. **INSURANCE.** The Parties shall maintain, for the Term of this Agreement, at their sole cost, policy or policies of general liability and property insurance as set forth in **EXHIBIT C**, attached hereto and incorporated herein.
14. **SUBCONTRACTING AND ASSIGNMENT.** YMCA shall not have the right, voluntarily or involuntarily, to assign, license, transfer, or encumber this Agreement. Any purported transfer shall be void and shall, at the District’s election, constitute a default. No consent to transfer shall constitute a waiver of the provisions of this Agreement. YMCA shall not subcontract any required performance under this Agreement without the prior, written consent from the District.
15. **Civic Center Act/Community Recreation Act.** All scheduling, use, fee/admission fee collection, and other activities shall be compliant with the Civic Center Act, Education Code sections 38130, et seq. and Community Recreation Act, Education Code sections 10900, et seq.
16. **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. All actions or proceedings brought to enforce the terms and conditions of this Agreement shall be maintained in Santa Clara County, California.
17. **INDEPENDENT CONTRACTOR STATUS.** This Agreement is by and between 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.
18. **ATTORNEYS’ FEES.** In the event either Party institutes legal action to enforce its rights under this Agreement, in whatever forum, public or private, each Party shall be solely responsible for its costs and attorneys’ fees. No court shall have authority or jurisdiction to rule or order contrary to this section.
19. **AMENDMENT AND MODIFICATION.** This Agreement and all exhibits attached hereto may be amended or modified in writing, signed by the Parties. No amendments, changes, or modifications to the Agreement or exhibits shall be valid or binding until approved by the District Superintendent, or their designee.
20. **SUSPENSION OF PERFORMANCE DURING GOVERNMENT MANDATED CLOSURES.** Either Party may suspend performance pursuant to this Agreement immediately due to state and local government mandated closures (“Closure”) due to a pandemic or epidemic or other health concern, including COVID-19. Such suspension shall not be considered a default, breach, material violation or failure to perform under the terms of the Agreement. Written notification of the closure shall be provided to the other Party as soon as practicable, but in no event more than ten (10) days after the Closure. The Parties shall meet and confer periodically during the term of the suspension regarding when the Program can resume. During the suspension, the Parties can terminate this Agreement per the “Termination” section contained herein.
21. **COMPLIANCE WITH ALL LAWS.** The Parties shall, at their sole expense, comply with all requirements of all governmental authorities in force either now or in the future, affecting the Program and this Agreement, and shall



faithfully observe, in its operation and administration of this Agreement and the Program, 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.

22. **FINGERPRINTING AND CRIMINAL BACKGROUND VERIFICATION.** YMCA shall be responsible for ensuring compliance with all applicable fingerprinting and criminal background investigation requirements described in California 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.). YMCA shall complete **EXHIBIT D** and provide verification of compliance with the fingerprinting and criminal background investigation requirements to the District prior to every individual's commencement of employment or participation in the Program and prior to permitting contact with any District students.
23. **WAIVER.** The waiver by either Party of any breach of any term, covenant, or condition contained herein 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.
24. **SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon, and inure to the benefit of, the Parties and their respective heirs, legal representatives, successors, and assigns.
25. **SEVERABILITY.** Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but in the event any provision of this Agreement is determined to be invalid, illegal, or unenforceable in any respect under the applicable laws, such provision shall be severed, and all remaining provisions shall remain valid, legal, and enforceable.
26. **SURVIVAL.** Any provision of this Agreement providing for performance by either Party shall survive the expiration or termination and continue to be effective and enforceable.
27. **ENTIRE AGREEMENT/AMENDMENTS.** The Agreement and all exhibits and amendments hereto constitute the entire agreement between the Parties, and supersedes all prior discussions, negotiations, understandings, and agreements, whether oral or written.
28. **TERMINATION.** This Agreement may be terminated for cause or convenience as specified below.
  - 28.1. **Termination for Cause.** Either Party may terminate this Agreement immediately for cause by written notification that identifies the effective date of the termination.
    - 28.1.1. Cause shall include, without limitation:
      - 28.1.1.1. Material violation of this Agreement by either Party; and
      - 28.1.1.2. Any act by a Party exposing the other Party to liability to others for personal injury or property damage; and
      - 28.1.1.3. Either Party is adjudged bankrupt, makes a general assignment for the benefit of creditors, or a receiver is appointed due to the Party's insolvency.
  - 28.2. **Termination for Convenience.** The District may terminate this Agreement by written notification to YMCA thirty (30) days prior to the effective date of the termination. The District shall not be required to provide just cause for termination in the Notice of Termination for Convenience.
  - 28.3. Termination under this section shall not release the Parties from the payment of any sum or payment then due, or from any claim for damages previously accrued or then accruing against a Party.

28.4. The foregoing provisions are in addition to, and not a limitation of, any other rights or remedies available to the Parties.

29. **NOTICES.** 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 by overnight delivery service, addressed as follows:

<b>DISTRICT:</b>	<b>YMCA:</b>
Mountain View-Whisman School District 1400 Montecito Ave., Mountain View, CA 94043 Attn: Rebecca Westover E-mail: rwestover@mvwsd.org Telephone: 650-526-3500	YMCA of Silicon Valley 2400 Grant Road Mountain View, CA 94040 Attn: E-mail: Telephone:

Any notice personally given shall be effective upon receipt. Notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Notice sent by USPS shall be effective within three (3) business days following delivery thereof to USPS. Notices, certificates, and other communications shall also be provided by electronic mail to the e-mail addresses identified above.

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

31. **BOARD APPROVAL.** This Agreement and all exhibits attached hereto, as well as any subsequent amendments and modifications, shall not be valid or binding until approved by the District Board.

32. **DRAFTING PARTY.** This Agreement is created as a joint effort of both Parties and shall not be interpreted against either Party as the drafter of the Agreement.

33. **AUTHORITY.** The person(s) executing this Agreement on behalf of the Parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said Parties and all acts necessary to confer such authority have been duly, properly, and legally taken, such that by executing this Agreement, the Parties are formally bound to the provisions of this Agreement.

34. **FORCE MAJEURE.** In addition to specific provisions of this Agreement, performance by a Party shall not be deemed to be in default, and all performance or other dates specified in this Agreement shall be extended, where the Party seeking the extension has acted diligently and delays or defaults are due to events beyond the reasonable control of the Party including, without limitation: war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; limitation of supplies; epidemics; quarantine restrictions; freight embargoes; lack of transportation; litigation; unusually severe weather; acts or omissions of another party; or any other causes beyond the control of or without the fault of the Party claiming an extension of time to perform. Any governmental statute, order, regulation, rule, or equivalent preventing the use of any Premises as a result of COVID-19 shall not be considered an event beyond the reasonable control of a Party. Notwithstanding anything to the contrary in this Agreement, an extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the Party claiming such extension is sent to the other party within ten (10) days of the commencement of the cause.

[SIGNATURE PAGE TO FOLLOW]

**AGREED AND APPROVED** on the date indicated below:

Dated: \_\_\_\_\_, 2024

Dated: \_\_\_\_\_, 2024

**MOUNTAIN VIEW WHISMAN SCHOOL DISTRICT**

**YMCA OF SILICON VALLEY**

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

Print Title: \_\_\_\_\_

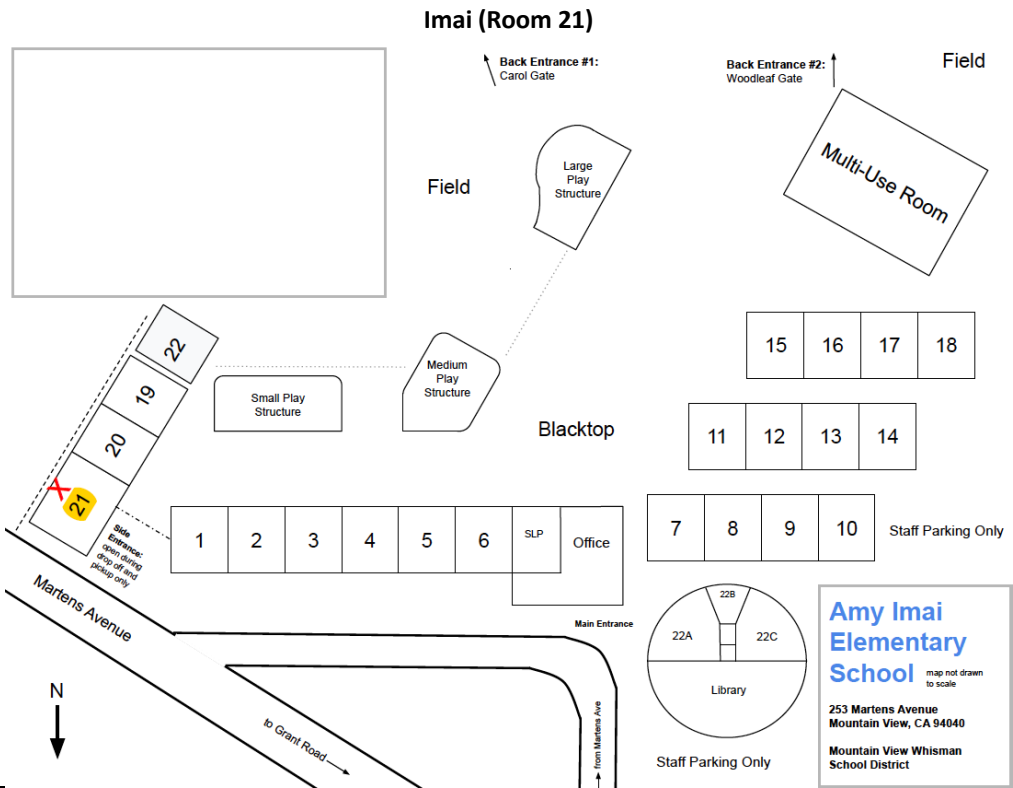
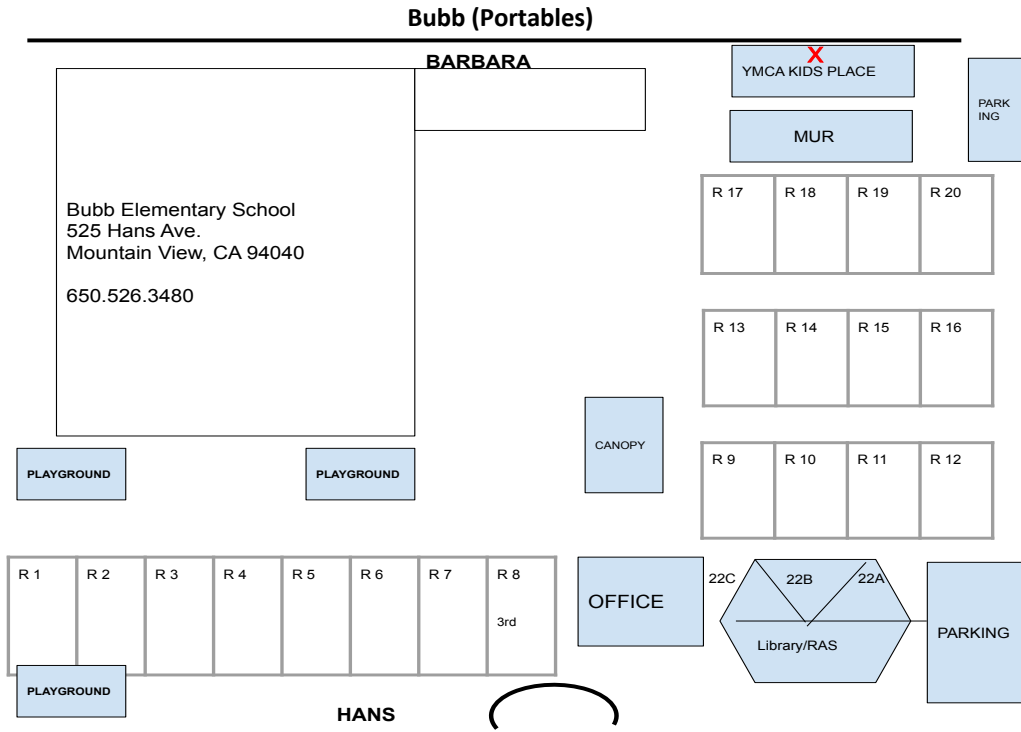
**EXHIBIT A**  
**DESCRIPTION OF PREMISES**

**School Site Availability and Associated Costs.** The following School Sites are available for YMCA's use as set forth in this Agreement and below:

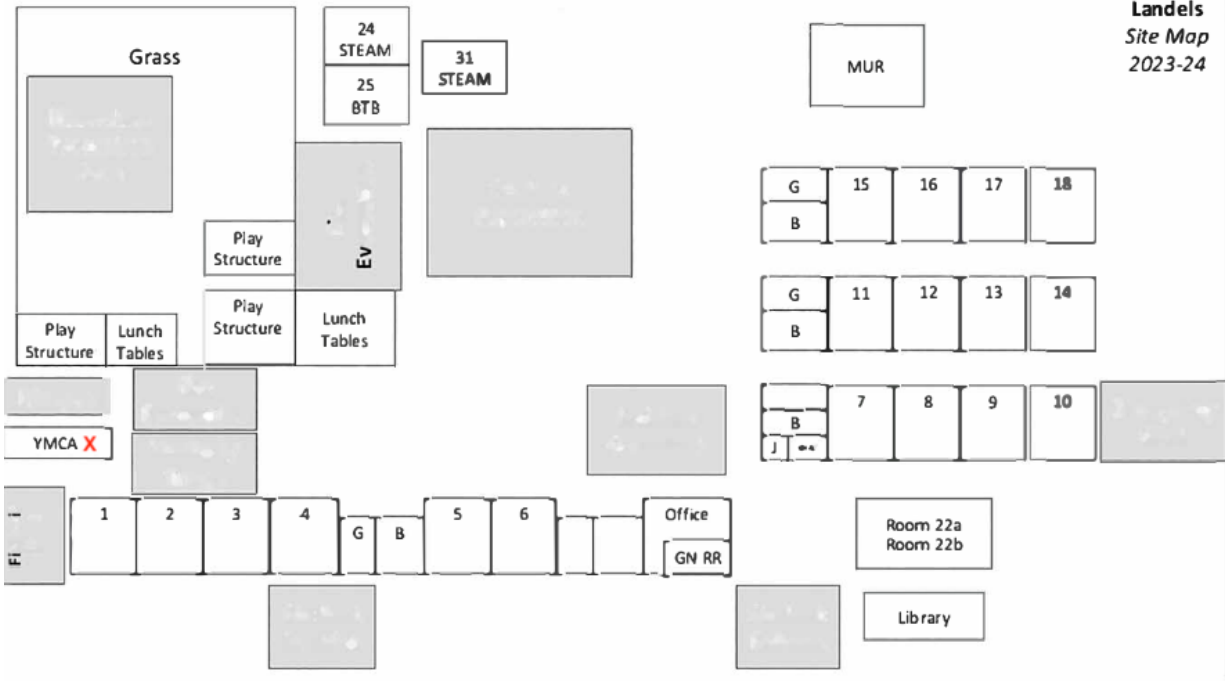
<b>24-25</b>				
School Site	Square feet	Cost per Square Foot	Number of Months Accessible	Annual Amount
Bubb	2,400	\$3.28	12	\$94,331.520
Imai	2,400	\$3.28	12	\$94,331.520
Landels	1,920	\$3.28	12	\$75,465.216
Mistral	828	\$3.28	12	\$32,544.374
Theuerkauf	851	\$3.28	12	\$33,448.385
Vargas	1,920	\$3.28	12	\$75,465.216
Stevenson	960	\$3.28	12	\$37,732.608
<b>Total</b>	<b>11,279</b>			<b>\$443,318.84</b>

**EXHIBIT B**  
**DESCRIPTION OF YMCA PROGRAM**

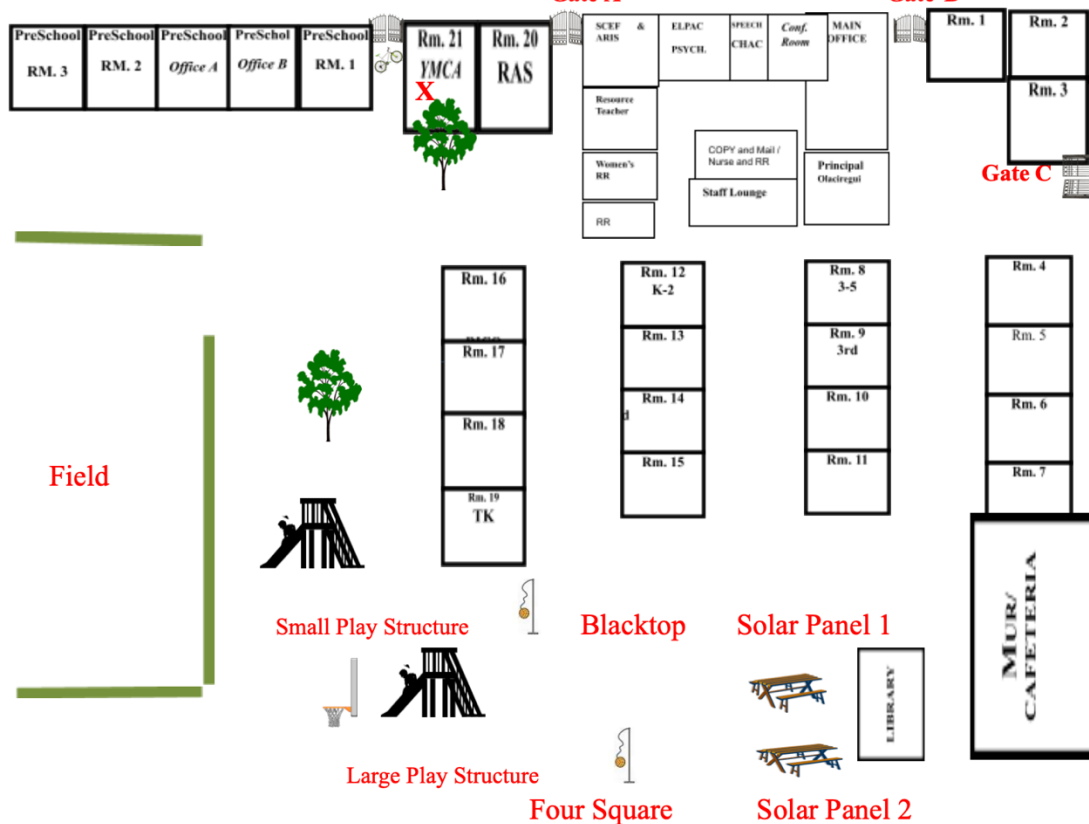
YMCA of Silicon Valley ("YMCA") is permitted to use District facilities ("Premises") for the purpose of administration and operation of its program ("Program"), YMCA, dedicated to fostering growth among students, as detailed herein.



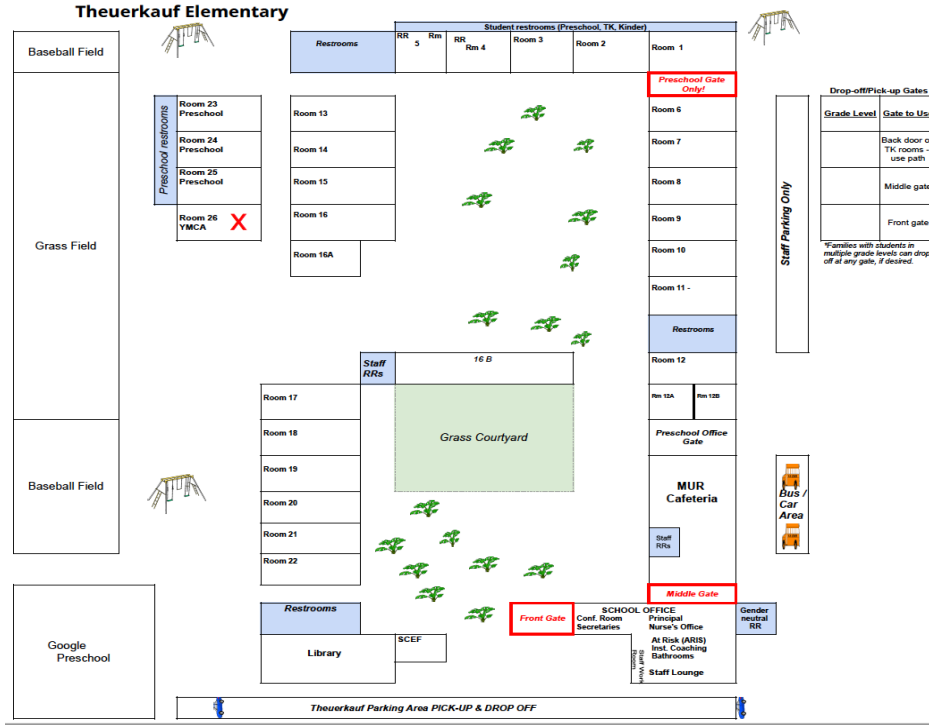
## Landels (Portables)



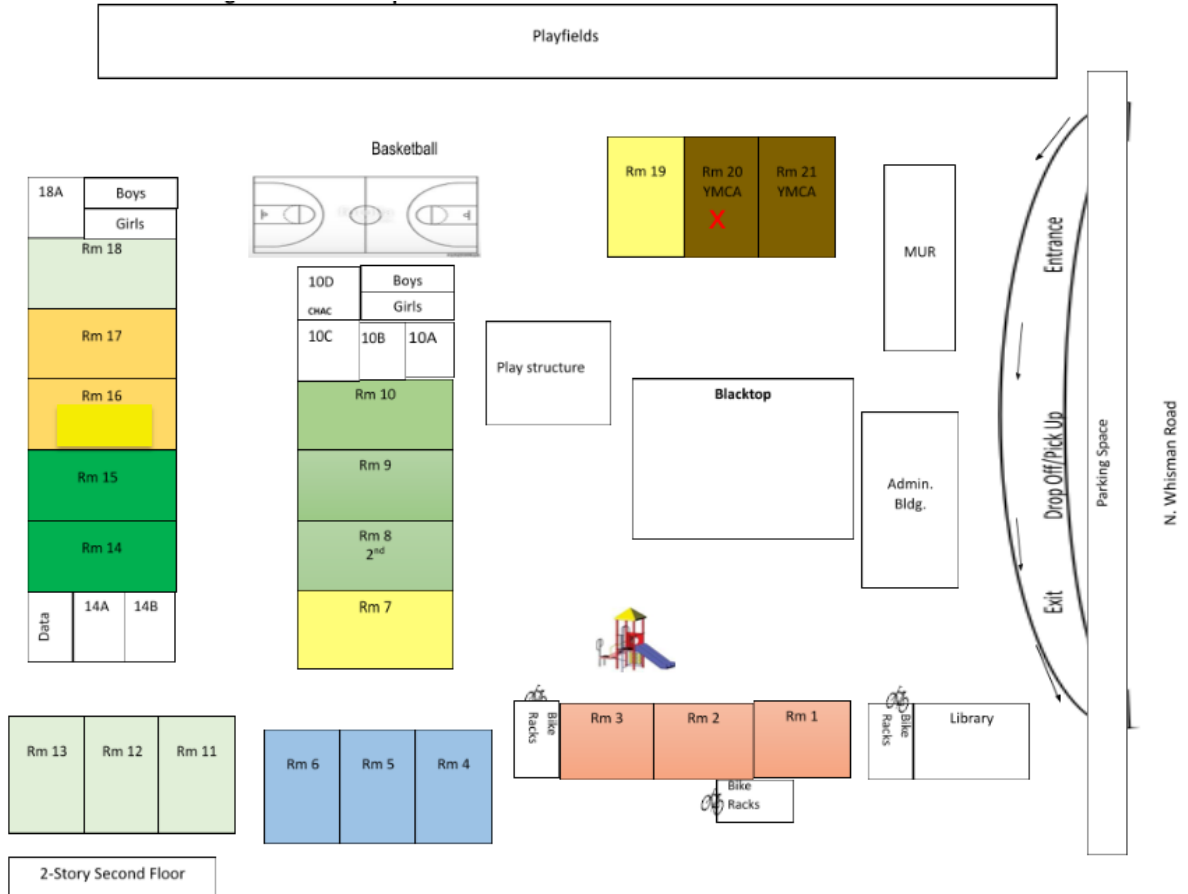
## Mistral (Room 21)



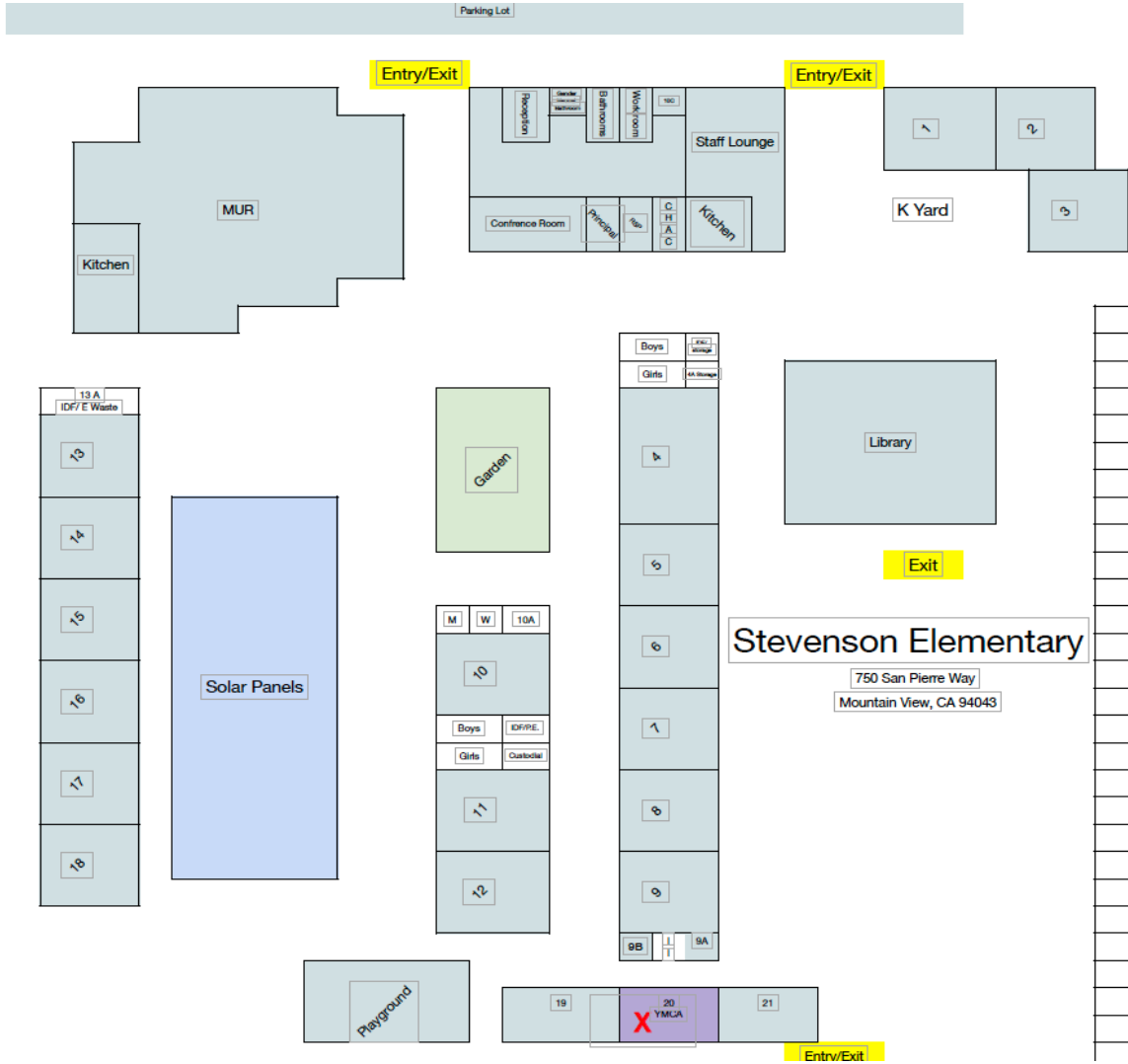
## Theuerkauf (Room 26)



## Vargas (Room 20)



## Stevenson (Room 20)





**EXHIBIT C**  
**INSURANCE REQUIREMENTS**

1. **Insurance Requirements.** YMCA of Silicon Valley (and all of its subcontractors, if any) shall, at its sole cost and expense, procure and maintain, during the term of this Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Services hereunder by YMCA, YMCA's agents, representatives, officers, employees, or subcontractors (of all tiers). Payment for insurance shall be considered included in the fee, and no additional payment will be made. YMCA agrees to maintain insurance coverage as follows:
  - 1.1. **Commercial General Liability Insurance.** Coverage must be equivalent in scope or at least as broad as Insurance Services Office ("ISO") Form CG 00 01 covering CGL on an "occurrence" basis, and must include coverage for property damage, bodily injury, personal & advertising injury, products and completed operations, liability assumed under an insured Contract (including tort of another assumed in a business contract), and independent contractor's liability with limits no less than \$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to work performed under this Contract (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit. The District, its board of trustees, officials, employees, agents, and volunteers must be named as additional insureds with respect to liability arising out of work or operations performed by or on behalf of YMCA. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used). The policy shall contain a severability of interests/cross liability clause or language stating that YMCA's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
  - 1.2. **Sexual Abuse and Molestation Insurance.** YMCA must provide Coverage for sexual abuse and molestation which covers bodily injury, emotional distress or mental anguish related to any claim, cause of action or liability associated with child molestation or sexual abuse, with limits no less than \$3,000,000 per wrongful act and \$6,000,000 aggregate. This coverage may be provided as an endorsement to the Commercial General Liability policy or under a separate policy and must be written on an "occurrence" and not on a claim(s) made and reported basis. Coverage must not be subject to any exclusion, restriction, or sub-limit. District, its board of trustees, employees, agents, and volunteers must be named as additional insureds with respect to sexual abuse and molestation claims. The coverage must contain a severability of interests/cross liability clause or language stating that YMCA's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
  - 1.3. **Commercial Automobile Liability Insurance.** Coverage must be equivalent in scope or at least as broad as ISO Form Number CA 00 01 covering any auto (Code 1) that includes all vehicles that are owned, non-owned, and hired and personal injury protection, with limit no less than \$1,000,000 per accident for bodily injury and property damage. The policy must provide Contractual Liability coverage equivalent to that provided in the 1990 and later editions of ISO form CA 00 01.
  - 1.4. **Workers' Compensation Insurance.** Coverage must be at least as broad as that which is required by the State of California, with Statutory Limits. YMCA must maintain Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
  - 1.5. **Cyber Security and Privacy Liability Policy.** This coverage shall have limits of not less than \$1,000,000 per occurrence and at least \$2,000,000 annual aggregate coverage. The policy shall be endorsed with an additional insured endorsement naming the District and its officials, employees, and agents as additional insureds. The policy shall provide coverage for liability arising from the theft, dissemination and/or use of confidential information, including but not limited to, personally identifiable information (PII), protected health information (PHI), security codes, access codes, passwords, security codes or personal identification numbers (PINS); Notification costs, credit monitoring and other expert services, regulatory fines and defense costs; Network security liability arising from unauthorized access to, use of, or tampering with computer

systems, including hacker attacks; Liability arising from the introduction of a computer virus into, or otherwise causing damage to vendor (first party) or customer's (third party) computer, computer system, network or similarly related property and the data, software and programs thereon; Liability arising from professional misconduct or lack of the requisite skill required for the performances of services defined in this Agreement; and Electronic Media Liability arising from personal injury, plagiarism or misappropriation of ideas, domain name infringement or improper deep-linking or framing, and infringement or violation of intellectual property rights.

1.6. **Other Insurance Requirements.**

- 1.6.1. **Umbrella/Excess Liability Policy.** An Umbrella Liability policy (or Excess Liability on a Following Form Basis) may be used to provide additional Commercial General Liability, Automobile Liability, and Employers' Liability limits to meet District's minimum coverage requirements provided all requirements set forth herein are fully satisfied with respect to such policy.
- 1.6.2. **Broader Coverage/Higher Limits Applies.** In the event that YMCA maintains broader coverage and/or higher limits than the minimums required herein, the District requires and shall be entitled to the broader coverage and/or higher limits maintained by YMCA.
- 1.6.3. **YMCA's Insurance shall be Primary.** For any claims related to this Agreement, YMCA's insurance coverage shall be primary insurance coverage, at least as broad as ISO CG 20 01 04 13, as respects the District, its board of trustees, officials, employees, volunteers, and agents. Any insurance or self-insurance maintained by the District, its board of trustees, officials, employees, volunteers, and agents shall be excess of YMCA's insurance and shall not contribute with it.
- 1.6.4. **Notice of Cancellation.** For all insurance required by this Agreement, YMCA shall provide District with no less than thirty (30) days prior written notice of cancellation or nonrenewal, or reduction in coverage.
- 1.6.5. **Additional Insured Coverage Not Affected By Named Insured's Duties after Accident or Loss.** If any of the insurance required herein requires reporting of accidents or other covered losses, all such policies must be endorsed to provide that any failure to comply with the reporting provisions of the policy shall not affect coverage provided to the District, its board of trustees, officials, employees, volunteers, or agents.
- 1.6.6. **Waiver of Subrogation.** YMCA hereby grants to District, its board of trustees, employees, volunteers, and agents a waiver of any right to subrogation which any insurer of said contractor may acquire against the District, its board of trustees, officials, employees, volunteers, and agents by virtue of the payment of any loss under such insurance. YMCA shall obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the District, its board of trustees, officials, employees, volunteers, and agents have received a waiver of subrogation endorsement from the insurer.
- 1.6.7. **Self-Insured Retentions.** Any self-insurance program or self-insured retentions must be declared to and approved separately in writing by the District's Risk Manager or designee and shall protect the District, its board of trustees, officials, employees, volunteers, and agents in the same manner and to the same extent as they would have been protected had the policy or policies not contained such self-insurance or self-insured retention provisions. The District may require YMCA to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. In addition, the policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the Named Insured or by the District, its board of trustees, officials, employees, volunteers, and agents.

- 1.6.8. **Acceptability of Insurers.** All insurance required herein is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable by District, and must be authorized to conduct business in the state of California, or approved by the Surplus Lines Association to do business in California.
- 1.6.9. **Verification of Coverage.** YMCA shall furnish the District with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this Agreement. The endorsements are to be signed by the person authorized by that Insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by District before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive YMCA's obligation to provide them. The District reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time. Failure to maintain insurance and furnish the required certificates may be considered a breach of this Agreement by YMCA, and District may terminate this Agreement without waiver of any remedy it may have.
- 1.6.10. **No Limitation on Liability.** Such insurance as required herein shall not be deemed to limit YMCA's liability relating to performance under this Agreement. The District reserves the right to require complete certified copies of all said policies at any time. The procuring of insurance shall not be construed as a limitation on liability or as full performance of the indemnification and hold harmless provisions of this Agreement. YMCA understands and agrees that, notwithstanding any insurance, YMCA's obligation to defend, indemnify, and hold District, its trustees, officials, agents, volunteers, and employees harmless hereunder is for the full and total amount of any damage, injuries, loss, expense, costs, or liabilities caused by or in any manner connected with or attributed to the acts or omissions of YMCA, its officers, agents, subcontractors (of all tiers), employees, licensees, patrons, or visitors, or the operations conducted by YMCA.
- 1.6.11. **Waivers and Modifications.** Any modification or waiver of the insurance requirements herein shall be made only with the written approval of the District Risk Manager or their designee.
- 1.6.12. **Claims-Made Policies.** If any of the required policies provide coverage on a claims-made basis:
  1. The Retroactive Date must be shown and must be before the date of the Agreement or the beginning of any Services performed under this Agreement.
  2. Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of the contract of work. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, Consultant must purchase "extended reporting" coverage.
- 1.7. **Subcontractors.** YMCA shall require and verify that all approved subcontractors maintain insurance meeting all the requirements stated herein, and YMCA shall ensure that District, its board of trustees, officials, employees, agents, and volunteers are named additional insureds on insurance required from subcontractors.
2. **Changes in Insurance Requirements.** On an annual basis, if, in the opinion of District, the amount of the foregoing insurance coverages is not adequate or the type of insurance or its coverage adequacy is deemed insufficient, YMCA shall amend the insurance coverage as required by District's Risk Manager or designee.
  - 2.1. The procuring of such required policy or policies or insurance shall not be construed to limit YMCA's liability hereunder or to fulfill the indemnification provision and requirements of this Agreement. Notwithstanding said policy or policies or insurance, YMCA 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.

- 2.2. During the Term, the District shall maintain at its cost a policy of standard fire and casualty insurance limited to the value of the buildings and improvements located on the Premises as of the Effective Date. In the event of loss or damage to the Premises, the buildings, or any contents, each Party, and all persons claiming under the Party, 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.
- 2.3. No use shall be made or permitted to be made of the Premises, nor acts done, that will increase the existing rate of insurance upon the building or buildings of the Premises or cause the cancellation of any insurance policy, covering same, or any part thereof, nor shall YMCA sell, or permit to be kept, used, or sold in or about the Premises any article that may be prohibited by the standard form of fire insurance policies. YMCA shall, at its sole cost and expense, comply with any and all requirements pertaining to the Premises, of any insurance YMCA or company, necessary for the maintenance of reasonable fire and casualty insurance, covering the Premises' buildings, or appurtenances. Fire and casualty insurance premium increases to District due to equipment and/or activities of YMCA shall be charged to YMCA.
- 2.4. During the Term, YMCA shall comply with all provisions of law applicable to YMCA with respect to obtaining and maintaining workers' compensation insurance.

**EXHIBIT D**  
**CRIMINAL BACKGROUND**  
**INVESTIGATION/FINGERPRINTING CERTIFICATION**  
**CERTIFICATION TO BE COMPLETED BY YMCA**

THE UNDERSIGNED MUST CHECK EACH BOX AND EXECUTE THIS FORM AND THEREBY CERTIFIES TO THE GOVERNING BOARD OF THE DISTRICT THAT:

**Fingerprint / Background Check Certification (Education Code § 45125.1).**

Pursuant to Education Code Section 45125.1, YMCA has obtained for any employee (or subconsultant(s)'s employee) who will interact with pupils, outside of the immediate supervision and control of the pupil's parent or guardian or a school employee, a valid criminal records summary provided by the Department of Justice (DOJ).

- The employee must provide sets of fingerprints to the DOJ that the DOJ will use to obtain criminal record summary information from itself and the Federal Bureau of Investigation (FBI).
- The DOJ shall review the criminal record summary it obtains from its internal search and from the FBI to ascertain whether an applicant for employment has a conviction, or an arrest pending final adjudication, for any sex offense, controlled substance offense, crime of violence, or serious or violent felony. If the criminal record summary for an employee reflects a conviction or arrest for any of these, that employee shall not perform any services for the District.
- The YMCA shall immediately provide any subsequent arrest and conviction information it receives to the District pursuant to the subsequent arrest service.

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**Megan' Law (Sex Offenders).**

I have verified and will continue to verify that the employees of YMCA that will be on District property and the employees of YMCA's subcontractor(s) that will be on District property are not listed on California's "Megan's Law" Website (<http://www.meganslaw.ca.gov/>).

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**DATE:** \_\_\_\_\_

**PROPER NAME OF YMCA:** \_\_\_\_\_

**SIGNATURE:** \_\_\_\_\_

**PRINT NAME:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

[END OF DOCUMENT]