ATTACHMENT 1

LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Agreement") is made and entered into as of this 1st day of July, 2012 (the "Effective Date"), by and between the Newport-Mesa Unified School District (hereinafter referred to as the "**District**") and the City of Costa Mesa (hereinafter referred to as "**City**").

WITNESSETH

WHEREAS, District owns the school site formerly known as the Balearic Elementary School, located at 1975 Balearic Drive, in the City of Costa Mesa, County of Orange, State of California (the "School"); and

WHEREAS, in 1977 **District** determined that the School as further shown and described in the site map attached hereto as Exhibit "A" and incorporated herein (the "Premises") was not needed by **District** for school classroom buildings and decided to inactivate the School; and

WHEREAS, the Premises include a 9.25-acre parcel consisting of a 7,857 square-foot building, a parking lot, and certain outdoor recreational areas; and

WHEREAS, there exists a need for community services to be provided at the Premises for **District**'s students and the community at large; and

WHEREAS, City wishes to enter into a lease agreement with **District** for the use of the Premises to provide such community services; and

WHEREAS, a prior lease agreement between the City and the District for this property was amended twice to allow for a zero payment for the fiscal years 2010-11 and 2011-12 in view of the significant fiscal challenges facing local governmental entities; and

WHEREAS, the most recent amendment also extended the term of the lease agreement to June 30, 2015; and

WHEREAS, both the City and the District wish to execute a complete new agreement to supercede the previous agreement and amendments so as to more clearly specify the terms and conditions in effect; and

WHEREAS, District is authorized to enter into the Agreement with **City** pursuant to Education Code section 35160.

NOW, THEREFORE, the parties hereto enter into this Agreement as a full statement of their respective responsibilities during the term of this Agreement and in

consideration of the representations made above and covenants and conditions set forth herein, the parties agree as follows:

1. **Term and Commencement.**

   A. The initial term of this Agreement shall be for a period of three (3) years commencing on July 1, 2012 and terminating on June 30, 2015 ("Initial Term"), unless sooner terminated as provided for hereinafter.

   B. **City** may request in writing not later than six (6) months or earlier than one (1) year prior to the expiration of the Initial Term or any term in effect thereafter (the "Term") that this Agreement be extended subject to mutually agreeable terms and conditions set forth in the form of an amendment for three (3) consecutive additional terms of five (5) years each. **District** shall notify **City** in writing not later than ninety (90) days following the receipt of any such extension request whether said request has been granted or denied. If (1) **City** fails to timely request any such extension, or (2) **District** determines to deny any such request in its absolute discretion, this Agreement shall end at the conclusion of the Term then in effect.

   C. Notwithstanding anything herein to the contrary, **District** shall reserve the right to cancel and terminate this Agreement in its sole discretion at any time if the Premises are needed for educational purposes of **District**. This Agreement shall be deemed terminated one hundred and eighty (180) calendar days after **District** has given **City** written notice. Said notice to be served in accordance with terms and conditions of the Agreement relating to Notice.

2. **Use of Premises**

   A. **City** shall have the right to use and occupy the Premises solely for the following purposes:

      (1) To house the coordinator of the programs to be conducted at the Premises and several other **City** staff;

      (2) To provide an Early Childhood Program for children 3-5 years old;

      (3) To provide facilities for contract classes for kids, such as karate, art, dance, and other activities for kids consistent with the provisions of the Civic Center Act under Education Code section 38130 et seq.;

(4) To provide facilities for community meetings which are open to the public and which are conducted by non-profit entities who do not charge a fee to attend such meetings.

(5) To provide facilities for community rental on weekends and evenings.

(Collectively herein, the "Program")

B. **City** agrees that the Premises will not be used for any purpose except as provided in paragraph A. above without the prior written consent of **District**, which consent may be withheld in the sole discretion of **District**.

C. In the event that **District** temporarily needs the Premises, or a portion thereof, for educational purposes, **District** shall obtain approval from **City** for the use of the Premises thirty (30) days in advance, which approval shall not be unreasonably denied.

D. **City** agrees to maintain the Premises in good condition and repair at all times during the term of this Agreement consistent with Section 9 of this Agreement and shall comply with all applicable local and state laws and regulations regarding the Premises and the Program.

3. <u>City's Operations.</u>

A. **City** shall not itself use or permit any other person or entity to use the Premises for any purpose which may materially damage or harm the Premises or any other improvements on or adjacent thereto or the image or attractiveness thereof, or in any manner which shall constitute waste, nuisance, or public annoyance; and **City** shall conform to, and cause all persons using or occupying any part of the Premises to comply with, all public laws, ordinances and regulations from time to time applicable thereto and to all operations thereon.

B. **City** shall be responsible for providing furniture and any other equipment or supplies necessary for conducting the Program.

C. Other than as set forth in Section 10 of this Agreement, **City** shall not erect, place upon, operate, or maintain any improvement on the Premises without the prior written consent of **District**.

4. **Compliance With Laws and Regulations.**

A. **City**, at no cost to **District**, shall be solely responsible for obtaining all permits, licenses, and/or approvals from local and state agencies necessary for the continued use of the Premises and the operation of the Program prior to occupancy of the Premises.

B. **City** shall, at its sole cost and expense, comply with all statutes, ordinances, and requirements of federal state and municipal authorities in force during the term hereof and any extension thereof in connection with any future operations or City funded improvements. City is not responsible for the existing non-compliance of the Premises. Non-compliance with this section shall constitute a breach of this Agreement.

C. As applicable, **City** shall meet or exceed all applicable laws and regulations of the Americans With Disabilities Act of l990 found at 42 United States Code Section 12101 et seq. and the Child Day-Care General Licensing Requirements found at Title 22 of the California Code of Regulations in connection with any future City funded improvements to the Premises. City is not responsible for the existing non-compliance of the Premises.

D. **City** shall comply with the administrative regulations set forth in **District** Disaster Guide adopted by the Board of Education in November 1990, or any subsequent plan adoption or revision, which includes, but is not limited to:

1. Preparation of a written civil defense disaster plan that includes evacuation routes and an emergency organizational chart of assigned duties. A copy of such plan shall be submitted to **District** with the executed Agreement.

2. Participation in zone drills, including fire, disaster, and intruder drills, as established by **District**.

E. **City** shall not permit any person to smoke cigarettes or other tobacco products or consume alcoholic beverages anywhere in **District's** property. District is responsible for the preparation and posting of signs prohibiting such activity on the Premises.

5. **Participants.**

City, in its sole discretion, shall have the right to determine which children and entities will be permitted to attend the Program and to otherwise establish reasonable rules, regulations and other requirements.

6. **Inspection.**

City has inspected the Premises and agrees that, as of the date of execution of this Agreement, they are acceptable for the use of the premises as listed in Section 2. City does not accept responsibility or liability for the existing condition of the Premises in connection with the compliance with the Americans with Disabilities Act or existing building codes.

7. **Rent.**

A. For the Initial Term as defined in Section 1, **City** agrees to pay **District** as rent the annual amount calculated as follows: Base rent of $67,145, (Base Rent) reduced by a $5,000 credit for performing deferred maintenance (Deferred Maintenance Credit) as defined in 7.C. below, and further reduced by $16,000 as an agreed upon credit for major maintenance (Major Maintenance Credit) during the Initial Term, resulting in a rent of $46,145 for the first year of this agreement. Subsequent years during the Initial Term shall be calculated as follows.

B. The Base Rent shall be increased on each anniversary of the Effective Date throughout the Initial Term of this Agreement by an amount equal to the CPI increase as a percentage of the rent for the previous year. The "CPI" for purposes of this lease shall be the US Consumer Price Index for all Urban Consumers (LA/Orange/Riverside areas) as published in April before the start of each lease year. Notwithstanding the foregoing, in no event shall the Base Rent be increased by more than five percent (5%) of the Base Rent attributable during the previous year during the Initial Term.

C. The Deferred and Major Maintenance credits defined in 7.A. above shall be applied to each year in the Initial Term after the recalculation of the Base Rent as described in 7.B.

D. The parties understand that the Major Maintenance credit defined herein shall not extend beyond the Initial term of this Agreement.

City shall submit verification of expenditures applicable to the Deferred Credit amount and to the Major Maintenance Credit amount no later than April 1 of any lease year. District shall then calculate the rent and submit an invoice to the City no later than May 1 before the start of each lease year indicating the rent due for the upcoming year. The invoice is to be delivered to the City of Costa Mesa, Finance Department, P.O. Box 1200, Costa Mesa, CA 92628-1200

Said sums shall be paid in annual installments, in advance, due on July 31 of each year. All lease payments shall be made payable to the Newport-Mesa Unified School District and delivered to 2985-A Bear Street, Costa Mesa, California 92626, Attention: Fiscal Services.

8. Other Costs and Credits

A. **City** shall also be responsible for all costs associated with the Agreement, including, but not limited to, the costs of utilities, maintenance of the grounds and buildings, taxes, assessments and insurance as more particularly described in this Agreement.

B. Deferred Maintenance Improvements. **City** shall perform deferred maintenance improvements in an amount not less than $5,000 annually. Records of such improvements shall be made available to **District** no later than April 1 of each lease year. Any deferred maintenance improvements shall be submitted to **District** for approval, which approval shall not be unreasonably withheld. The cost of such deferred maintenance up to the $5,000 amount will be subtracted from the upcoming year's rent.

(1) Deferred maintenance is defined under the guidelines of the State of California Office of Public School Construction and includes the following projects:

(a)	Floor Covering:	Tile, Carpet, hardwood floors
(b)	Painting:	Interior and Exterior
(c)	Electrical	Panels and Boards, Signal Systems, Fire Alarms, Public Address, Conductors and Cables
(d)	Classroom Lighting:	Incandescent and Fluorescent Lighting, Fixtures
(e)	Roofing:	Flashings, Gutters, Downspouts, Ceiling Tiles
(f)	Plumbing:	Underground Gas and Water Lines, Sewer
(g)	HVAC:	Wall Heaters, Central Systems, Individual Units, Cafeteria Fume Exhaust Systems
(h)	Wall Systems:	Doors and Hardware, Window Assemblies, Indoor Gym Bleachers, Siding, Restroom Partitions
(i)	Paving:	Asphalt and Concrete

(2) Examples of unqualified projects under deferred maintenance guidelines include:

(a) Repair and maintenance of furniture and equipment
(b) Ongoing preventive maintenance
(c) Installation of new items that did not previously exist
(d) Energy Conservation
(e) Landscaping, fencing, irrigation, and sprinkler systems
(f) Athletic stadium equipment
(g) Window curtains and blinds
(h) Tables and counter tops
(i) Whiteboards, chalkboards and blackboards
(j) Playground equipment
(k) Replacement of portable buildings
(l) Technology and telephone cables, panels, and wiring

(3) City shall not be responsible for any asbestos or lead remediation, encapsulation or removal, except for what is necessary for City deferred maintenance projects.

C. Major Maintenance Improvements: City may perform facility upgrades and energy conservation projects to the facility to allow for updating the facility to meet new programmatic and technology needs at the facility. Any major maintenance improvements shall be submitted to **District** for approval, which approval shall not be unreasonably withheld. . Records of such improvements shall be made available to **District** no later than April 1 of each lease year. The cost of such major maintenance improvements up to the $16,000 amount provided in section 7.A. above will be subtracted from the upcoming year's rent during the Initial Term of this Agreement.

9. <u>Utilities.</u>

A. During the term of this Agreement, **City** shall be responsible for the payment of all utilities used at the Premises, including, but not limited to electricity, natural gas, trash, water and telephone services. **City** shall cause all utility services to be placed in its name and shall directly pay such utility bills within ten (10) days after **City** receives the applicable utility and service bills or prior to the due date, whichever is earlier.

B. Any and all utility and service costs incurred by **City** shall be separate and apart from any lease payment which is due pursuant to Section 7 of this Agreement.

C. If any such charges are not paid when due, **District** may pay the same and charge the amount thereof to **City** who agrees to pay the same on demand, together with ten percent (10%) interest per annum, or the maximum allowed by law, whichever is the lesser, from the date of expenditure by **District**.

10. <u>Custodial Care, Maintenance, Grounds Maintenance.</u>

A. During the term of this Agreement, **City** shall keep the Premises in good order, condition, and repair. If **City** fails to perform its obligations under this Section, **District** may, at its option, after thirty (30) days written notice to **City**, enter upon the Premises and put the same in good order, condition and repair and the cost thereof shall become due and payable as additional rent by **City** to **District** upon demand.

B. **City** shall provide maintenance to the interior and exterior of the building, including windows, roof repair, painting, HVAC, and service systems. **City** shall also be responsible for minor exterior maintenance work within normal wear and tear, including painting over graffiti, etc.

C. **City**, at its sole cost and expense, shall be responsible for mowing the lawn, trimming lawn edges, removing weeds, watering, repairing irrigation systems of the Premises, including broken sprinkler heads as needed, and otherwise maintaining the grounds in a neat and orderly appearance.

D. **City**, at its sole cost and expense, shall provide all maintenance and janitorial supplies and services to keep the Premises in a neat, orderly and sanitary condition. Such supplies shall include, but not be limited to, replacement of restroom supplies, light bulbs and fluorescent tubes. **City** shall also be solely responsible for necessary repairs due to **City's** or its invitees' use of the Premises, ordinary wear and tear excepted.

E. **City**, at its sole cost and expense, shall sweep the parking lot either mechanically or by hand as often as is necessary to maintain the same in a clean and presentable condition. **City** shall also maintain the parking lot periodically if and when needed with regard to resurfacing, if necessary, re-pairing holes, maintaining striping, etc. The asphalt and concrete work will qualify as a deferred maintenance item.

F. **City** shall keep the plumbing and air-conditioning, if any, installed in the premises in good repair. **District** will not be liable or

accountable for any damages occurring by reason of any defects in such plumbing and air-conditioning, nor be liable for any damages occasioned by the Premises being out of repair, nor for any damage done or occasioned by or from plumbing, gas, water, steam or other pipe or sewage, or the bursting, leaking or running of any water pipes, closets, tanks, sprinklers, or plumbing upon or about the Premises, or about or upon any adjacent premises.

G. Notwithstanding anything in this paragraph to the contrary, **District** shall be under no obligation to repair any damage caused by the willful or negligent conduct of **City**.

H. It is further agreed, however, that if **City** should fail to perform hereunder, then **District** may, at its option, (but this shall not be deemed to create any obligation upon **District** so to do, nor in any manner affect the obligations of **City**) enter the Premises and repair the same as in its judgment may be necessary, and the cost and the expenses of such repairs shall be added to the next succeeding installment of rent, and if not so paid, this Lease may be declared forfeited and at an end, in the same manner as for the nonpayment of rent.

I. On the last day of the term hereof, or on any sooner termination, **City** shall surrender the Premises to **District** in the same condition as when received, in broom clean condition, ordinary wear and tear excepted. **City** shall repair any damage to the Premises occasioned by the removal of its property.

11. <u>Alterations or Improvements.</u>

A. **City** shall not make or permit to be made, any alteration of the Premises, or any part thereof, without the prior written consent of **District**, which consent shall not be unreasonably withheld.

B. Major structural changes to the Premises shall be subject to approval by **District** and the Division of the State Architect, if applicable, and shall be in compliance with the California Environmental Quality Act requirements, when required by law. **District's** approval or disapproval shall be communicated in writing to **City** within sixty (60) days of receipt of such request.

C. During the term hereof, and any extension thereof, **City** shall keep the premises, and all parts thereof, free from stop orders arising out of any work performed, material furnished, or obligation incurred by **City**, and **City** hereby agrees to indemnify and hold **District** and the Premises harmless from any and all claims, demands or

liabilities thereof. **District** reserves the right to post non-responsibility notices for stop orders as authorized by law but is not obligated to do so.

D. All of **City's** personal property, business and trade fixtures, cabinet work, furniture, movable partitions, machinery and equipment, other than that which is affixed to the Premises so that it cannot be removed without material damage to the Premises, shall remain the property of **City** and will be removed by **City,** at no cost to **District**, within ninety (90) days after the expiration or earlier termination of this Agreement. If any property is provided to **City** by **District**, the same shall be returned to **District** upon termination of this Agreement in good order, condition and repair.

E. **City** shall be solely responsible for the cost of removal of any alterations or improvements which may be installed on the Premises and for any damage to the Premises proximately caused by such removal.

F. Upon termination of the Agreement by either party before the end of the Term, District shall compensate the City or give credit to any rent amount due for the unamoritized cost of any **District** approved capital or deferred maintenance improvements made by the City.

12. <u>Right of Entry, Operation and Supervision of Program.</u>

A. **District** or its authorized representatives may, from time to time, at any reasonable hour after giving reasonable notice, enter upon and inspect the Premises, or any portion thereof including the improvements thereon to ascertain compliance with this Agreement, but without obligation to do so or liability therefor.

B. **City** shall hire and supervise its own staff and Program operators, and shall not create additional work for **District**.

13. <u>Termination.</u>

A. Notwithstanding the terms of this Agreement to the contrary, each of the parties hereto may, without cause, terminate this Lease, upon six (6) months notice, in writing, served upon the other party, said notice to be served in accordance with terms and conditions of this Agreement relating to Notice.

B. In the event of any breach of this Agreement by **City**, **District** shall notify **City** in writing of such breach, and **City** shall have sixty (60) calendar days in which to cure said breach. Should any breach

remain uncured, **District** may, in its sole discretion, give written notice to **City** and immediately terminate this Agreement. The occurrence of any one or more of the following shall constitute a "breach" hereunder by **City**:

(1) **City's** failure to make any payment of rent or any other payment required to be made by **City** hereunder, as and when due, where such failure shall continue for a period of ten (10) days after written notice thereof is received by **City** from **District**.

(2) **City's** failure to observe or perform any of the express or implied covenants or provisions of this Agreement to be observed or performed by **City**, other than as specified in paragraph 12.B.(1) above, where such failure shall continue for a period of thirty (30) days after written notice thereof is received by **City** from **District**; provided, however, that it shall not be deemed a breach by **City** if **City** shall commence to cure such failure within said thirty (30)-day period and thereafter diligently prosecutes such cure to completion.

C. This Agreement shall automatically terminate if **City** utilizes the Premises for any purpose not specified in Section 2 herein without the prior written authorization from **District** and/or inconsistent with the terms of the Agreement.

D. **District** may terminate this Agreement if the Premises are needed for educational purposes as provided in Section 1.C. above.

E. Upon the termination or expiration of the term of this Agreement, **City** shall immediately, peaceably and quietly yield up to **District** possession of the Premises in good order, condition and repair.

14. <u>Holding Over.</u>

Any holding over after the expiration of the term hereof, or any extension thereof, with the consent of **District**, shall be deemed to be a tenancy from month to month only, on the same terms, conditions and covenants as are herein provided.

15. <u>District's Non-Liability and Indemnity.</u>

A. **District** shall not be liable for any loss, damage or injury of any kind or character to any person or property (a) arising from any use of the Premises, or any part thereof, (b) caused by or arising from any

act or omission of **City** or any of its agents, employees, licensees or invitees, (c) arising from any accident on the Premises or any fire or other casualty thereon, (d) occasioned by the failure of **City** to maintain the Premises in safe condition, or (e) arising from any other cause whatsoever, except as occasioned by the negligence or willful misconduct of **District** or its employees.

B. **City** shall indemnify and hold harmless **District** and its officers, directors, agents and employees from and against any and all claims, actions, damages, liability and expenses, including attorneys' fees, in connection with the loss of life, personal injury and/or damage to property arising from the occupancy or use by **City** of the Premises or any part thereof, or arising from or out of **City's** failure to comply with any provision of this Agreement, or otherwise occasioned wholly or in part by any act or omission of **City**, its agents, representatives, employees, servants, invitees or licensees, except as occasioned by the negligence or willful misconduct of the **District** or its employees. In case **District** shall, without fault on its part, be made a party to any litigation commenced against **City**, then **City** shall protect and hold **District** harmless and shall pay all costs, expenses and reasonable attorneys' fees incurred by **District** in connection with any such litigation, except as occasioned by the negligence or willful misconduct of the **District** or its employees. **District** may, at its option, require **City** to assume **District's** defense in any action covered by this Section through legal counsel satisfactory to **District** except as occasioned by the negligence or willful misconduct of the **District** or its employees.

16. <u>Insurance.</u>

A. **City** shall, at its own cost and expense, maintain in full force and effect during the term of this Agreement: (a) comprehensive public liability and property damage insurance, including owned and non-owned automobile liability coverage insuring against claims for injuries to persons or property occurring in, upon or about the Premises. Said liability policy shall have limits of not less than One Million Dollars ($1,000,000) for bodily injury and death of person or persons, and not less than One Million Dollars ($1,000,000) for property damage; (b) workers' compensation coverage as required by law; and (c) employer's liability coverage.

B. All policies of insurance provided for herein shall be written as primary policies specifically covering the Premises with responsible and solvent insurance companies authorized to do business in California.

C. **City's** insurance company shall supply **District** with a Certificate of Insurance of such liability policy or policies and an endorsement to such comprehensive liability policy or policies showing **District** as an additional insured with respect to claims arising out of **City's** occupancy and use of the Premises.

D. Each policy evidencing insurance required to be carried by **City** pursuant to this Section shall contain the following provisions and/or clauses: (a) a provision that such policy and the coverage evidenced thereby shall be primary and that any coverage carried by **District** shall be noncontributing with respect to any policies carried by **City**; and (b) a provision that insurer will not cancel or change the coverage provided by such policy without first giving **District** a minimum of thirty (30) calendar days prior written notice. **City** shall pay any additional insurance premiums which may be required for the inclusion of such provisions. **City** further agrees to provide **District** with a written waiver of any right to subrogation against **District**, its agents, employees and representative in connection with any damage or injury covered by the liability insurance policy or policies required by this Section, except as occasioned by the sole negligence or willful misconduct of **District** or its employees. **City** covenants that such written waiver will be provided to its insurance company issuing the insurance coverage required by this Section and that such insurance company will honor and acknowledge **City's** waiver in writing.

E. The limits of insurance specified above shall not limit **City's** liability.

F. **City** may comply with this Section by being self-insured under any adequate or reasonable self-insurance program.

17. <u>Liens and Claims.</u>

A. **City** shall not suffer or permit to be enforced against the Premises, or any part thereof, or any improvements thereon, any mechanics', materialmens', contractors' or subcontractors' liens arising from or any claim for damage growing out of the work of any construction, repair, restoration, replacement or improvement prosecuted by or on behalf of **City**, or any other claim or demand that may arise due to **City's** use and occupancy of the Premises, but **City** shall promptly pay or cause to be paid all said liens, claims or demands before any action is brought to enforce the same against the Premises or improvements. **City** agrees to indemnify and hold **District** and the Premises free and harmless from any and all such liens, claims, demands and actions (collectively, the "Liens")

together with reasonable attorneys' fees and all costs and expenses in connection therewith.

B. Notwithstanding the foregoing Paragraph, if **City** shall in good faith contest the validity of any such Lien, then **City** shall, at its sole expense, defend itself and **District** against the same and shall promptly pay and satisfy any expense or cost of any judgment that may be rendered thereon before the enforcement thereof against **District** or the Premises, upon the condition that if **District** shall require, **City** shall furnish to **District**, a surety bond satisfactory to **District** in an amount at least equal to such contested Lien indemnifying **District** against liability for the same, and holding the Premises free from the effect of such Lien or if **District** shall request, **City** shall procure and record the bond provided for in the California Civil Code, or any comparable statute hereinafter enacted providing for a bond freeing the Premises from the effect of such a Lien.

18. <u>Taxes and Assessment.</u>

A. **City** expressly recognizes, understands and agrees that this Agreement may create a possessory interest subject to property taxation and that **City** may be subject to the payment of property taxes levied on such interest. **City** shall hold **District** harmless for all property taxes which may be levied on the leased Premises during the term of this Agreement.

B. **City** shall be responsible for, and agrees to pay, not later than ten (10) days prior to delinquency, any and all taxes, assessments, levies, fees and other governmental charges of every kind or nature (hereinafter collectively called "taxes") levied or assessed by any municipal, county, state, federal or other taxing or assessing authority upon, against or with respect to (a) the Premises, (b) personal property of any kind placed, maintained or located within, upon or about the Premises, (c) all alterations, additions or improvements of whatsoever kind or nature, if any, made to the Premises, and (d) rentals or charges payable by **City** to **District**, irrespective of whether any of the items described in the clauses (a) through (c) above are assessed as real or personal property, and irrespective of whether any of such items are assessed to or levied against **District** or **City**. **City** shall, not later than the 10-day period described above, or upon written request of **District** if payment is made earlier, furnish to **District** a copy of the receipted tax bill or other proof of said payment. **City** hereby agrees to protect and hold harmless **District** and the Premises, all improvements in, on, or about the same from all liability for any and all such taxes,

together with any interest, penalties, or other sums thereby imposed and from any sale or other proceeding to enforce payment thereof. If any such taxes are not paid when due, **District** may pay the same, and charge the amount thereof to **City**, who agrees to pay the same on demand, together with ten percent (10%) interest per annum, or the maximum allowed by law, whichever is the lesser, from the date of expenditure by **District**.

19. Signs.

City shall have only those signs on the Premises which are necessary and which comply with all laws, rules and regulations of federal, state and local jurisdiction in force during the period of this lease.

20. Hazardous Materials.

A. District warrants that to the best of its knowledge, the Premises are free of hazardous materials (as defined hereinafter). In the event it is discovered that the Premises are not free of hazardous materials, District, at its sole cost and expense, shall conduct and complete all investigations, studies, sampling, and testing, and all remedial, removal, and other actions necessary to clean up and remove all hazardous materials on, from, or affecting any portion of the Premises. District agrees to defend, indemnify, and hold harmless City, City Council, and each of their employees, agents and representatives from and against all claims, demands, penalties, fines, liabilities, settlements, damages, costs or expense, including attorney's fees, of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to the presence, disposal release, or threatened release of any hazardous materials on or about the Premises resulting from the actions or inaction of District.

B. **City** shall keep the Premises completely free of hazardous materials, as defined hereinafter. In the event that it is discovered that the Premises have become contaminated with hazardous materials, due to the action of **City**, **City**, at its sole cost and expense, shall conduct and complete all investigations, studies, sampling, and testing, and all remedial, removal, and other actions necessary to clean up and remove all hazardous materials on, from, or affecting any portion of the Premises. **City** agrees to defend, indemnify, and hold harmless **District**, **District's** governing board, and each of their employees, agents, and representatives from and against all claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses, including attorney's fees, of whatever kind or nature, known or unknown, contingent or

otherwise, arising out of, or in any way related to the presence, disposal, release, or threatened release of any hazardous materials on or about the Premises resulting from **City's** actions.

C. For purposes of this Section, "Hazardous Materials" shall mean any toxic or hazardous substance, material or waste or any pollutant or contaminant or infectious or radioactive material, including but not limited to those substances, materials or wastes regulated under any state or federal statutes or regulations promulgated thereto including without limitation: (1) any "hazardous substance" within the meaning of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA") 42 U.S.C. § 9601, et seq. or the California Hazardous Substance Account Act, Cal. Health and Safety Code § 25300 et seq. or the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, et seq.; (2) any "hazardous waste" within the meaning of the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq.; (3) any petroleum products or fractions thereof or derivatives, (4) flammable explosives, or (4) asbestos or related materials.

21. <u>Partial Destruction or Damage.</u>

In the event of partial destruction of or damage to the Premises or the Premises being declared unsafe or unfit for occupancy by a public authority authorized to make such declaration, for any reason other than **City's** act, use or occupation, except as otherwise provided; **District** shall have the option either to terminate the Agreement, or as soon as practicable, to make such repairs as are necessary to restore the Premises to the condition which existed prior to the destruction or damage and/or make such repairs as are necessary to make the Premises safe and fit for occupancy. **City** shall, however, be entitled to a reduction of rent as mutually agreed upon during any periods its use and occupancy of the Premises are adversely affected by reason of destruction, damage, restoration, and/or subsequent repair required thereby. Such reduction shall be proportionate to the interference with **City's** ordinary use of the Premises. In the event of total destruction of the Premises, **City** shall have the right to terminate the Agreement.

22. <u>Acts of God.</u>

If either party hereto shall be delayed or prevented from the performance of any act required hereunder by reason of Acts of God, restrictive governmental laws or regulations, or other cause, without cause and beyond the control of the party obligated (financial liability excepted), performance of such acts shall be excused for the period of the delay, and the period for performance of any such act shall be extended for a period

equivalent to the period of such delay. However, nothing in this clause shall excuse either party from the prompt payment of any rental or other charges required except as may be expressly provided elsewhere in this Agreement.

23. Relationship.

Nothing contained in this Agreement shall be construed as creating a relationship of employer and employee, or principal and agent, between **District** and **City** or any of **City's** agents or employees. **City** assumes exclusively the responsibility for the acts of its employees or agents as they relate to services to be provided during the course and scope of their employment.

24. Assignment and Subletting.

City will not assign, let or sublet the whole or any part of its interest in this Agreement and shall not suffer any other person or entity to occupy or use the Premises, or a portion thereof, without the prior written consent of **District**. Any such assignment or subletting, without the required consent, shall be void and shall, at **District's** option, terminate this Agreement.

25. Notices.

Any notice which either party may desire to give to the other party must be in writing and may be given by personal delivery, by overnight courier, or by mailing the same by first class mail, postage prepaid, to the party to whom the notice is directed at the address of such party hereinafter set forth, or such other address and to such other persons as the parties may hereafter designate. Notice shall be deemed given and served upon delivery if delivered personally or by overnight courier, or three (3) calendar days after depositing in the United States Mail, postage pre-paid, return receipt requested, addressed to:

District: Newport-Mesa Unified School District
2985 Bear Street, Building A
Costa Mesa, California 92626
Attention: Deputy Superintendent, Business Services

City: City of Costa Mesa
77 Fair Drive
Costa Mesa, CA. 92626
Attention: Tom Hatch, CEO

Any party may change the address or persons to whom notices are to be sent by giving written notice of such change of address or persons to the other party in the manner herein provided for giving notice.

26. Waiver.

A. The failure of either party to insist upon strict performance of any of the terms, conditions, or covenants in this Agreement shall not be deemed a waiver of any right or remedy that either party may have and shall not be deemed a waiver of any right or remedy for a subsequent breach or default of the terms, conditions, or covenants herein contained.

27. California Law.

This Agreement shall be construed and enforced in accordance with the laws of the State of California.

28. Time.

Time is of the essence of every provision of this Agreement in which time is an element.

29. Authority.

Each person executing this Agreement warrants that he or she has the authority to so execute this Agreement and that no further approval of any kind is necessary to bind the parties hereto.

30. Entire Agreement; Amendments.

A. This Agreement, together with the exhibit(s) hereto, constitutes the entire Agreement between **District** and **City**. **District** and **City** agree that all prior or contemporaneous oral and written agreements between themselves or their agents and authorized representatives relative to the Premises are revoked by this Agreement.

B. Any amendment or other modification of this Agreement must be in the form of a written amendment signed by both parties, duly noticed and approved at a public meeting of **District's** Board.

31. Severability.

If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the

remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

32. Interpretation.

All provisions, whether covenants or conditions, shall be deemed to be both covenants and conditions. The definitions contained in the Agreement shall be used to interpret this Agreement and when required by the context of this Agreement, the singular shall include the plural and the masculine shall include the feminine or the neuter.

33. Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, District and **City** have caused this Agreement to be executed by their duly authorized officers as of the Effective Date.

District:	**City:**
Newport-Mesa Unified School District	City of Costa Mesa – A Municipal Corporation
By: _____	By: _____
Name: Paul H. Reed	Name: Eric Bever
Title: Deputy Supt. and CBO	Title: Mayor of the City of Costa Mesa
Board Approved Date: June 12, 2012	Approved as to Form
	By: _____
	Name: Thomas P. Duarte
	Title: City Attorney
Approved as to Content	Attest:
By: _____	By: _____
Name: Thomas R. Hatch	Name: Brenda Green
Title: Chief Executive Officer	Title: Interim City Clerk and ex-officio Clerk of the City of Costa Mesa

Exhibit "A"

Site Map of School

[TO BE INSERTED]