REVISED/UPDATED
January 14, 2015

TO: Santa Clara County Board of Education
FROM: Mary Ann Dewan, Ph.D.
       Chief Schools Officer
VIA: Jon R. Gundry
      County Superintendent of Schools

SUBJECT: Relocation of Special Education Sites

Associated Goal
GOAL 1: Improve student equity and reduce access discrepancies to high quality education

Background
This information item was prepared for the January 14, 2015 Board Meeting agenda per the request of Trustee Di Salvo.

In the Fall of 2014, the SCCOE Special Education department staff was contacted by staff at San Jose Unified School District (SJUSD) to discuss the location of a SCCOE severe disabilities program currently located at the Erikson site (4849 Pearl Ave, San Jose, CA 95136) in San Jose Unified. The SCCOE operates nine classes serving approximately 100 students from middle school through post-secondary from approximately 17 school districts in the county.

As part of a review of their facilities use master plan, SJUSD decided to offer the SCCOE a different site for our program for the 2015-2016 school year. The new site is the Hester site (1460 The Alameda, San Jose, CA 95126).

If located at the Hester site, the SCCOE would also relocate county wide special education classes currently located in Campbell Union School District at the Della Maggiore site (2300 Clove Dr. San Jose, CA 95128). There has been some conversation with our special education staff suggesting that the lease holder has a strong desire for us to vacate the Della Maggiore site in 2016 and that the site will be designated for demolition upon our program vacating the site. Currently, the SCCOE operates six classrooms serving
approximately 60 students from approximately nine districts at Della Maggiore. All other spaces at the site have already been vacated.

The Erikson and Della Maggiore sites are designed to serve students from any district in Santa Clara County and therefore need to be centrally located within Santa Clara County. These special centers are for medically fragile and behaviorally challenged students who cannot be on integrated sites due to their Individualized Education Plans (IEP).

The SCCOE has a lease for the Erikson site. According to our SELPA housing policy, a district may terminate or change the offer of space for our county wide special education programs by providing such notice by February 28th each year. We received verbal notice that the Erikson site will not be available to the SCCOE after June 2015. However, we have confirmed that if we were not to enter into the new lease for the Hester site, our lease at Erikson would end on June 30, 2016.

The current Agreement for Use of School District Facilities with SJUSD is attached.
AGREEMENT FOR USE OF VARIOUS SCHOOL DISTRICT FACILITIES BETWEEN
SAN JOSE UNIFIED SCHOOL DISTRICT AND
SANTA CLARA COUNTY OFFICE OF EDUCATION TO COMPLY WITH THE
SELPA HOUSING POLICY

THIS AGREEMENT FOR USE OF FACILITIES AT Various District Sites ("Agreement" or
"Lease") is made on this ___ day of ___ , 2011, by and between the San Jose Unified School
District, a California Public School District in the City of San Jose, Santa Clara County,
California ("District"); and the Santa Clara County Office of Education, located in the State of
California ("County Office" or "County").

RECITALS:

WHEREAS, the District and other districts (collectively the "Districts") within Santa
Clara County ("County") have entered into an agreement for the County Office to provide special
education services to children who reside in the districts and qualify for special education
services;

WHEREAS, the Special Education Local Plan Areas (SELPAs) within the County have
adopted a formula for each of the districts to provide to the County Office a specified number of
classrooms or a cash payment in lieu of classrooms based upon each district’s enrollment and
other factors;

WHEREAS, prior to 2004, the District had been paying substantial funds to the County
Office in lieu of providing classrooms;

WHEREAS, under the current formula, the District is required to provide the County
Office classrooms based on the following: the number of District students participating in
SELPA programs divided by the number of students per classroom ("District Classroom
Allocation") or pay fees in lieu of facilities; however, the County Office shall not be responsible
for either any decline in student enrollment and change in associated fees, or whether, because
of a decline in countywide student enrollment, the number of classrooms required were
to fluctuate from year to year;

WHEREAS, due to school closures and student population changes, the District has
space available for use by the County Office;

WHEREAS, the County Office has agreed to pay the District for District classrooms in
excess of the District Classroom Allocation used by the County Office;

WHEREAS, the District has offered the County Office the use of the following facilities,
which offer the County Office has accepted and which facilities the County Office is using;
- Fourteen (14) classrooms, the administrative offices, and the multi-use room at Erikson School;
- Two (2) oversized classrooms at Carson School with sufficient space to provide the District credit for three (3) classrooms;
- Two (2) oversized classrooms at Cory School with sufficient space to provide the District credit for three (3) classrooms;
- One (1) classroom at Willow Glen Middle

WHEREAS, the administrative offices and the multi-use room at Erikson School contain a total of approximately 6,731 square feet and are therefore equivalent to one and one half (1-1/2) standard classrooms of 960 square feet each;

WHEREAS, County operates special education programs to serve students of the District as well as of other school districts that participate in County’s programs;

WHEREAS, the District and County Office entered into an agreement for the use of Facilities at Erikson School between San Jose Unified School District and Santa Clara County Office of Education (“Erikson Agreement”, Exhibit C) in 2004, and that Agreement is scheduled to expire June 30, 2014;

WHEREAS, the District and County Office entered into an agreement for County Office use of classrooms at various District facilities in 2005 and that agreement is due to expire July 31, 2011 (the “Expired Agreement”);

WHEREAS, the parties desire to enter into one agreement for County Office use of facilities that will terminate the Erikson Agreement and replace both agreements;

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

Section 1. Premises.

The Premises subject to this Agreement are located on school sites owned by the District (“School Sites”) and are described in Exhibit “A,” attached hereto and made a part of this Agreement. District agrees to lease the Premises to County to perform the County’s Activities, as more fully described in Exhibit “B,” attached hereto and made a part of this Agreement. County shall have use of the Premises at all times during the term of this Agreement to perform County’s Activities only, subject to written modification agreed to by the parties.

Section 2. Title to School Site.

The parties acknowledge that title to the School Sites is held by District.

Section 3. Term.
The term of this Agreement shall commence on July 1, 2011 (the "Commencement Date"), and shall remain in effect until June 30, 2016 unless terminated sooner under any provision hereof ("Term"). At District’s sole discretion, this Lease may be renewed in writing upon mutually agreed terms and conditions.

Section 4. Consideration.

For and in consideration of the use of the Premises and other District classrooms as set forth above the County Office shall give the District credit for twenty two and one half (22.5) classrooms against the District’s requirement of providing the County Office classrooms to accommodate the District Classroom Allocation (the "Consideration"). The District does not owe the County any fees since the SELPA formula has been fulfilled. The District’s required contributions in 2011-2010 are 18.86 classrooms, and the County is occupying 22.50 classrooms.

The District Classroom Allocation shall be recalculated annually based on the number of District students served by the County. For each year that the District Classroom Allocation is less than the number of classrooms provided by the District, the County shall pay the District for the additional classrooms in accordance with the formula set forth in the established SELPA Housing Policy, Exhibit “D” hereto.

Section 5. Utilities.

In addition to the Consideration, District shall provide the following utilities for the Premises. For purposes of this Agreement, utilities include: water, gas, electricity, telephone, data and communication lines and service, trash collection, landscape and sewer service. County shall pay for and provide all other services supplied to or consumed on the Premises and all taxes and surcharges thereon.

Section 6. Delivery and Condition of Premises.

6.1 Delivery: District shall deliver to County on the Commencement Date, actual possession of the Premises. If for any reason District cannot deliver possession of the Premises to County on the Commencement Date, District shall not be subject to any liability therefore nor shall District’s failure to deliver the Premises affect the validity of this Lease or the obligations of County hereunder or extend the Term hereof. However, in this case, County shall not be obligated to provide the Consideration set forth above until possession of the Premises is tendered to County.

6.2 Condition of Premises: The Premises are leased to County on an "AS IS" basis. District shall not be required to make or construct any alterations including structural changes, additions or improvements to the Premises. By entry and taking possession of the Premises pursuant to this Lease, County accepts the Premises in “AS IS” condition. County acknowledges that neither the District nor any of District’s agents has made any representation or warranty as to the suitability of the Premises to the conduct of County’s programs. Any agreements, warranties or representations not expressly contained herein shall in no way bind either District or County, and District and County expressly waive all claims for damages by reason of any statement, representation, warranty, promise or agreement, if any, not contained in this Lease.
Section 7. Use of Premises.

County shall use the Premises solely for the purpose of operating special education programs to serve students of the District and other school districts that participate in County’s programs ("Program"). County shall not use the Premises for any purpose other than that specified in this section without the prior written consent of the District.

7.1 County agrees to maintain the Premises and to conduct the Program in a manner that meets all federal, state and local regulations relating to the Premises and to the operation of the Program, and to comply with all federal, state and local laws, regulations and ordinances, now or hereafter enacted concerning the Premises, the use of the Premises, and/or the Program. The execution of this Lease shall be subject to the County obtaining any and all permits or approvals that may be required in order for the County to operate the Program on the Premises. County shall not use or permit the Premises to be used in whole or in part during the Term of this Lease for any purpose or use in violation of the laws or ordinances applicable thereto.

7.2 If required, County and all sub-lessees shall obtain a use permit from the City of San Jose for County’s use throughout the Term of this Lease. County shall require all sub-lessees, licensees, and invitees to use the Premises only in conformance with the permitted use and with applicable governmental laws, regulations, rules and ordinances. District shall cooperate with County by executing and, if necessary, recording any required applications for zoning or use permits necessary for County’s use of and operations on the Premises, however, no costs shall accrue to or be borne by District.

7.3 County represents that it is qualified to administer and operate the Program. County shall be solely responsible for the administration and operation of the Program, including the hiring of all employees. County 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 County’s activities on the Premises.

7.4 County shall indemnify, defend, and hold District harmless against any loss, expense, damage, attorneys’ fees or liability arising out of failure of County to comply with any applicable law, regulation, rule or ordinance.

7.5 County shall not commit or suffer to be committed, any waste upon the Premises, or allow any sale by auction upon the Premises, or allow the Premises to be used for any unlawful purpose, or place any loads upon the floor, walls or ceiling which endanger the structure, or place any harmful liquids in the plumbing, sewer or storm water drainage system of the Premises. No waste materials or refuse shall be dumped upon or permitted to remain upon any part of the Premises except in trash containers designated for that purpose.
7.6 Any uses which involve the serving and/or sale of alcoholic beverages and/or the conducting of games of chance are prohibited on the Premises. County shall comply with the District-wide policies prohibiting the use of tobacco products, alcoholic beverages or controlled substances on the Premises at all times. County shall not use or permit the use of the Premises or any part thereof for any purpose that is inimical to public morals and welfare or morally objectionable as unsuitable for a public educational facility.

7.7 County agrees to respond immediately to concerns expressed by District relating to the operation of the Premises.

7.8 Compliance with CEQA. County shall comply with all applicable requirements of the California Environmental Quality Act ("CEQA") and its implementing regulations in its use of any of the Premises. County specifically acknowledges that, pursuant to the indemnification provision in this Agreement, the County shall protect, defend, indemnify and hold harmless the District in any CEQA-related issues, claims, lawsuits, or actions of any kind. County agrees to pay District all costs, fees, and expenses incurred by the District that are related, in any way, to CEQA.

Section 8. Custodial Services, Maintenance, and Repairs.

8.1 District shall provide the following services to the Premises. Custodial services, which are defined as cleaning and care consistent with the District’s standard.

8.2 District shall be responsible for all repairs and maintenance of the School Sites (e.g., repairing heating and ventilation system, re-sodding lawns, planting trees, and landscaping).

8.3 County shall maintain the Premises in a safe condition in conformance with all laws, rules, and regulations applicable to the use of the Premises by County or District, whichever standard is higher.

Section 9. Construction, Improvements or Alterations.

9.1 No construction, improvements or alternations ("Work") shall occur on the Premises unless and until District has given County written approval of the Work and of all plans for the Work and the District has provided County specific guidelines for the performance of Work on District property by amendment of this Lease. County shall give District fifteen (15) days prior written notice before commencing any Work on the Premises so that District may post notices of non-responsibility with respect thereto as District may deem appropriate. County shall provide District with evidence satisfactory to District that it has obtained all required approvals and permits for any Work and that County and County’s contractor(s) have in effect, with premiums paid, adequate casualty and liability insurance (including builder’s risk) coverage, workers’ compensation, and labor and materials payment and performance bonds.
9.2 **Barrier:** District shall install a barrier between the Premises and the rest of the School Site. The location, design and construction shall be in accordance with the District’s requirements. County shall reimburse District for fifty percent (50%) of the barrier and related costs.

**Section 10. Renewal.**

This Agreement is renewable only by the written agreement of the parties. This Agreement can only be renewed by a separate writing executed by both parties that complies with all of the following provisions:

10.1 It specifically authorizes further tenancy by County and specifies the terms of that tenancy, and

10.2 It is approved by each party’s governing body prior to the end of the Term.

**Section 11. Holding Over.**

Should County hold over in possession after the expiration of the original Term or any extended or renewal term of this Lease, such holding over shall not be deemed to extend the Term or renew the Lease, but the tenancy thereafter shall continue upon the covenants and conditions herein set forth, and County shall be a hold-over Tenant and subject to eviction, an unlawful detainer action, and/or all other remedies available to the District.

**Section 12. No Subcontract, Sublease, and/or Assignment.**

Neither party shall subcontract, sublease, and/or assign some or all of its rights, duties or privileges under this Agreement, nor shall either party attempt to confer some or all of its rights, duties or privileges under this Agreement on any third party, without the written consent of the other party. The County shall not allow any other person and/or entity to use the Premises without the prior written consent of the District.

**Section 13. Termination.**

13.1 **Termination For District Use of Facilities:**

13.1.1 District may terminate this Agreement or eliminate some classrooms from the Premises if its Board adopts a resolution declaring the leased premises necessary for District’s educational purposes and by giving at least eighteen (18) months prior written notification to County with a June 30th effective date of termination.

13.1.2 County shall fully cooperate with District in District’s efforts to obtain possession of the Premises for District use.
13.2 **Termination for Cause:** Either party may terminate this Agreement immediately for cause. Cause shall include, without limitation:

13.2.1 Material violation of any provision of this Agreement by the County or District; or

13.2.2 Any act by County exposing the District to liability to others for personal injury or property damage, or

13.2.3 If any of the follow occurs:

13.2.3.1 County is adjudged bankrupt,
13.2.3.2 County makes a general assignment for the benefit of creditors, and/or
13.2.3.3 A receiver is appointed on account of County's insolvency.

13.3 The foregoing provisions are in addition to, and not a limitation of, any other rights or remedies available to the District and/or the County.

13.4 Upon termination of this Agreement, County shall be responsible for restoring the School Site and/or the Premises to its condition prior to the commencement of this Agreement with no damage thereto, reasonable wear and tear excepted.

**Section 14. Title to and Removal of County's Facilities.**

14.1 Title to any equipment placed by County onto the Premises but not affixed thereto ("County's Facilities") shall be held solely by County. These items shall remain the personal property of County and shall not be treated as real property or become a part of the School Site unless affixed thereto.

14.2 On or before the expiration of this Lease, or within 30 days after any earlier termination of this Lease, County shall remove County's Facilities, at its sole expense. County shall repair any damage to the School Site and/or the Premises caused by removal of County's Facilities and restore the School Site and the Premises to good condition, less reasonable wear and tear. In the event that County fails to timely remove County's Facilities, District, upon fifteen (15) days written notice, may either (1) accept ownership of some or all of County's Facilities with no cost to the District, or (2) remove some or all of County's Facilities at County's sole cost. In the event that District chooses to accept ownership of some or all of County's Facilities, County shall execute any necessary documents to effectuate the change in ownership of County's Facilities. If County fails to execute any necessary documents within ten (10) days of written request to do so, District may execute such documents as County's attorney-in-fact for which purpose County hereby appoints District. In the event that District removes some or all of County's Facilities, County shall pay all invoices for the removal of County's Facilities within thirty (30) days of receipt of such invoices.
Section 15. Fingerprinting and Criminal Background Verification.

At any time there are pupils of any age on the School Site, County shall be responsible for ensuring compliance with all applicable fingerprinting and criminal background investigation requirements described in Education Code section 45125.1 and 45125.2, 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.).

Section 16. Hold Harmless/Indemnification.

16.1 County Indemnification. County Office agrees to defend, indemnify, and hold harmless the District against any and all liability, claims, demands, costs, losses and expenses, including reasonable attorney’s fees (collectively, “Claims”) for damage to property, injury or death arising or asserted to have arisen from or relating to the use of the Premises or operation of the Program or the performance of this Lease.

16.2 This Section shall survive expiration or sooner termination of this Lease.

Section 17. Insurance.

17.1. Liability Insurance: County shall, during the term of this Agreement, maintain in force, a combined, single-limit commercial general liability insurance policy in the amount of not less than two million dollars ($2,000,000) per occurrence for bodily injury, personal injury and property damage, and five million dollars ($5,000,000) in the aggregate with District, its trustees, officers, employees and agents, at County’s expense, named as additional insured under such policy.

17.1.1. The coverage described in Insurance Services Office Form Number GL 0002 (Ed. 01/96) covering Commercial General Liability together with Insurance Services Office Form Number GL 0404 covering Broad Form Comprehensive General Liability; or that described in Insurance Services Office Commercial General Liability coverage (“occurrence”) Form Number CG 0001 (Ed. 01/96), including X, C, U (Explosion, Collapse and Underground) coverages.

17.1.2. SCCOE may satisfy its insurance requirements through a self-insurance policy that meets these requirements.

17.2. Auto Insurance: County shall, during the Term of this Lease, maintain in force one million dollars ($1,000,000) combined single limit per accident for bodily injury, including death, and property damage.

17.2.1. The coverage described in Insurance Services Office Form Number CA 0001 (Ed. 12/93) covering Automobile Liability, Code 1 “any auto”, or Code 2
“owned autos” and Endorsement CA 0025. Coverage shall also include Code 8 “hired autos” and Code 9 “non-owned autos”.

17.3. **Workers’ Compensation Insurance**: County shall, during the Term of this Agreement, comply with all provisions of law applicable to County with respect to obtaining and maintaining workers’ compensation insurance.

17.4. **Employers Liability Insurance**: County shall during the Term of this Lease, maintain in force, Employers Liability limits of one million dollars ($1,000,000) per accident.

17.5. Prior to the commencement of this Lease and County’s occupancy of the Premises, County shall provide District, as evidence of this required coverages, a certificate of insurance in a form satisfactory to District on or before the Effective Date or renewal date, prior to expiration of any policy and upon request of District during the Lease Term, providing that the required insurance coverages shall not be canceled or reduced without thirty (30) days prior written notice to District.

17.6. **Deductibles and Self-Insured Retentions**

17.6.1. Any deductibles or self-insured retentions must be declared to, and approved by District’s Risk Manager. At the request of District, the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the District its trustees, officers, employees, agents and contractors.

17.7. **Other Insurance Provisions**

The policies are to contain, or be endorsed to contain, the following provisions:

a. Except for Workers’ Compensation, the District, its trustees, officers, employees, agents and contractors are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of County; products and completed operations of County; premises owned, leased or used by County; and automobiles owned, leased, hired or borrowed by County. The coverage shall contain no special limitations on the scope of protection afforded to the District, its trustees, officers, employees, agents and contractors.

b. County’s insurance coverage shall be primary insurance as respects the District, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by the District, its trustees, officers, employees, agents or contractors shall be excess of County’s insurance and shall not contribute with it.

c. Any failure of County to comply with reporting provisions of the policies of County shall not affect coverage provided to the District, its trustees, officers, employees, agents, or contractors.
d. Coverage shall state that County’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.

17.8. **Acceptability of Insurers:**

Insurance is to be placed with insurers acceptable to District’s Risk Manager.

17.9. **Verification of Coverage:**

The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

17.10. **Sublessee Insurance:** During the Term of this Lease, County shall require any sublessee of all or any portion of the Premises to maintain in effect during the Term of its sublease, insurance coverage equivalent to that required to be maintained by County.

17.11. **County’s Property Insurance:** Tenant acknowledges that the insurance to be maintained by District on the Premises will not insure any of County’s property or improvements made by County. Accordingly, County shall, at its own expense, maintain in full force and effect an insurance policy on all of its fixtures, equipment, improvements made by County and personal property in, about, or on the Premises. Said policy shall be for “All Risk” coverage insurance to the extent of at least ninety percent (90%) of the insurable value of County’s property. County shall deliver to District prior to the Commencement Date a certificate of insurance evidencing the existence of the policy required hereunder.

17.12. **Insurance Limits, Rating of Insurers and Certificates:** It is the intent of the parties that policy limits set herein shall be raised from time to time during the Term of this Lease to account for (i) increases in Annual Rent for the Premises, (ii) increases in the estimated full replacement cost of the Premises, and (iii) increases in the general marketplace insurance limits for tenancies as defined herein or sub-tenancies consistent with the provisions of this Lease. Insurance is to be placed with insurers with a current A.M. Best Insurance rating of no less than A-:VII and subject to the approval of District. County shall furnish District with the original certificates and amendatory endorsements effecting coverage required.

**Section 18. Inspection of Premises.**

County agrees to provide District with a set of keys to the Premises for emergency repairs. County shall permit District and its agents to enter the Premises at any reasonable time for the purpose of inspecting the same, performing District’s maintenance and repair responsibilities, or posting a notice of non-responsibility for alterations, additions, or repairs. District and its authorized agents and representatives shall have the right throughout the term of this Lease to enter the Premises at all reasonable times during usual business hours and upon reasonable notice for the purpose of inspecting the Premises. At any time prior to the expiration of the Term of this Lease, District, for
the purpose of showing the Premises to prospective lessees/bidders may place upon the Premises “For Lease” or “For Sale” signs, provided said signs shall not suggest that County’s business is for sale.

Section 19. Notice.

Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served and received if given in writing and personally delivered or either deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service or facsimile transmission, addressed as follows:

District: Superintendent  
San Jose Unified School District  
855 Lenzen Avenue  
San Jose, CA 95126

County: General Services Director  
Santa Clara County Office of Education  
1290 Ridder Park Drive  
San Jose, CA 95131-2398

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

Section 20. Independent Contractor Status.

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

Section 21. Entire Agreement of Parties.

This Agreement constitutes the entire agreement between the parties and supersedes all prior discussions, negotiations and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both parties.

Section 22. California Law.

This Agreement shall be governed by and the rights, duties and obligations of the parties shall be determined and enforced in accordance with the laws of the State of California. The parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in Santa Clara County, California.

Section 23. Compliance with All Laws.
23.1 County shall at County expense comply with all requirements of all governmental authorities, in force either now or in the future, affecting the Premises, and shall faithfully observe in County’s use of the Premises all laws, regulations and ordinances of these authorities, in force either now or in the future including, without limitation, all applicable federal, state and local laws, regulations, and ordinances pertaining to air and water quality, hazardous material, waste disposal, air emission and other environmental matters (including the California Environmental Quality Act (“CEQA”) and its implementing regulations) in its use of the Premises, and all District policies, rules and regulations. County shall be the lead agency on all CEQA matters related to the Premises and County’s use of the Premises.

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

Section 24. Attorneys’ Fees.

If either party files any action or brings any proceedings against the other arising out of this Agreement, each party shall bear its own fees.

Section 25. Waiver.

The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

Section 26. Successors and Assigns.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors, and assigns.

Section 27. Surrender of Lease.

The voluntary or other surrender of this Lease by County, or a mutual cancellation thereof, shall, at the option of District, terminate all or any existing subleases, or operate as an assignment to District of any or all such subleases…

Section 28. Counterparts.

This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.
Section 29. Captions.

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

Section 30. Severability.

Should any provision of this Lease, except for the payment of rent or provision of credit against the District's housing requirement, be determined to be invalid, illegal or unenforceable in any respect, such provision shall be severed and the remaining provisions shall continue as valid, legal and enforceable, unless such enforcement would be unreasonable or inequitable under all the circumstances or would frustrate the purposes of this Lease.

Section 31. Incorporation of Recitals and Exhibits.

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

Section 32. Time Is Of The Essence.

Time is of the essence for the performance of each term, covenant and condition of this Lease.

Section 33. Signs.

County shall not have the right to place County's signs on said Premises or to otherwise advertise its services without the prior written consent of District. Any signs shall be at County's cost and in compliance with the local ordinances pertaining thereto. If any signs are authorized, County shall, at its sole cost and expense, maintain the signage and all appurtenances in good condition and repair. At the termination of this Lease, County shall remove any signs which it has placed on the land or buildings in which the Premises are located, and shall repair any damage caused by the installation or removal of the signs.

Section 34. Cooperation with Other Occupants of the School Site.

County understands and recognizes that the School Site, of which the Premises is a part, will be used by other parties, including District, and County shall cooperate with the other parties in reaching amicable arrangements concerning matters such as use of the parking areas, playgrounds, policing of common areas, custodial services, and security measures.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date(s) indicated below.
ACCEPTED AND AGREED on the date indicated below:

**District:**
San Jose Unified School District

By: [Signature]

Name: Ann Jones

Title: Chief Business Officer

Date: 7/11/11

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**County:**
Santa Clara County Office of Education

By: [Signature]

Name: Charles Weis, Ph.D.

Title: Santa Clara County Superintendent of Schools

Date: June 30, 2011

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Risk Management
Reviewer: [Signature]
Rm#: 12-0099

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AGREEMENT FOR USE OF FACILITIES
BY SANTA CLARA COUNTY OFFICE OF EDUCATION

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EXHIBIT “A”

Description of Premises and Site Map

ERIKSON ELEMENTARY SCHOOL
4849 Pearl Avenue
San José, CA 95136 = 15 classrooms (rooms 1,2,3,4,5,6,7,8,9,10,11,12,K1,K2)

ERIKSON ELEMENTARY SCHOOL
4849 Pearl Avenue
San José, CA 95136 = 4 classrooms (Administrative Building equates to 6,731 sq. feet)

CARSON ELEMENTARY SCHOOL
4245 Meg Drive
San José, CA 95136 = 2 classrooms (rooms E20 & E21)

CORY ELEMENTARY SCHOOL
2280 Kenwood Avenue
San José, CA 95133 = 3 classrooms (rooms 7 & 8 equate to 3270 sq ft.)

WILLOW GLEN MIDDLE SCHOOL
2105 Cottle Avenue
San José, CA 95125 = 1 classroom (H103)

TOTAL CLASSROOMS  25
EXHIBIT “B”

Description of County’s Activities

County shall use the Premises only for operating special education programs to serve students of the District and the other school districts that participate in County’s programs. In addition to the operation of special education classes, County’s Program includes, but is not limited to:

- PTA’s
- Home and School Club
- Parent and Staff meetings
- Staff / Parent inservices & workshops

These activities may be held after school hours, in the evenings, and/or on the weekends.
EXHIBIT “C”

Agreement for Use of Facilities at Erikson School
EXHIBIT “D”

SELPA Housing Policy
SANTA CLARA COUNTY SELPAs

SCCOE SPECIAL EDUCATION HOUSING POLICY

This policy covers housing for programs operated by the SCCOE Special Education Department on district operated sites. The policy shall apply to programs operated by SCCOE for three (3) to twenty-two (22) year old students and does not pertain to Regional Programs operated by districts. The policy shall remain in effect unless modified and approved by all SELPA Executive Councils in Santa Clara County.

I. INTRODUCTION

The districts of the Santa Clara County SELPAs are committed to the provision of special education services to all students with disabilities in the least restrictive environment as required by State and Federal law. It is the districts' obligation to assure that when it is not possible for students with disabilities to be educated in their home schools, they receive the services specified in their IEPs in classrooms located as close to their homes as possible. This goal is intended to fulfill the SELPA's purpose that the students and staff be included to the greatest extent possible as a part of the school community. To fulfill this commitment, the districts shall provide classroom space for all special education students in Santa Clara County.

Each school district accepts the ultimate responsibility for providing classroom facilities, or the financial resources to provide classroom facilities, for the special education students residing within its boundaries. A district may join with other districts in its area to provide classroom space or the financial support to house their students. The classroom needs of all students, both general and special education must be considered in all decisions regarding the allocation of classroom space. There may be times when a school district offers classroom space, which is not utilized by SCCOE (see page 2, item #7).

Maximum effort will be made to avoid the over representation of special education classes on an individual school site. In addition, classrooms should be located to promote natural opportunities for students with disabilities to participate with chronologically age-appropriate, general education students in academic, non-academic and extra-curricular activities to the maximum extent appropriate for the needs of both the special and general education students.

II. POLICIES AND PROCEDURES

The Santa Clara County SELPAs will be responsible for the implementation and monitoring of this policy. The SCCOE Special Education Department will assume responsibility for determination of classrooms owed and provided by each district, and will collaborate with the SELPA offices in the calculation and collection of housing fees and disbursement of housing compensation.
III. PROVISION OF CLASSROOM SPACE BY DISTRICTS

A. Calculation of Projected Classroom Space Needed by Districts

Classroom space needed for those programs specified in this policy will be calculated using the following procedure:

1. The SCCOE Special Education Department’s May 1st enrollment projections for the following year will serve as the basis for estimating the classroom space owed by each district in the subsequent school year.

2. Actual determination of housing obligations will be based on current year December-April average enrollment in SCCOE Special Education programs.

3. The number of pupils constituting one classroom for the purpose of the Housing Policy will be recommended each year by the Facilities Rate Setting Committee and approved in the SELPA Budget Allocation Plans along with Rate per class and percentage credit for land-only.

4. When the Santa Clara County Office of Education owns or leases a portable classroom located on district operated site, that classroom will generate partial credit toward the calculation of the district’s housing obligation.

5. Each district will have two options for fulfilling its housing obligation.

   - The provision of classroom space. This is the preferable option.

   - In the event that a district does not provide the obligated classroom space, it will be charged a housing fee.

   - A SELPA may exercise the option of “pooling” member district obligations and/or compensation for space.

6. When a district exceeds its housing obligation by providing additional classroom space, the district will be paid the approved housing compensation rate.

7. Classroom space offered by the district must not only meet the standards specified in this policy, but must also be appropriate to the needs of the program operator.

Criteria for appropriateness include the following:

- the classroom offered provides for interaction with nondisabled peers
- usage of the classroom offered does not result in unusual additional costs to the SCCOE Special Education program
- usage of the classroom minimizes transportation time and cost
- there should be a sufficient population projections to sustain the classroom for at least three years
- there shall be minimal disruption or displacement for students in existing programs.
SCCOE Special Education Housing Policy

B. Contracts for Provision of Classroom Space

1. By February 28 of each year, districts will notify the SCCOE-Special Education Department of their intention to reclaim classroom space.

2. Negotiations between the SCCOE Special Education Department and districts for new contracts or other arrangements to provide classroom space shall be completed by May 30th of each year.

3. Contracts for classroom space shall be for a specific classroom site and it is recommended that it be for a minimum of three (3) years. The use of classrooms for Extended School Year programs is included in the contracts. The relocation of classrooms for Extended School Year programs shall be negotiated between the district and SCCOE Special Education Department by April 15.

4. Termination of contracts prior to their expiration date shall be by mutual consent of the district and SCCOE Special Education Department.

C. Standard for Classrooms

Classrooms provided by district, as a means of fulfilling their housing obligations shall meet the following standards, as appropriate:

1. One classroom (approximately 960 square feet) will be provided in accordance with established State and Federal standards (i.e., applicable Americans with Disabilities Act accessibility standards, Health and Safety Codes, fire alarm requirements, and Field Act standards, or a waiver of Field Act standards.

2. Running hot water will be provided in all classrooms where the availability of water within the classroom is necessary to meet the health and safety needs of the students, as determined by the SCCOE Special Education Department. Example: An accommodation for hot water could be an instant hot water heater.

3. Heat and Air Conditioning will be provided in all classrooms where the availability of heat and air conditioning within the classroom is necessary to meet the health and safety needs of the students, as determined by the SCCOE Special Education Department.

4. In-class toilet facilities will be provided as appropriate for the age and the needs of the students and as determined by the SCCOE Special Education Department with the approval of the district.

   Students will have access to toileting facilities on campus available to all other students.

   It is the intent of this policy to respect the privacy rights of special education students, which accord them with basic human dignity.

   The toilet and/or changing area shall be large enough to accommodate personal hygiene activities.

5. Any site modifications, if needed, will be negotiated between the SCCOE Special Education Department and the district prior to modifications taking place.

6. The site will provide internet access in each classroom.
D. Custodial Services

Custodial service, including daily classroom cleaning for all classrooms, including portables, whether district or SCCOE owned, shall be the responsibility of the district. The SCCOE Special Education Department will provide information regarding recommended daily classroom cleaning as identified in the State publication, “State Guidelines and Procedures for Meeting the Specialized Physical Health Care Needs of Pupils,” and designated by level of need of classroom. (see attached).

E. Maintenance

Maintenance service shall be the responsibility of the owner of the facility. This includes regularly scheduled and preventative classroom maintenance such as filter replacements, carpet cleaning, floor polishing, light bulb replacements, etc.

F. Repairs

Classroom repair due to normal wear for such items as plumbing, windows, locks, roofs, cooling and heating systems, etc. shall be the responsibility of the owner of the facility.

Repairs of the facility for any damage caused by the program staff and/or students and repairs of the personal property owned by the program shall be the responsibility of the SCCOE Special Education Department.

G. Relocation of Classrooms

In the event a district has to relocate a SCCOE Special Education Department classroom due to planned renovations, fire, natural disaster, vandalism or other emergency situations when the classroom is unsuitable for housing students, the district remains responsible for providing adequate temporary housing until repairs can be completed. The district will make every effort to house the students on the same school site.

With respect to moving costs for COE classrooms, the following will apply:

- Fire or natural disaster: Insurance will be billed. If no insurance, cost will be borne centrally.
- Renovation by district: Cost will be borne centrally.
- COE moves class during ESY for safety: Cost will be borne centrally.
- District decision to consolidate classrooms for summer: Cost will be borne by district or district will move class.

IV. PROVISION OF NEW CLASSROOMS BY THE DISTRICT OR SCCOE SPECIAL EDUCATION DEPARTMENT ON DISTRICT PROPERTY

A. New Construction by COE on District Property Requiring 40 Year Lease. The housing policy section concerning new construction (40 year leases): shall be reviewed every two years beginning with the 2007-08 school year.

Option 1

COE provides the custodial and utilities. District receives 45% credit times current agreed upon facilities housing rate times the number of actual classrooms provided.
SCCOE Special Education Housing Policy

Option 2

COE provides utilities and district provides custodial. District receives 71% credit times current agreed upon facilities housing rate times the number of actual classrooms provided.

B. When constructing new classrooms or acquiring a new portable, not requiring a 40 year lease, the SCCOE Special Education Department and the district will meet to negotiate any one-time cost.

For example:
- Site preparation
- Water and sewer hook-up
- Architectural and other fees

Classrooms provided by new construction shall meet all of the requirements specified in Section IIIC, Standards for Classrooms.

V. RESPONSIBILITY FOR PORTABLE CLASSROOMS PLACED BY THE SCCOE SPECIAL EDUCATION DEPARTMENT ON DISTRICT PROPERTY

When the SCCOE Special Education Department brings a portable onto district property, the following shall apply:

1. SCCOE Special Education Department shall be responsible for all requirements specified in Section IIIC (Standards for Classrooms).

2. Custodial service, including daily classroom cleaning for all classrooms, shall be the responsibility of the district or negotiated between the district and SCCOE Special Education Department. The SCCOE Special Education Department will provide information regarding daily classroom cleaning as identified in the State publication, “State Guidelines and Procedures for Meeting the Specialized Physical Health Care Needs of Pupils.”

3. Whenever possible, actual maintenance/repair shall be provided by the local school district. Cost for maintenance service, classroom repair due to normal wear and tear or any site improvements should be the responsibility of the SCCOE Special Education Department or negotiated between the SCCOE Special Education Department and the district.

VI. FINANCIAL ARRANGEMENTS

1. Districts are obligated to provide classroom space (or financial resources to provide classroom space) for the number of resident students enrolled in SCCOE Special Education Department operated programs. This obligation includes classroom space, utilities, custodial services and such maintenance and repair as specified in this document.

2. The SELPA facilities committee each year will recommend the value to be placed on classrooms provided, which are over or under a district’s obligation. The value placed will be in consideration of the following factors: average cost of utilities, average cost of custodial services and routine maintenance/repair, average cost of a leased portable, and reasonable lease rate for classroom space on an
open school campus. The value placed on classrooms, and the fraction thereof allowable for land (utilities and custodial/maintenance service) shall be pending approval of all SELPA Executive Councils in the county.

a) The Facilities Rate Setting Committee will meet prior to March of each year to recommend and finalize the rate/number of pupils per class and percentage of credit for land-only for the following year. The rate suggested at the December 2010 meeting will stay in effect for the 2011-2012 year.

b) The committee will be comprised of district special education program and fiscal representatives. The intention of the committee is to reach agreement using the following priorities:

- Consensus of all present at the Facilities Rate Setting Meeting with a quorum consisting of representation from all SELPAs and a minimum of five fiscal and/or program administrators from Southeast and five fiscal and/or program administrators from Northwest SELPAs.
- Dispute resolution (SELPA Directors, and an outside mediator)

c) The SELPA AU Directors and SCCOE Special Education staffs are not members of the committee that decides consensus.

3. Housing fees for the number of spaces that a district is short of its obligation will be added to the estimate of cost of COE programs for that district. Housing compensation for the number of spaces that a district provides, which are over its obligation, will be estimated, but not credited against, the district’s cost of COE programs. This amount will be a Revenue Transfer for Housing Compensation at the end of each year.

4. SELPA Fiscal Advisors will assess the Excess or Deficit in revenue resulting from the Housing Policy at the end of each year looking only at the year to either refund any excess or collect from districts any deficit when the excess or deficit is greater than or equal to the current facilities rate for a COE classroom. In that case, the entire excess will be distributed or deficit charged back based on current pupil count used in facility cost calculations. This process began in 2008-2009 and will continue annually thereafter. Included in the assessment will be other contract costs related to Facility costs, moving expenses, set-up and remodel fees and indirect costs. Also included will be other lease revenue collected by SCCOE Special Education.

OVERSIGHT COMMITTEE

1. An Oversight Committee will be established that is composed of SELPA Directors and SCCOE Director of Special Education.

2. The Oversight Committee will be responsible for the following:
• the SELPA Directors and COE Director will meet with district directors to review needs and availability of classroom space; and

• the Oversight Committee will meet, if necessary, to review appropriateness of offers submitted by districts for use of classrooms.

Approved SELPA I June 14, 2007
Approved SELPA II June 15, 2007
Approved SELPA III June 14, 2007
Approved SELPA IV June 18, 2007
Approved SELPA VII June 18, 2007
Approved SECSE June 20, 2007

Approved SELPA I May 19, 2011
Approved SELPA II May 27, 2011
Approved SELPA III May 19, 2011
Approved SELPA IV May 18, 2011
Approved SELPA VII May 19, 2011
Approved SECSE May 18, 2011
SCCOE Classroom Custodial Requirements:

Level 1 – Daily Intensive:

Custodial Staff will follow "*=" section of Guidelines & Procedures for Meeting the Specialized Physical Health Care Needs of Pupils. (see attached)

Level 2 - Daily:

Clean Floors – Vacuum / mop
Empty Garbage
Clean sinks and toilets (if in classroom)

Steam clean carpets on regular school schedule

Level 3 – Routine:

Same level of custodial services as the regular education classes at that site.
## SCCOE Minimum Classroom Requirements:

<table>
<thead>
<tr>
<th>Blocks</th>
<th>Custodial</th>
<th>Plumbing, etc.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Autism</td>
<td>Level 1 - Daily - Intensive</td>
<td>Water in classroom: Bathroom in classroom or dedicated bathroom*</td>
</tr>
<tr>
<td>2. Deaf/Hard of Hearing</td>
<td>Level 2 - Daily</td>
<td>Water in classroom</td>
</tr>
<tr>
<td>3. Emotionally Disturbed</td>
<td>Level 3 - Routine</td>
<td>Water in classroom if available</td>
</tr>
<tr>
<td>4. Basic – Ambulatory – No Medical Procedures</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Pre-school/Primary</td>
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<td>• Upper Elementary</td>
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<tr>
<td>• MS/HS/Post-Senior</td>
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</tbody>
</table>

| 1. Basic – Non-Ambulatory – Medical Procedures | Level 1 - Daily - Intensive | Water in classroom: Bathroom in classroom or dedicated bathroom |
| 2. Orthopedically Impaired                   | Level 1 - Daily - Intensive | Water in classroom: Bathroom in classroom or dedicated bathroom |
| 3. Medically Fragile                         | Level 1 - Daily - Intensive | Water in classroom: Bathroom in classroom or dedicated bathroom |
| • Pre-school/Primary                        |                            |                                                   |
| • Upper Elementary                          |                            |                                                   |
| • MS/HS/Post-Senior                         |                            |                                                   |

* Dedicated bathroom may not be needed for Primary ED or D/HOH depending on students’ level of independence in toileting skills.

* Water in classroom needs to be Hot and Cold
WHEREAS, the San Jose Unified School District and other districts (collectively the "Districts") within Santa Clara County ("County") have entered into an agreement for the County Office to provide special education services to children who reside in the districts and qualify for special education services;

WHEREAS, the Special Education Local Plan Areas (SELPAs) within the County have adopted a formula for each of the districts to provide to the County Office a specified number of classrooms or a cash payment in lieu of classrooms based upon each district's enrollment and other factors;

WHEREAS, prior to 2004, the District had been paying substantial funds to the County Office in lieu of providing classrooms;

WHEREAS, under the current formula, the District is required to provide the County Office classrooms based on the following formula: the number of District students participating in SELPA programs divided by the number of students per classroom ("District Classroom Allocation") or pay fees in lieu of facilities;

WHEREAS, due to school closures and student population changes, the District has space available for use by the County Office;

WHEREAS, the County Office has agreed to pay the District for District classrooms in excess of the District Classroom Allocation used by the County Office;

WHEREAS, the District has offered the County Office the use of the following facilities (the "Facilities," which offer the County Office has accepted and which Facilities the County Office is using:

- Fifteen (15) classrooms and the administrative offices at Erikson School;
- Two (2) classrooms at Carson School;
- Two (2) oversized classrooms at Cory School with sufficient space to provide the District credit for three (3) classrooms;
- One (1) classroom at Willow Glen High

WHEREAS, the administrative offices at Erikson School contain a total of approximately 6,731 square feet and are therefore equivalent to four (4) standard classrooms of 960 square feet each;
WHEREAS, County operates special education programs to serve students of the District as well as of other school districts that participate in County's programs;

WHEREAS, the District and County Office entered into an agreement for the use of Facilities at Erikson School between San Jose Unified School District and Santa Clara County Office of Education ("Erikson Agreement") in 2004, and the Erikson Agreement is scheduled to expire June 30, 2014;

WHEREAS, Erikson School is a surplus school site, and the District offered use of facilities at that school to the County Office pursuant to Education Code section 17465, which offer the County Office accepted;

WHEREAS, the District and County Office entered into an agreement for County Office use of classrooms at various District facilities in 2005 and that agreement expired in 2010 (the "Expired Agreement") although the County Office has continued to utilize those classrooms and to provide the District with housing credit for them;

WHEREAS, the parties desire to enter into one Agreement for Use of Various School District Facilities between San Jose Unified School District and Santa Clara County Office of Education to Comply with the SELPA Housing Policy ("Agreement") that will terminate the Erikson Agreement and replace both it and the Expired Agreement;

WHEREAS, District intends to continue operation of its own programs at the other school sites containing the Facilities;

WHEREAS, Section 17527 of the Education Code authorizes the governing body of any school district to enter into agreements to make vacant classrooms or other space in operating school buildings available for rent or lease; and

WHEREAS, section 17529 of the Education Code requires that, prior to entering into a joint use agreement at an operating school, a district must determine that leasing of vacant classrooms (1) will not interfere with the educational programs or activities of any school or class conducted by the district, (2) will not unduly disrupt the residents in the surrounding neighborhood, and (3) will not jeopardize the safety of district children;

NOW, THEREFORE, BE IT RESOLVED as follows:

Section 1. The above recitals are true and correct.

Section 2. The District hereby determines that entering into the Agreement is compatible with the educational purpose of the District and its uses of the school sites containing the Facilities and is a benefit to the community.

Section 3. The District, pursuant to section 17529 of the Education Code, hereby determines that County Office use of the Facilities (1) will not interfere with the educational
programs or activities of any school or class conducted by the District, (2) will not unduly disrupt the residents in the surrounding neighborhoods, and (3) will not jeopardize the safety of District children.

**Section 4.** The District shall enter into a five (5) year joint-use agreement with the County Office for the County Office to use the Facilities to operate its programs, for SELPA Housing Policy credit.

**Section 5.** The Superintendent or his designee is authorized to take all steps and sign all documents necessary to effect the intent of this resolution.

**PASSED AND ADOPTED** by the Board of Education of the San Jose Unified School District this 23rd day of June, 2011 by the following vote:

**AYES:** Garcia, Gonzalez, Foley, Lewis, Reynolds

**NOES:** None

**ABSTENTIONS:** None

**ABSENT:** None

**ATTEST:**

[Signatures]

Vincent C. Matthews, Ed. D.  
Superintendent and Secretary  
Governing Board of Education

[Signature]  
Richard Garcia, President  
Governing Board of Education