

**FACILITIES USE AGREEMENT  
BETWEEN  
MONTEREY PENINSULA UNIFIED SCHOOL DISTRICT  
AND THE  
COUNTY OF MONTEREY  
FOR THE  
MONTEREY COUNTY WORKFORCE DEVELOPMENT BOARD**

This Facilities Use Agreement (“Agreement”) is made and entered into this 9<sup>th</sup> day of April, 2019 (“Effective Date”), by and between the Monterey Peninsula Unified School District, a public school district of the State of California (“District”), and the County of Monterey, a political subdivision of the State of California (“County”), for the Monterey County Workforce Development Board (“WDB”). The District and County are individually referred to herein as a “Party” and collectively as the “Parties.” This Agreement shall not be effective until approved or ratified by the District’s Board of Education and the Monterey County Board of Supervisors.

**RECITALS**

- A. **WHEREAS**, pursuant to Education Code sections 38130 *et seq.* (“Civic Center Act”), the management, direction, and control of school facilities are vested in the District’s Board of Trustees (“Board”), and the Board may provide for the use of school facilities as a civic center where such use is consistent with school purposes and does not interfere with the regular conduct of schoolwork; and
- B. **WHEREAS**, the District is the owner of two (2) portable buildings (“Facilities”), each approximately 960 square feet in size, as depicted and identified as P16 and P17 in the Site Map attached hereto as **Exhibit A** and incorporated herein by reference, located at the Monterey Adult School, 1295 La Salle Ave, Seaside, California 93955 (the “School Site”); and
- C. **WHEREAS**, in accordance with the federal Workforce Innovation and Opportunity Act of 2014 (“WIOA”), WDB operates in partnership with the Monterey County Board of Supervisors, the Chief Elected Official of the Monterey County local workforce area, and other private and public partners to provide individuals with education, training, and the necessary skills to fulfill employer needs; and
- D. **WHEREAS**, WDB wishes to use the Facilities for the purposes of conducting training and outreach and for its day-to-day operations, all in furtherance of its mission; and
- E. **WHEREAS**, the Parties hereto agree that it is to their mutual benefit, and for the benefit of the citizenry of the District and other area citizens served by WDB, for the Parties to enter this Agreement providing for WDB’s use of the Facilities under the terms and conditions as set forth herein.

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

1. Use of Terms. Unless otherwise stated, for the purposes of this Agreement, the terms “County” and “WDB” may be used interchangeably, with the duties and responsibilities of the County and WDB being the same under this Agreement.
2. Grant of Use of Facilities. The District hereby grants to WDB and WDB hereby accepts from District the use of the Facilities under the terms and conditions set forth herein.
3. Monthly Use Fees. On the first day of each month during the term hereof, WDB shall pay the District Two Hundred and Thirty Dollars and Forty Cents (\$230.40) as a monthly use fee (“Monthly Use Fee”). The Monthly Use Fee shall not be increased during the Initial Term of this Agreement, but the District reserves the right to increase the Monthly Use Fee in any future agreement for use of the District Facilities. Failure to pay the Monthly Use Fee by the tenth day of any month shall constitute a breach of this Agreement and may result in immediate termination of this Agreement by the District.
4. Term of Agreement. The initial term of this Agreement (“Initial Term”) shall be for a period of three (3) years, commencing on **May 1, 2019** and ending on **June 30, 2022**, unless such Initial Term is earlier terminated as provided in this Agreement. By mutual written agreement of the Parties, this Agreement may be renewed five (5) times after the expiration of the Initial Term for consecutive periods of one (1) year each renewal for a maximum of five (5) additional years (each a “Renewal Term”). District reserves the right to increase the Monthly Use Fee at the commencement of each Renewal Term.
5. Termination. Either Party may terminate this Agreement for convenience at any time upon one hundred eighty (180) days’ written notice to the other Party. Such termination automatically shall take effect on the 181st day following such notice, or on such later date as specified in the notice, or as the Parties may agree in writing. Upon termination of this Agreement for any reason, or at the expiration of the Term hereof, WDB shall remove all personal property from the Facilities and shall restore the Facilities to the condition existing upon the Effective Date of this Agreement, excepting normal wear and tear.
6. Limitations on Use; Compliance with Law.
  - a. The Facilities shall be used only for the purposes of training, teaching, outreach, and the day-to-day operation of WDB’s programs. No other uses shall be permitted without the prior written consent of the District.
  - b. WDB shall comply with all federal, state, local and District laws, statutes, codes, ordinances, rules, regulations, policies and requirements (“Law”) regarding use of the Facilities.

- c. WDB shall not use, permit, or allow School Site or Facilities to be used, occupied, or improved under this Agreement in any manner or for any purpose that is in any way in violation of any Law.
  - d. WDB will not permit the possession or consumption of alcohol or the use of tobacco products by its employees, volunteers, licensees, or invitees at the School Site or in the Facilities.
  - e. All materials, equipment, and supplies provided or used by WDB at or on the School Site or Facilities shall fully conform to all applicable Law. WDB shall not be permitted to store any supplies or equipment containing Hazardous Substances (as that term is defined herein) on the School Site or Facilities.
  - f. Parking of cars by WDB's employees, agents, licensees and invitees shall be confined to designated parking areas at the School Site, and is available on a "first come, first served" basis. Vehicles, including but not limited to, cars, trucks, campers, mobile homes, and trailers shall not be parked at the School Site for more than two (2) consecutive days without the prior written consent of the District.
7. Access to Facilities. WDB, its employees, volunteers, licensees and invitees shall have a reasonable right of ingress and egress across the School Site to the Facilities as necessary for the Program. The District may designate access routes to and from the Facilities for use by WDB, its employees, licensees, and invitees.
8. Right of Entry. At no time shall WDB have sole or exclusive access to or use of the Facilities, and District and its officers, agents, and employees shall have the right to enter the Facilities at reasonable times for the purpose of inspecting the same and making such alterations, repairs or improvements to the Facilities as the District may deem necessary or desirable.
9. Hours of Use. WDB shall have sole and exclusive use of the Facilities during the hours of operation of the Monterey Adult School, which as of the Effective Date of this Agreement are 7:00 a.m. to 7:00 p.m. District may change these hours upon providing WDB with advance written notice of not less than ninety (90) days. Use of the Facilities outside of the hours of the Monterey Adult School shall be scheduled in advance with the District's Chief Business Official or designee.
10. Non-Exclusive Use. WDB and its employees, volunteers, licensees and invitees shall have the non-exclusive right to use the driveways, walkways, and parking areas located at the School Site, provided that such use shall be subject to such reasonable rules and regulations as may from time to time be adopted by District.
11. Security; Keys. WDB shall at all times provide adequate security for its use of the Facilities. WDB shall be solely and completely responsible for the safety of all persons and property when using the Facilities. At the end of each business day, WDB shall lock and properly secure the Facilities. WDB shall provide District with a key to access the Facilities to be used primarily for

emergencies and shall also provide District with a list of emergency contact information, which shall be kept updated and current at all times.

12. Maintenance and Repairs.

- a. WDB acknowledges that the Facilities are in good repair and order at the commencement of the Agreement, and further agrees that at the time of expiration or termination of this Agreement, the Facilities will be returned to the District in the same state of good repair and order, ordinary wear and tear excepted. Any damage to the Facilities resulting from WDB's use of the Facilities, excepting ordinary wear and tear shall be repaired or replaced by District and invoiced to WDB in accordance with the District's usual billing practices. Such charges shall include the cost of labor, materials, equipment, plus an administrative services fee of fifteen percent (15%). Payment for such costs shall be made by WDB within thirty (30) days of receipt of invoice.
- b. Minor maintenance and repairs of the Facilities that would normally occur through use of the Facilities, other than those repairs and maintenance addressed herein, shall be the responsibility of WDB. WDB shall obtain the District's prior written approval before undertaking maintenance or making any such repairs, which approval shall not be unreasonably withheld.
- c. The District shall provide for major repair and maintenance that would normally occur through operation of the Facilities. For the purposes of this Agreement, "major repairs and maintenance" shall mean any repairs to plumbing, heating, air conditioning, ventilating, electrical and lighting equipment, fixtures, interior and exterior walls, ceilings, windows, doors and plate glass.

13. Alterations and Improvements. WDB shall make no alterations, improvements, or modifications ("Improvements") to the Facilities without the prior written consent of the District. Unless otherwise agreed in writing by the Parties, any such Improvements shall become the sole and exclusive property of the District upon completion.

14. Signage. WDB shall not place any signage on or about the School Site or Facilities without prior written consent of the District. The District shall have final approval over the signage, but shall not unreasonably deny its location, design or content. WDB shall remove the signage on termination of this Agreement, and must restore the School Site and Facilities, following removal of the signage, to the condition existing prior to installation of the signage.

15. Custodial Obligations. At its sole cost and expense, WDB shall be responsible for maintaining the Facilities in a safe, clean, and hygienic condition at all times which shall include, at a minimum: keeping all floors and walkways swept and clear of debris, ensuring that all rubbish is placed in trash containers and/or dumpsters at the end of each day, and storing or sealing any foodstuffs in such a manner so as to not be an attractant to mice, rats, and other vermin. WDB shall be responsible, at its own cost and expense, for the provision of any

custodial services for the Facilities. WDB may use the District's dumpsters and recycling containers for the disposal of trash and recyclable materials.

If District determines, in its discretion, that WDB has failed to maintain the Facilities in a safe and clean condition, the District will notify WDB in writing of such failure, and shall include in such notice an itemized list of the deficiencies and the required manner and timeline for correcting each item. In the event that WDB fails to correct the items listed by the District within the specified timeline, or another timeline, as mutually-agreed upon between the Parties, the District may make the corrections and invoice such costs to WDB, in accordance with the District's usual billing practices. Such costs shall include the cost of labor, materials, equipment, plus an administrative services fee of fifteen percent (15%). Payment for such costs will be made by WDB within thirty (30) days of receipt of invoice.

16. Designated Representative. WDB shall designate in writing to the District an on-site representative who shall serve as liaison with the District and who shall be responsible for the day-to-day operations, maintenance, cleanliness and general order of the Facilities.

17. Utilities. Water, gas, electricity, and trash removal costs for the Facilities shall be included in the Monthly Use Fee. WDB shall comply with all present and future water conservation programs required by federal, state or local laws. WDB shall be responsible for the costs of telephone and internet services for the Facilities.

18. Hazardous Substances. WDB shall not use, maintain, or keep any Hazardous Materials, other than ordinary cleaning supplies and waste, on the School Site or in the Facilities without the District's prior written approval. WDB shall promptly give notice to the District of any Hazardous Materials dispersal or spill, or Hazardous Materials claim, of which it is aware. WDB shall indemnify and hold the District harmless from any and all claims, costs, damages, penalties or liabilities arising out of WDB's use or release of any Hazardous Materials at, in or on the Facilities. The foregoing indemnification obligation shall survive the expiration or earlier termination of this Agreement. The term "Hazardous Materials" as used in this Agreement shall mean any products, substances, chemical, material or waste whose presence, nature, quantity and/or intensity of existence, use, manufacture, disposal, transportation, spill, release or effect, either by itself or in combination with other materials expected to be on the School Site, is either (a) potentially injurious to the public health, safety or welfare and environment of the School Site, (b) regulated or monitored by any governmental authority, or (c) a basis for liability of District to any governmental agency or third party under any applicable statute or common law theory. Hazardous Materials shall include, but not be limited to, hydrocarbons, MTBE, petroleum, gasoline, crude oil, or any products, by-products, or fractions thereof. Willful or negligent breach of WDB's obligations under this Section may, at the District's discretion, result in immediate termination of this Agreement.

19. WDB Insurance. Without limiting the County and WDB's mutual indemnification obligations as set forth in Section 21 hereof, the County shall, on behalf of WDB, secure and maintain in force during the term of this Agreement the following:

- a. Self-insurance and excess insurance equivalent to a comprehensive general liability policy and automobile policy with combined single limits of \$3,000,000.00, or \$1,000,000.00 per person and \$1,000,000.00 per accident, with no aggregate limit. The County shall provide a letter to District certifying that it is self-insured in accordance with these requirements. The County shall not alter or terminate its self-insurance and excess insurance policy without at least thirty (30) prior days' notice to the District. Any altered or terminated self-insurance or excess insurance policy shall be replaced with insurance meeting the requirements of this Section, so that the terms of the replacement self-insurance and/or excess insurance policy become effective no later than the termination or alteration of the prior self-insurance and/or excess insurance policy.
- b. A policy or policies of insurance for all of WDB's personal property located at the Facilities equal to 100% of its replacement cost.
- c. Worker's Compensation Insurance as required by Law.

20. District Insurance. Without limiting the District's mutual indemnification obligations as set forth in Section 21 hereof, the District shall secure and maintain in force during the term of this Agreement the following:

- a. A comprehensive general liability policy and automobile policy using an occurrence policy form, with combined single limits of \$3,000,000.00, or \$1,000,000.00 per person and \$1,000,000.00 per accident, with no aggregate limit. A copy of the declarations page of the District's policy shall be attached to this Agreement as proof of insurance. The District shall not alter or terminate said insurance policy without at least thirty (30) prior days' notice to the WDB and County. Any altered or terminated insurance policy shall be replaced with an insurance policy meeting the requirements of this Section, so that the terms of the replacement policy become effective no later than the termination or alteration of the prior policy.
- b. A policy or policies of insurance for the Facilities equal to 100% of their replacement cost.
- c. Worker's Compensation Insurance as required by Law.

21. Indemnification.

- a. County hereby agrees to indemnify and save harmless the District, its Board of Education, members of its Board of Education, officers, agents, employees, and authorized volunteers of and from any and all claims, demands, judgments or decrees made or rendered against the District, its Board of Education, members of its Board of Education, officers, agents or employees by reason of any injury, death or damage suffered or sustained by any person or entity caused by, or



alleged to have been caused by the negligent act or omission or willful misconduct of County and/or the WDB under this Agreement.

- b. Further, County, at its own cost, expense and risk, shall defend any and all suits, actions, or other legal proceedings that may be brought or instituted by third parties against the District, its Board of Education, members of its Board of Education, officers, agents, employees or authorized volunteers, where such claim or demand arises from the County's and/or the WDB's negligent act, omission or willful misconduct, and shall pay and satisfy any judgment or decree that may be rendered against the District, its Board of Education, members of its Board of Education, officers, agents, employees and volunteers in any such suit, action, or other legal proceedings.
  - c. The District hereby agrees to indemnify and save harmless County and/or the WDB, their officers, agents, and employees of and from any and all claims, demands, judgments, or decrees made or rendered against County and/or the WDB, their officers, agents, or employees by reason of any injury, death, or damage suffered or sustained by any person or entity caused by, or alleged to have been caused by the negligent act or omission or willful misconduct of the District under this Agreement.
  - d. Further, the District at its own cost, expense and risk, shall defend any and all suits, actions, or other legal proceedings that may be brought or instituted by third parties against County and/or the WDB, their officers, agents, employees or authorized volunteers, where such claim or demand arises from the District's negligent act, omission or willful misconduct, and shall pay and satisfy any judgment or decrees that may be rendered against County and/or the WDB, their officers, agents, employees, and volunteers in any such suit, action, or other legal proceedings.
  - e. The indemnification obligations established by this Agreement shall survive the termination of this Agreement and shall extend to the expiration of the statute of limitations applicable to any claims arising from this Agreement.
22. Disability Access. Prior to the Initial Term of this Agreement, the District shall make all modifications to the front doors of the Facilities necessary to comply with the accessibility requirements of the Americans with Disabilities Act of 1990 (the "ADA") as amended. Such modifications may include installing new handles and spring systems for closing, and repairing any vandalism or damage. The District agrees to diligently pursue completion of these ADA modifications, however, in the event the District's completion of such modifications is delayed beyond the commencement date of the Initial Term, the Parties shall meet and discuss postponement of the commencement of the Initial Term to a later date, or other remedies as may be mutually agreed upon by the Parties, until such time as the District's obligations are complete.
23. Notices. Any notice to be given shall be provided to the following addressees:

District:

Monterey Peninsula Unified School District  
700 Pacific Street  
Monterey, CA 93942  
Attention: Chief Business Official  
Facsimile: (831) 649-1729  
Email: raltmeyer@mpusd.k12.ca.us

Copy to:

Claudia P. Weaver, Esq.  
Lozano Smith, Attorneys at Law  
4 Lower Ragsdale Drive, Suite 200  
Monterey, CA 93940  
Facsimile No.: (831) 646-1801  
Email: cweaver@lozanosmith.com

County:

County of Monterey Contracts/Purchasing Division  
1448 Schilling Place  
Salinas, CA 93901  
Attention: Mike Derr  
Facsimile No: (831) 755-4969  
Email: derrm@co.monterey.ca.us

Copy to:

Workforce Development Board  
1441 Schilling Place – North Building  
Salinas, CA 93901  
Attention: WDB Director  
Facsimile No: (831) 757-7639  
Email: donnellyc@co.monterey.ca.us

Notice may be provided by personal service, regular mail, certified mail, overnight mail with proof of delivery, facsimile with proof of transmission, or by email provided receipt is acknowledged. By written notice to the other, either Party may change its mailing address or correspondence information.

24. Confidentiality of WDB's Service/Clients. The District recognizes that WDB's services, client identities, and records are related to a confidential relationship between WDB and its clients. The District agrees that it will not release or disclose such confidential identities, information, or records, except as required by judicial order or applicable law. WDB will



maintain confidential items in a locked environment and will shred any confidential items before disposing of them in trash receptacles. For the purposes of this section, the Parties will consider the Facilities to be locked environments.

25. Default. Either Party may terminate this Agreement upon sixty (60) days written notice to the other Party if the other Party is in default and fails within such sixty (60) day period to cure such default. A Party will be deemed to be in default under this Agreement if it fails to comply with any obligation, term, or covenant herein. Upon termination of the Agreement by reason of default, WDB shall immediately remove any personal property from the Facilities and shall surrender the possession of the Facilities to the District. Termination of this Agreement will not affect or diminish the rights, claims, or remedies available to the non-defaulting Party arising by reason of any default.

26. Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California applicable to instruments, persons, transactions and subject matter which have legal contacts and relationships exclusively within the State of California. Any action or proceeding seeking any relief under or with respect to this Agreement shall be brought solely in the Superior Court of the State of California for Monterey County, subject to any transfer of venue as required by law.

27. Severability. If any provision or any part of this Agreement is for any reason held to be invalid and/or unenforceable or contrary to public policy, law, statute, or ordinance by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby and shall remain valid and fully enforceable.

28. Assignment. Neither Party may assign, transfer any of its obligations, rights, or duties under this Agreement. Any such purported assignment or transfer shall be void, and shall constitute a breach of this Agreement.

29. Amendment. Each of the Parties acknowledges and agrees that this Agreement may be amended only by a writing signed by both the Parties and approved or ratified by the governing boards of both Parties.

30. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and no prior agreement, statement, promise, or representation made by any party, employee, officer, or agent which is not contained herein shall be binding or valid. Any previous agreements between the District and WDB regarding WDB's use of the Facilities are hereby terminated. Any Facilities or District property that are not designated for WDB's use in **Exhibit A** to this Agreement are not subject to this Agreement.


31. Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original of the Agreement. Facsimile signature pages transmitted to either Party to this Agreement shall be deemed equivalent to original signatures on counterparts.

32. Warrant of Authority. Each of the persons signing this Agreement represents and warrants that such person has been duly authorized to sign this Agreement on behalf of the Party

indicated, and each of the Parties by signing this Agreement warrants and represents that such Party is legally authorized and entitled to enter into this Agreement.

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

**MONTEREY PENINSULA UNIFIED SCHOOL DISTRICT**

By:   
Name: RYAN ALTEMEYER, Assoc. Supt., Business Services  
Monterey Peninsula Unified School District  
Title: 700 Pacific Street  
Monterey, CA 93940

**COUNTY OF MONTEREY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_