

**PERMIT AGREEMENT BETWEEN BUILDING KIDZ OF PACIFICA
AND THE PACIFICA SCHOOL DISTRICT
FOR USE OF UNUSED BUILDING SPACE AT
LINDA MAR EDUCATIONAL CENTER**

This Permit Agreement is entered into September 1, 2016, by and between the Pacifica School District, hereinafter known as “DISTRICT”, and Building Kidz of Pacifica, hereinafter known as “CONTRACTOR”.

RECITALS

WHEREAS, the DISTRICT desires that the building space be well utilized; and

WHEREAS, the DISTRICT desires to permit CONTRACTOR, including its employees and volunteers, if any, in utilizing unused district building space, and CONTRACTOR desires to utilize the unused space for the purposes of housing enrichment classes in the performing arts;

NOW, THEREFORE, in consideration of the covenants, terms, conditions, and provisions of this Contract, the parties agree:

SECTION 1. TERM and LOCATION

- 1.1 The term of this Permit Agreement shall be ten months, commencing upon receipt of state license and terminating on June 30, 2017.
- 1.2 Each party will notify each other by April 15, 2017 of its intent to renew this contract.
- 1.3 Permit Agreement shall be for use of the following unused district building space:

Linda Mar Educational Center – exclusive use of Room A5, A6, A7 and A9

- 1.4 The CONTRACTOR may request the occasional use of additional space at Linda Mar Educational Center on a temporary basis, if available, through the DISTRICT’S Facilities Use Permit process. Applicable charges will apply.
- 1.5 The CONTRACTOR may make use of outside space at Linda Mar Educational Center including the Kindergarten playground and the play structure. All indemnification provided to the DISTRICT for the use of the buildings applies also to any outside use.

- 1.6 The CONTRACTOR may also make use of the primary bathrooms and hallway spaces of Wing A.

SECTION 2. USAGE FEES/OTHER CONSIDERATION

- 2.1 In consideration for use of property described above the CONTRACTOR will pay the DISTRICT \$4,112 per month payable by the tenth of each month.
- 2.2 The DISTRICT will provide monthly garbage pick-up and the CONTRACTOR will pay the DISTRICT \$75 per month. This fee is subject to change based on changes in garbage fees or level of service.
- 2.3 The DISTRICT and CONTRACTOR agree that if custodial services are needed by the CONTRACTOR, the DISTRICT agrees to provide such services for \$30 per hour. The weekly amount of hours of custodial service shall be mutually agreed upon in advance by the parties. The hourly rate shall be inclusive of travel time necessary to provide such services and is subject to change based on availability of staff. The DISTRICT reserves the right to cancel any scheduled service with one week notice. Any paper supplies for bathroom facilities requested by CONTRACTOR shall be billed in addition to the hourly rate. If CONTRACTOR believes that the custodial services are not performed to a reasonably acceptable standard, the parties agree to meet and confer regarding possible adjustments to billing.
- 2.4 CONTRACTOR also agrees to confer and collaborate in good faith with the DISTRICT special education staff to develop and implement opportunities for students being served in DISTRICT pre-school special day classes at Linda Mar Education Center to interact with, and participate in programming with, students served by CONTRACTOR at appropriate times.

SECTION 3. RESPONSIBILITIES OF CONTRACTOR

- 3.1 CONTRACTOR shall make all arrangements for and pay for all custodial work required to maintain PREMISES in clean, orderly, and sanitary condition at all times during the term of this Contract including hallway spaces and the primary bathrooms.
- 3.2 If CONTRACTOR does not maintain PREMISES in clean, orderly, and sanitary condition, DISTRICT may, but shall not be obligated to, have the PREMISES cleaned and charge all costs associated with such cleaning to the CONTRACTOR.

- 3.3 DISTRICT will not be responsible for any loss, inconvenience, annoyance, or damage to CONTRACTOR because of such cleaning.
- 3.4 The CONTRACTOR will not create excessive noise or otherwise disturb the surrounding neighborhood. The CONTRACTOR will make use of parking on the school grounds and minimize the use of street parking.
- 3.5 The CONTRACTOR will obey all laws and policies that govern school district property including those laws and policies applying to possession and use of alcohol and tobacco (such as, for example, Board Policy 3513.3, Tobacco-Free Schools). The CONTRACTOR will follow all California Education Code and other local, state, and federal laws and policies that pertain to school property.
- 3.6 The CONTRACTOR agrees to follow all state fingerprinting laws, if applicable.
- 3.7 The CONTRACTOR shall be responsible for the security of building space it uses and shall not hold the DISTRICT responsible for any theft or damage to property. In addition, if DISTRICT property is damaged or stolen due to a negligent act of the CONTRACTOR, its employees, agents, contractors, parents, and students, the CONTRACTOR shall be responsible for its repair or replacement.
- 3.8 The CONTRACTOR will be responsible for any and all costs associated with telephone hookup and monthly service costs.
- 3.9 The CONTRACTOR shall obtain written permission from the DISTRICT for any physical modification of any interior or exterior space at Linda Mar Educational Center. This includes attachments to walls, doors, and any modification to electrical and mechanical systems.
- 3.10 CONTRACTOR will maintain supervisory responsibility for the use, care, and cleanliness of the assigned space.
- 3.11 CONTRACTOR represents and warrants that it will:
 - a) Procure all necessary permits and licenses, pay all charges and fees, and give all notices, which may be necessary, and incidents to the due and lawful prosecution of its intended use of the building space;
 - b) Keep itself fully informed of all existing and future Federal, State of California, and local laws, ordinances, regulations, orders, and decrees which may affect its use of building space;
 - c) At all times observe and comply with, and cause its employees, volunteers, members, visitors, and contractors (and consultants), if any, who are present on the Linda Mar site to observe and comply

with, the laws, ordinances, regulations, orders and decrees mentioned above; and

- d) Report immediately to the DISTRICT'S Chief Business Official, in writing, any discrepancy or inconsistency it discovers in the laws, ordinances, regulations, orders, and decrees mentioned above in relation to its use of the assigned space.

- 3.12 The CONTRACTOR shall provide the DISTRICT access to the property for maintenance and other inspection purposes.
- 3.13 The CONTRACTOR will notify the DISTRICT in advance and receive permission for any other group on an occasional basis to utilize the building space covered under this agreement.
- 3.14 The CONTRACTOR shall not operate a Kindergarten program in which students, upon completion, will be eligible for placement in first grade in a public school or WASC accredited private school.

SECTION 4. RESPONSIBILITIES OF THE DISTRICT

- 4.1 The Chief Business Official will represent the DISTRICT for all purposes under this Contract. The Chief Business Official is the designee for the Superintendent. The designee will supervise the performance, progress, and execution of the CONTRACTOR'S use of the assigned space.
- 4.2 In the event the DISTRICT should determine from any source, including but not limited to information submitted by the CONTRACTOR under this Contract or any evaluation report from any source, that there is a condition, which requires correction, DISTRICT may forward to CONTRACTOR requests for corrective action. Such requests shall indicate the nature of the issues which are to be reviewed to determine the need for corrective action and may include a recommendation as to the appropriate corrective action. Within thirty (30) days of DISTRICT'S request, CONTRACTOR shall submit its response, which shall include its views of the problems and proposed action, if any. Upon requests of either party, the parties shall meet to discuss any such request and response within the thirty (30) day period specified.
- 4.3 DISTRICT shall be responsible for maintenance of roof, exterior doors, exterior walls, plumbing and electrical systems, flooring and heating systems, and foundations; unless damage to any of the items listed herein is caused in part or in whole by the act, neglect, fault or omission of any duty by CONTRACTOR, its employees, agents, invitees, licenses or contractors, in which case CONTRACTOR shall be responsible for the cost of such repairs. DISTRICT shall at all times, maintain the

PREMISES in good and safe condition. DISTRICT shall be responsible for all repairs required.

- 4.4 The DISTRICT shall pay for the CONTRACTOR'S usage of electricity, sewer, and natural gas at the site.

SECTION 5. INDEMNITY

- 5.1 It is agreed that the CONTRACTOR shall defend, hold harmless and indemnify the DISTRICT, its officers, agents and/or employees from any and all liability, damage, cost, expense, and/or claims for injuries to persons and/or damage to property which arise from the CONTRACTOR'S use of the PREMISES (including ingress and egress to the PREMISES), and for such liability, damage, cost, expense, and/or claims arising from the negligent acts or omissions of the CONTRACTOR, its officers, agents and/or employees.
- 5.2 It is agreed that the DISTRICT shall defend, hold harmless and indemnify the CONTRACTOR, its officers, agents and/or employees from any and all liability, damage, cost, expense, and/or claims for injuries to persons and/or damage to property which arise from the DISTRICT'S use of the PREMISES (including ingress and egress to the PREMISES), and for such liability, damage, cost, expense, and/or claims arising from the negligent acts or omissions of the DISTRICT, its officers, agents and/or employees.

SECTION 6. WAIVERS

- 6.1 The waivers by either party of any breach or violation of any covenant, term, condition or provision of this Contract, or of the provisions of any ordinance or law, will not be deemed to be a waiver of any other term, covenant, condition provisions, ordinance or law, or of any subsequent breach or violation of the same or of any other term, covenant, condition, provision, ordinance or law. The subsequent acceptance by either party of any fee or other money, which may become due hereunder, will not be deemed to be a waiver of any preceding breach or violation by the other party of any term, covenant, condition or provision of this Contract or of any applicable law or ordinance.
- 6.2 No payment, partial payment, acceptance, or partial acceptance by DISTRICT will operate as a waiver on the part of DISTRICT of any of its rights under this Contract.

SECTION 7. INSURANCE

- 7.1 CONTRACTOR, at its sole cost and expense, will obtain and maintain, in full force and effect during the term of this Contract, personal liability

insurance coverage of not less than one million dollars (\$1,000,000) insuring not only CONTRACTOR and its contractors, if any, but also, with the exception of workers' compensation, employer's liability, and professional liability insurance, naming DISTRICT as an additional insured concerning CONTRACTOR'S performance under this Contract.

- 7.2 Any and all contractors of CONTRACTOR retained to perform services will obtain and maintain, in full force and effect during the term of this Contract, identical insurance coverage, naming DISTRICT as an additional insured under such policies as required above.
- 7.3 Certificate of insurances will be filed with DISTRICT concurrently with the execution of this Contract. The certificates will be subject to the approval of DISTRICT'S Chief Business Official and will contain an endorsement stating that the insurance is primary coverage and will not be canceled or altered by the insurer except after filing with the DISTRICT'S Chief Business Official thirty (30) days' prior written notice of such cancellation or alteration, and that the PACIFICA SCHOOL DISTRICT is named as an additional insured except in policies of workers' compensation, employer's liability, and professional liability insurance. Current certificates of such insurance will be kept on file at all times during the term of this Contract with the Chief Business Official.
- 7.4 The procuring of such required policy or policies of insurance will not be construed to limit CONTRACTOR'S liability hereunder nor to fulfill the indemnification provisions of this Contract. Notwithstanding the policy or policies of insurance, CONTRACTOR will be obligated for the full and total amount of any damage, injury, or loss caused by or directly arising as a result of the Services performed under this Contract, including such damage, injury, or loss arising after the contract is terminated or the term has expired.

SECTION 8. WORKERS' COMPENSATION

- 8.1 CONTRACTOR, by executing this contract, certifies that it is aware of the provisions of the Labor Code of the State of California which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and certifies that it will comply with such provisions, as applicable, before commencing the performance of the Services.

**SECTION 9. TERMINATION OR SUSPENSION OF CONTRACT
OR SERVICES**

- 9.1 The Chief Business Official may suspend the performance of the services, in whole or in part, or terminate this Contract, by giving ninety (90) days' prior written notice thereof to CONTRACTOR.
- 9.2 CONTRACTOR may terminate this Contract or suspend its performance of the services by giving one ninety (90)) days' prior written notice thereof to DISTRICT.

SECTION 10. ASSIGNMENT

- 10.1 This Contract is for the use of assigned space by the CONTRACTOR; therefore, CONTRACTOR will not assign, transfer, convey or otherwise dispose of this Contract or any right, title or interest in or to the same or any part thereof without the prior written consent of DISTRICT. A consent to one assignment will not be deemed to be a consent to any subsequent assignment. Any assignment made without the approval of the Chief Business Official will be void and, at the option of the Chief Business Official, this Contract may be terminated. This Contract will not be assignable by operation of law.

SECTION 11. NOTICES

- 11.1 All notices hereunder will be giving in writing and mailed, postage prepared, by certified mail, and addressed as follows:

To DISTRICT: Chief Business Official
 Pacifica School District
 375 Reina del Mar Avenue
 Pacifica, CA 94044

To CONTRACTOR: Ana Galdamez/Mercedes Bernard
 Co-Owners/Administrators
 Building Kidz of Pacifica
 830 Rosita Road, A-9
 Pacifica, CA 94044

SECTION 12. **CONFLICT OF INTEREST**

- 12.1 In accepting this Contract, CONTRACTOR covenants that it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services.
- 12.2 CONTRACTOR further covenants that, in the performance of this Contract, it will not employ any contractor or persons having such an interest. CONTRACTOR certifies that no person who has or will have any financial interest under this Contract is an officer or employee of DISTRICT. This provision will be interpreted in accordance with the applicable provisions of the Government Code of the State of California.

SECTION 13. **NONDISCRIMINATION**

- 13.1 As set forth in DISTRICT Policy, no discrimination will be made in the employment of any person under this Contract because of the age, race, color, national origin, ancestry, religion, disability, sexual preference or gender of that person. CONTRACTOR agrees to meet all requirements of the DISTRICT Policy pertaining to nondiscrimination in employment, including completing the requisite form furnished by DISTRICT.
- 13.2 If CONTRACTOR is found in violation of the nondiscrimination provisions of the State of California Fair Employment Practices Act or similar provisions of Federal law or executive order in the performance of this Contract, it will be in default of this Contract. Thereupon, DISTRICT will have the power to cancel or suspend this Contract, in whole or in part, or to deduct the sum of twenty-five dollars (\$25) for each person for each calendar day during which such person was subjected to acts of discrimination, as damages for breach of contract, or both. Only a finding of the State of California Fair Employment Practices Commission or the equivalent federal agency or officer will constitute evidence of a breach of this Contract.

SECTION 14. **MISCELLANEOUS PROVISIONS**

- 14.1 CONTRACTOR represents and warrants that it has knowledge of the requirements of the Americans with Disabilities Act of 1990, and the Government Code and the Health and Safety Code of the State of California, relating to access to public buildings and accommodations for disabled persons, and relating to facilities for disabled persons. CONTRACTOR will comply with or ensure by its advice that compliance with such provisions will be effected in the performance of this Contract.

- 14.2 This Contract will be governed by the laws of the State of California, excluding its conflicts of law.
- 14.3 In the event that an action is brought, the parties agree that trial of such action will be vested exclusively in the state courts of California or in the United States District Court for the Northern District of California in the County of San Mateo, State of California.
- 14.4 The prevailing party in any action brought to enforce the provisions of this Contract may recover its reasonable costs and attorney's fees expended in connection with that action.
- 14.5 This document represents the entire and integrated agreement between parties and supersedes all prior negotiations, representations, and contracts, either written or oral. This document may be amended only by a written instrument, which is signed by the parties.
- 14.6 All provisions of this Contract, whether covenants or conditions, will be deemed to be both covenants and conditions.
- 14.7 The covenants, terms, conditions and provisions of this Contract will apply to, and will bind, the heirs, successors, executors, administrators, assignees, and contractors, as the case may be, of the parties.
- 14.8 If a court of competent jurisdiction finds or rules that any provision of this Contract or any amendment thereto is void or unenforceable, the unaffected provisions of this Contract and any amendments thereto will remain in full force and effect.
- 14.9 All exhibits referred to in this Contract and any addenda, appendices, attachments, and schedules which, from time to time, may be referred to in any duly executed amendment hereto are by such reference incorporated in this Contract and will be deemed to be a part of this Contract.
- 14.10 This Contract may be executed in any number of counterparts, each of which will be an original, but all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have by their duly authorized representatives executed this Contract on the date first above written.

ATTEST

“PACIFICA SCHOOL DISTRICT”

By: _____
Josephine Peterson
Chief Business Official

“BUILDING KIDZ OF PACIFICA”

By: _____
Ana Galdamez/Mercedes Bernard
Co-Owners/Administrators