



## City of Palo Alto City Council Staff Report

(ID # 11460)

---

**Report Type:** Consent Calendar

**Meeting Date:** 6/23/2020

**Summary Title:** Cubberley Lease Agreement

**Title:** Approval of Lease Agreement Between Palo Alto Unified School District and City of Palo Alto for Cubberley for 54 Months, Not-to-Exceed \$2,733,280 per Year

**From:** City Manager

**Lead Department:** Administrative Services

### **Recommended Motion**

Staff recommends that Council authorize the City Manager to execute the Lease Agreement contained in Attachment A between Palo Alto Unified School District (PAUSD) and the City of Palo Alto (City) for the Cubberley premises for a 54-month term ending December 31, 2024, at an annual rent of between \$2,500,000 and \$2,733,280, depending on the amount of space occupied.

### **Executive Summary**

On June 15, 2020, City Council authorized the City Manager to execute the same lease agreement for Cubberley that is recommended in this memorandum, except for the length of the term ([Report ID # 11386](#)). Based on feedback from school officials, and in continued partnership with PAUSD, City Council unanimously endorsed placing the 54-month lease agreement (Attachment A) for approval on the June 22, 2020 consent calendar as reported out at the June 17, 2020 City Council meeting.

### **Background**

The City currently leases approximately 27 acres from PAUSD at Cubberley and offers various services and resources through those facilities including short term and long-term rentals, fields, gyms, and theater, as well as an auditorium. The original lease Agreement was for 15 years, beginning January 1, 1990 and ending on December 31, 2004. Since 1989, City staff and PAUSD have entered into several lease amendments and other agreements regarding the site needs. The City exercised its first option to extend the lease for an additional ten years through December 31, 2014 and its second option to extend the lease through December 31, 2019. PAUSD consented to the City's request to continue its tenancy on a month-to-month basis beginning on January 1, 2020. Due to the negative impacts to the City's budget from the events surrounding

COVID-19 and the request by PAUSD to retain portions of Cubberley, a new lease for Cubberley has been negotiated to reduce the City's use of the premises and the corresponding cost.

## **Discussion**

On June 15, 2020, City Council authorized the City Manager to execute the same lease agreement for Cubberley that is recommended in this memorandum, except for a 30-month term rather than a 54-month term ([Report ID # 11386](#)). Based on feedback from school officials, and in continued partnership with PAUSD, City Council unanimously endorsed placing the 54-month lease agreement (Attachment A) for approval on the June 22, 2020 consent calendar. Council tentatively approved the new amount for the Cubberley lease recommended in this memorandum as part of the FY 2021 proposed budget hearings in May. Council is scheduled to adopt the FY 2021 budget on June 22. Additional information including financials and tenants were provided to the City Council during the budget hearings and can be found here: <http://cityofpaloalto.org/civicax/filebank/documents/76655>.

## **Timeline**

PAUSD's Board approved the Cubberley lease at its May 26, 2020 meeting. Staff issued termination notices to affected tenants at Cubberley, effective June 29, 2020. The new lease will commence on July 1, 2020. Council is scheduled to adopt the FY 2021 budget, which includes the new Cubberley lease, on June 22, 2020.

## **Resource Impact**

Currently, the City pays a base rent to PAUSD for the use of the 27 acres of Cubberley facilities of \$5.4 million. The City covers the operations and maintenance costs of approximately \$2.6 million annually including the utilities for the facility. In addition, the City earns both short-term and long-term rental receipts of \$1.6 million annually. Ultimately resulting in a net cost to the City of \$6.4 million.

Under this new agreement, the base rent for the new Cubberley lease will be reduced from \$452,487 per month (\$5,429,844/yr.) to \$227,773 (\$2,733,276/yr.). The operating and maintenance costs are expected to continue at current levels noted above however, the City will now be reimbursed by PAUSD for a portion of their share. Lastly, as a result of the reduced area, it is expected that both short-term rental revenues and long-term lease revenues will reduce however, the estimated amounts are currently unknown at this time. Staff continues to work to find new space for displaced tenants. The FY 2021 Proposed budget assumes a net savings of \$2.5 million in net cost to the City, this will be monitored closely to ensure these terms and impacts manage within this estimate.

Although not a term in this revised lease agreement, the City expects to continue contributing \$1,864,248 annually into the Cubberley Property Infrastructure Fund.

**Policy Implications**

Amending the Lease Agreement at Cubberley Community Center is consistent with policies and programs in the Comprehensive Plan promoting City-PAUSD collaboration and the effective provision of community services.

**Stakeholder Engagement**

The City and PAUSD collaborated on development of a new agreement containing these terms. City staff have delivered termination notices and are proactively seeking potential alternative spaces to relocate those tenants and renters affected at Cubberley. Staff will work with PAUSD to propose releasing a joint press release on June 22, 2020, explaining the future use of Cubberley

**Environmental Review**

This does not constitute a project for purposes of the California Environmental Quality Act (CEQA).

**Attachments:**

- Attachment A: Cubberley Lease

**LEASE AGREEMENT**

BY AND BETWEEN

**PALO ALTO UNIFIED SCHOOL DISTRICT**

**AS LANDLORD**

and

**CITY OF PALO ALTO,**

**A CALIFORNIA CHARTERED MUNICIPAL CORPORATION**

**AS TENANT**

## **TABLE OF CONTENTS**

	<b><u>PAGE</u></b>
<b>1. DEMISE. ....</b>	<b>6</b>
<b>2. PREMISES. ....</b>	<b>6</b>
2.1 Premises .....	6
2.2 Possession .....	6
2.3 Termination of Original Lease.....	6
<b>3. TERM .....</b>	<b>7</b>
<b>4. RENT. ....</b>	<b>7</b>
4.1 Base Rent .....	7
4.2 Additional Rent.....	7
<b>5. TAXES. ....</b>	<b>7</b>
5.1 Reserved.....	7
5.2 Taxes.....	7
5.3 Nonuse Payments.....	8
<b>6. UTILITIES.....</b>	<b>8</b>
<b>7. ALTERATIONS.....</b>	<b>8</b>
7.1 Tenant Alterations.....	8
7.2 Liens.....	8
<b>8. MAINTENANCE AND REPAIR OF PREMISES.....</b>	<b>9</b>
8.1 Maintenance and Repair by Tenant .....	9
8.2 Maintenance and Repair by Landlord.....	9
<b>9. ENVIRONMENTAL PROTECTION PROVISIONS.....</b>	<b>9</b>
9.1 Hazardous Materials .....	9
9.2 Environmental Indemnity .....	10
<b>10. ASSIGNMENT AND SUBLETTING. ....</b>	<b>10</b>
<b>11. INDEMNITY AND WAIVER OF CLAIMS. ....</b>	<b>10</b>
11.1 Tenant Indemnification.....	10
11.2 Landlord Indemnification .....	11
11.3 Survival/No Impairment .....	11
<b>12. INSURANCE. ....</b>	<b>11</b>
12.1 Tenant's Insurance .....	11

**TABLE OF CONTENTS**  
**(CONTINUED)**

	<b><u>PAGE</u></b>
12.2 Certificates of Insurance .....	11
<b>13. DAMAGE OR DESTRUCTION. ....</b>	<b>12</b>
13.1 Repair Obligations .....	12
13.2 Abatement of Rent .....	12
<b>14. CONDEMNATION.....</b>	<b>12</b>
<b>15. DEFAULT.....</b>	<b>12</b>
15.1 Events of Default .....	12
15.2 Remedies.....	13
15.3 No Waiver .....	13
15.4 Landlord’s Breach.....	13
<b>16. SURRENDER OF PREMISES.....</b>	<b>13</b>
<b>17. HOLDING OVER.....</b>	<b>14</b>
<b>18. NOTICE. ....</b>	<b>14</b>
<b>19. EARLY TERMINATION BY TENANT. ....</b>	<b>14</b>
19.1 Debt Limitation.....	14
19.2 Gann Limit .....	14
19.3 Restriction on Taxing Power .....	14
<b>20. RESERVED.....</b>	<b>15</b>
<b>21. RESERVED.....</b>	<b>15</b>
<b>22. MISCELLANEOUS.....</b>	<b>15</b>
22.1 Governing Law .....	15
22.2 Severability .....	15
22.3 Attorneys’ Fees .....	15
22.4 Force Majeure .....	15
22.5 Brokers .....	15
22.6 Access by Landlord.....	15
22.7 Waiver of Right to Jury Trial.....	16
22.8 Article and Section Titles.....	16
22.9 Quiet Possession .....	16
22.10 Asbestos Notification for Commercial Property Constructed Before 1979 .....	16

**TABLE OF CONTENTS**  
**(CONTINUED)**

	<b><u>PAGE</u></b>
22.11 Lead Warning Statement.....	16
22.12 Certified Access Specialist Disclosure .....	16
22.13 Time of the Essence .....	17
22.14 Entire Agreement.....	17
22.15 Counterparts.....	17

**INDEX OF EXHIBITS**

*Exhibit*

A	Property
B	Premises
C	Space Used by City
D	Space Used by PAUSD

## LEASE AGREEMENT

### BASIC LEASE INFORMATION

<i>Lease Date:</i>	Dated as of <u>[Insert date in DocuSign]</u> for reference purposes only
<i>Landlord:</i>	Palo Alto Unified School District
<i>Landlord's Address:</i>	Palo Alto Unified School District 25 Churchill Avenue Palo Alto, CA 94306 Attn: Superintendent of Schools
<i>Tenant:</i>	City of Palo Alto
<i>Tenant's Address:</i>	City of Palo Alto 250 Hamilton Avenue Palo Alto, CA 94301 Attn: Manager, Real Property
<i>Property:</i>	The 27.48-acre Cubberley School consisting of approximately 15.94 acres of outdoor recreational area and an additional 11.54 acres of land improved with walkways, a parking lot, and 104,600 square feet of buildings, as depicted in <b>Exhibit A</b> ("Property").
<i>Usable Area:</i>	Approximately 807,486 square feet of area consisting of 15.94 acres (694,346 square feet) of outdoor recreational area and 104,600 square feet of buildings ("Usable Area").
<i>Premises:</i>	A portion of the Usable Area consisting of the theater, pavilion, Gym A, Gym B, Rooms G5 and G8, JMZ (Junior Museum and Zoo), S Building, fields, and all other areas marked as Leased by City in <b>Exhibit B</b> , containing approximately 65,046 rentable square feet of building area and 15.94 acres of outdoor recreational area, located in the City of Palo Alto and more particularly described and depicted in <b>Exhibit B</b> ("Premises"). It is understood that such acreage and square footage figures are only approximate and have not been precisely determined.
<i>Length of Term:</i>	54 months
<i>Commencement Date:</i>	July 1, 2020
<i>Expiration Date:</i>	December 31, 2024
<i>Extension Option:</i>	None



<i>Monthly Base Rent:</i>	<p>\$208,333.33 per month for use of the theater, pavilion, Gym A, Gym B, Rooms G5 and G8, and fields</p> <p>\$13,790.00 per month for use of the JMZ (Junior Museum and Zoo)</p> <p>\$5,650.00 per month for use of the S Building</p>
<i>Tenant's Share:</i>	58.81%, as reasonably adjusted for changes in the physical size of the Premises, Usable Area, or the Property occurring thereafter ("Tenant's Share") See breakdown of calculation in <b>Exhibit C</b> .
<i>Landlord's Share:</i>	41.19%, as reasonably adjusted for changes in the physical size of the Premises, Usable Area, or the Property occurring thereafter ("Landlord's Share") See breakdown of calculation in <b>Exhibit D</b> .
<i>Security Deposit:</i>	\$0
<i>Permitted Use:</i>	Any use permitted by law
<i>Brokers:</i>	None

## LEASE AGREEMENT

**THIS LEASE AGREEMENT** is made and entered into by and between PALO ALTO UNIFIED SCHOOL DISTRICT (“**Landlord**” or “**District**”) and CITY OF PALO ALTO, a California chartered municipal corporation (“**Tenant**” or “**City**”). The Basic Lease Information, the Exhibits and this Lease Agreement are and shall be construed as a single instrument and are referred to herein as the “**Lease**”.

### 1. DEMISE.

In consideration for the rents and all other charges and payments payable by Tenant, and for the agreements, terms and conditions to be performed by Tenant in this Lease, Landlord does hereby lease to Tenant and Tenant does hereby hire and take from Landlord, the Premises described below, upon the agreements, terms and conditions of this Lease for the Term hereinafter stated.

### 2. PREMISES.

2.1 Premises. The Premises demised by this Lease are as specified in the Basic Lease Information. The Premises have the address and contain the square footage specified in the Basic Lease Information; provided, however, that any statement of square footage set forth in this Lease is an approximation which Landlord and Tenant agree is reasonable and no economic terms based thereon shall be subject to revision whether or not the actual square footage is more or less. Tenant shall have the right to reduce the Premises by surrendering the JMZ and/or S Building back to Landlord upon 30 days written notice. City intends to surrender the JMZ Building to Landlord after completion of a new museum building (that is not located on the Property) and moving to that new building.

The portion of the Property including, but not limited to, parking, walkways, restrooms, and other portions of the Property which are non-exclusive are collectively referred to herein as the “**Common Areas**”. Tenant shall have the non-exclusive right during the Term to use the Common Areas along with others having the right to use the Common Areas.

2.2 Possession. Tenant accepts the Premises in its current condition and configuration without any representations or warranties by Landlord, and subject to all matters of record and all applicable laws, ordinances, rules and regulations. Tenant acknowledges that it is currently in possession and has been in possession of the Property under that certain Lease and Covenant Not to Develop, dated September 1, 1989, as amended by that certain Amendment No. 1, dated July 21, 1998, and as further amended by that certain Amendment No. 2, dated August 13, 2002, and , and as further amended by that certain Amendment No. 3, dated as of January 1, 2015 (collectively the “**Original Lease**”).

2.3 Termination of Original Lease. As of the Lease Commencement Date identified in the Basic Lease Information above, the Original Lease shall be deemed terminated and, except for such obligations which expressly survive termination, the parties shall have no further rights or obligations thereunder. Tenant’s right of continued occupancy of the Premises shall thereafter be solely pursuant to the terms of this Lease.

3. **TERM.** The term of this Lease (“**Term**”) shall be for the period specified in the Basic Lease Information, commencing on the Commencement Date (“**Commencement Date**”). This Lease shall terminate at midnight on December 31, 2024 (“**Expiration Date**”), unless sooner terminated or extended as hereinafter provided.

4. **Rent.**

4.1 Base Rent.

(a) Generally. From and after the Commencement Date, Tenant shall pay to Landlord, in advance of the first day of each calendar month, without any setoff or deduction and without further notice or demand, the monthly installments of rent specified in the Basic Lease Information (“**Base Rent**”). If the Commencement Date should be on a date other than the first day of a calendar month, the Monthly Base Rent installment paid for any fractional month during the Term shall be prorated based upon a thirty (30) day calendar month. If Tenant exercises its right to reduce the Premises, Base Rent shall be reduced by \$13,790.00 per month if the JMZ Building is surrendered and \$5,650.00 per month if the S Building is surrendered.

4.2 Additional Rent. As used in this Lease, the term “**Additional Rent**” shall mean all sums of money, other than Base Rent, that are due and payable by Tenant under the terms of this Lease. The term “**Rent**,” as used herein, shall mean all Base Rent, Additional Rent and all other amounts payable hereunder from Tenant to Landlord. Unless otherwise specified herein, all items of Rent other than Base Rent shall be due and payable by Tenant on or before the date that is thirty (30) days after billing by Landlord.

5. **TAXES.**

5.1 Reserved.

5.2 Taxes. Tenant shall reimburse to Landlord as Additional Rent Tenant’s Share of all Taxes as herein defined within thirty (30) days after receipt of an invoice and proof of payment from Landlord. Payments for any fractional period shall be prorated. For purposes of this Section 5.2, the term “**Taxes**” shall mean all taxes, assessments, fees, impositions, assessments and charges levied (if at all) upon or with respect to the Premises, personal property of Landlord used in the operation of the Premises or Landlord’s interest in the Premises. Taxes shall include, without limitation and whether now existing or hereafter enacted or imposed, all general real property taxes, all general and special bonds and assessments, all charges, fees and levies for or with respect to transit, housing, police, fire, flood control, infrastructure, or other governmental or quasi-governmental services or purported benefits to or burdens attributable to the Premises, that are now or hereafter levied or assessed against Landlord or the Premises by the United States of America, the State of California, the City of Palo Alto, or any other political or public entity, and shall also include any other tax, fee or other excise, however described, that may now or hereafter be levied or assessed as a substitute for, or as an addition to, in whole or in part, any other Taxes, whether or not now customary or in the contemplation of the parties on the date of this Lease. Taxes shall not include any increase as the result of any transfer of Premises. Tenant shall pay any taxes levied or assessed against personal property or trade fixtures placed by Tenant in or about the Premises during the Term. The interest created by this Lease may at

some time be subject to property taxation under the laws of the State of California. If property taxes are imposed, the party in whom the possessory interest is vested may be subject to the payment of the taxes levied on such interest. This notice is included in this Lease pursuant to the requirements of section 107.6 (a) of the Revenue and Taxation Code of the State of California.

5.3 Nonuse Payments. In the event any nonuse payments or taxes are levied against the Premises, or any portion thereof, in accordance with any section of the California Education Code, Landlord shall initially be responsible for the payment of any such non-use payments or taxes. Landlord may invoice Tenant for 75%-of the non-use payment or taxes paid. Said invoice to Tenant shall be accompanied by proof of payment by Landlord. Tenant shall thereafter reimburse the paying party within thirty (30) days after receipt of said invoice and proof of payment.

6. **UTILITIES.** Tenant shall contract directly with the providers of, and shall pay all charges for water, sewer, storm water, gas, electricity, and refuse collection to be furnished to the Property, together with all related installation or connection charges or deposits (“**Utilities**”). If any such Utilities are not separately metered or billed to Tenant for the Premises but rather are billed to and paid by Landlord, Tenant shall reimburse Landlord, as Additional Rent, its pro rata share of the cost of such services, within thirty (30) days after receipt of Landlord’s proof of payment of the same. If any Utilities are not separately metered, Landlord shall have right to determine Tenant’s consumption by either submetering, survey, or other methods designed to measure consumption with reasonable accuracy.

## 7. **ALTERATIONS.**

7.1 Tenant Alterations. Tenant may make any alterations, improvements, additions or structural changes, exclusive of any maintenance or repair obligations of Tenant under Section 8.1 (each an “**Alteration**”) of whatever nature it deems necessary for its free use and enjoyment of the Premises without Landlord approval. The foregoing notwithstanding, for any Alterations for which the estimated cost will exceed Three Hundred Thousand Dollars (\$300,000.00), Tenant shall be required to provide Landlord with written notice thereof not less than thirty (30) days prior to commencing work. Said notice shall include plans and specifications depicting the Alterations and, upon completion, Tenant shall furnish Landlord with a set of “as built” plans for the Alterations. Any Alterations shall be at Tenant’s sole cost and expense, unless otherwise agreed upon in writing by Landlord. Alterations shall be made in compliance with all applicable laws. In the event any such Alterations are subject to the Field Act, Ed. Code, §§39140-39159, 39210-39232, 81130-81147, it shall be the sole responsibility of Tenant to obtain such permits or approvals from the Department of General Services as may be required for any such Alterations. Landlord agrees to reasonably cooperate with Tenant in securing any such approvals.

7.2 Liens. Tenant shall pay when due all claims for labor or materials furnished Tenant for use in the Premises. Tenant shall not permit any mechanic liens, stop notices, or any other liens against the Premises, or any of Tenant’s interests under this Lease for any labor or materials furnished to Tenant in connection with work performed on or about the Premises by or at the direction of Tenant. Tenant shall indemnify, hold harmless and defend Landlord from any liens and encumbrances arising out of any work performed or materials furnished by or at the

direction of Tenant. In the event that Tenant does not, within ninety (90) days following the imposition of any such lien or stop notice, cause such lien or stop notice to be released of record by payment or posting of a proper bond, or otherwise Landlord shall have, in addition to all other remedies provided herein or by law, the right, but not the obligation, to cause the same to be released by such means as it may deem proper, including payment of the claim giving rise to such lien. All such sums paid by Landlord and expenses reasonably incurred in connection therewith, including reasonable attorneys' fees and costs, shall be payable to Landlord by Tenant within thirty (30) days of Tenant's receipt of an invoice from Landlord, which invoice shall document all such sums paid.

## **8. MAINTENANCE AND REPAIR OF PREMISES.**

8.1 Maintenance and Repair by Tenant. Tenant shall maintain the Property in substantially the same condition as of the Commencement Date of this Lease Term, subject to Landlord reimbursement at the following rates: Landlord's reimbursement rate for Common Areas will be at the rate of Landlord's share, as detailed in Basic Lease Information. Areas of the Property that are not the Premises or Common Areas will be at the rate of 100%. Landlord shall reimburse Tenant within thirty (30) days of receipt of invoice from Tenant. Tenant's repair and maintenance obligations include, without limitation, repairs to: all interior and exterior work and Common Areas on the Property, and all janitorial, pest control, plumbing, fire sprinkler, sewage, heating, ventilation, air-conditioning, roof repair and replacement, electrical and lighting facilities, irrigation systems, fences, landscaping, litter collection and removal. Tenant shall further, at its own costs and expense, repair or restore any damage or injury to all or any part of the Property caused by Tenant or Tenant's agents, employees, invitees, licensees, visitors or contractors, including but not limited to repairs or replacements necessitated by (i) the construction or installation of Alterations to the Premises by or on behalf of Tenant; (ii) the moving of any property into or out of the Premises; or Tenant's use and occupancy of the Premises. In the event that any law, regulation or mandate requires the expenditure in excess of \$250,000 to bring the Property into compliance the parties shall negotiate in good faith a cost sharing agreement as between Landlord and Tenant for any amount in excess of \$250,000. If no agreement is reached after ninety (90) days from the commencement of negotiations, the parties agree to resolve the matter through the option available in Section 22.7 of this Lease.

8.2 Maintenance and Repair by Landlord. Landlord shall, at its own cost and expense, perform maintenance or repair of the Property when necessitated by the negligence or willful misconduct of Landlord, and with respect to the remediation of any Hazardous Materials (as defined herein below) that existed on, about or under the Property as of the commencement of the term under the Original Lease.

## **9. Environmental Protection Provisions.**

9.1 Hazardous Materials. "**Hazardous Materials**" shall mean any material, substance or waste that is or has the characteristic of being hazardous, toxic, explosive, radioactive or corrosive, including, without limitation, petroleum, solvents, lead, acids, pesticides, paints, PCBs, asbestos, materials commonly known to cause cancer or reproductive harm and those materials, substances and/or wastes, including wastes which are or later become regulated by any local governmental authority, the state in which the Premises are located or the

United States Government, including, but not limited to, substances defined as “hazardous substances,” “hazardous materials,” “toxic substances” or “hazardous wastes” in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §1801, et seq.; the Resource Conservation and Recovery Act; all environmental laws of the state where the Premises are located, and any other environmental law, regulation or ordinance now existing or hereinafter enacted. “**Hazardous Materials Laws**” shall mean all present and future federal, state and local laws, ordinances and regulations, prudent industry practices, requirements of governmental entities and manufacturer’s instructions relating to industrial hygiene, environmental protection or the use, analysis, generation, manufacture, storage, presence, disposal or transportation of any Hazardous Materials, including without limitation the laws, regulations and ordinances referred to in the preceding sentence.

9.2 Environmental Indemnity. Tenant shall indemnify and hold Landlord harmless from any and all costs, claims, judgments, including Landlord’s reasonable attorney’s fees and court costs, relating to the storage, placement or use of Hazardous Materials by Tenant on or about the Premises. Tenant shall reimburse Landlord for (i) all costs of cleaning up or other alterations to the Premises necessitated by Tenant’s use, storage or disposal of Hazardous Materials at the Premises; and (ii) any diminution in the fair market value of the Premises caused by Tenant’s use, storage or disposal of Hazardous Materials in the Premises. Landlord shall indemnify and hold Tenant harmless from any and all costs, claims, judgments, losses, demands, causes of action, proceedings or hearings, including Tenant’s reasonable attorney’s fees and court costs, relating to the storage, placement or use of Hazardous Materials or underground tanks existing on or about the Premises placed there by Landlord or which existed before the commencement of this Lease Term. The obligations of Tenant and Landlord under this Section 9.2 shall survive the expiration of the Lease Term.

## **10. ASSIGNMENT AND SUBLETTING.**

Tenant may at any time, and from time to time, sublease all or any portion of the Premises without first obtaining the consent of Landlord. Landlord acknowledges that as of the Lease Date identified in the Basic Lease Information, there are various subleases entered into by Tenant under the Original Lease. Unless explicitly agreed to in writing by Landlord, no assignment or subleasing of all or any portion of the Premises shall release or discharge Tenant of or from any of its obligations hereunder.

## **11. INDEMNITY AND WAIVER OF CLAIMS.**

11.1 Tenant Indemnification. Tenant shall indemnify, defend and hold Landlord harmless against and from all liabilities, obligations, damages, penalties, claims, actions, costs, charges, judgment and expenses (including reasonable attorneys’ fees, costs and disbursements) (collectively referred to as “**Losses**”), arising from (a) the use of, or any activity done, permitted or suffered in or about the Premises by Tenant, (b) any activity done, permitted or suffered by Tenant or Tenant’s agents, contractors, invitees or licensees in or about the Premises, (c) any act, neglect, fault, willful misconduct of Tenant or Tenant’s agents, or (d) from any breach or default in the terms of this Lease by Tenant or Tenant’s agents, except to the extent such claims arise out of or relate to the actions or omissions of Landlord. If any action or proceeding is brought

against Landlord by reason of any such claim, upon notice from Landlord, Tenant shall defend the same at Tenant's expense.

11.2 Landlord Indemnification. Landlord shall indemnify, defend and hold Tenant and Tenant-related parties harmless against and from all Losses arising from any use of, or any activity done, permitted or suffered by Landlord or Landlord's agents, contractors, invitees or licensees in or about the Premises. If any action or proceeding is brought against Tenant by reason of any such claim, upon notice from Tenant, Landlord shall defend the same at Landlord's expense by counsel.

11.3 Survival/No Impairment. The obligations of Tenant and Landlord under this Article 11 shall survive any termination or expiration of this Lease. The foregoing indemnity obligations shall not relieve any insurance carrier of its obligations under any policies carried by either party, to the extent that such policies cover the peril or exposure that result in the claims that are subject to the foregoing indemnity.

## **12. INSURANCE.**

### **12.1 Tenant's Insurance.**

(a) Damage Liability. Tenant shall maintain in full force throughout the Term, commercial general liability insurance providing coverage on an occurrence form basis with limits of not less than Five Million Dollars (\$5,000,000.00) each occurrence for bodily injury and property damage combined, covering bodily injury and property damage liability. Said insurance obligations may be satisfied by Tenant's insurance policy or policies, Tenant's self-insurance, or Tenant's participation in a pooling program with applicable coverage, or any combination thereof.

(b) Personal Property Insurance. Tenant shall maintain in full force and effect on the improvements located on the Premises and its personal property, furniture, furnishings, trade fixtures and equipment from time to time located in, on or upon the Premises in an amount not less than one hundred percent (100%) of their full replacement value from time to time during the Term, providing protection against all perils, included within the standard form of "all-risk" (i.e., "Special Cause of Loss") fire and casualty insurance policy. Landlord shall have no interest in the insurance upon Tenant's property or Alterations and will sign all documents reasonably necessary in connection with the settlement of any claims or loss by Tenant. Said insurance obligations may be satisfied by Tenant's insurance policy or policies, Tenant's self-insurance, or Tenant's participation in a pooling program with applicable coverage, or any combination thereof.

12.2 Certificates of Insurance. Upon execution of this Lease by Tenant, and not less than thirty (30) days prior to expiration of any policy thereafter, Tenant shall furnish to Landlord a certificate of insurance reflecting that the insurance required by this Article is in force, accompanied by an endorsement(s) showing the required additional insureds satisfactory to Landlord in substance and form, or other reasonable evidence of compliance with this Article 12.

### **13. DAMAGE OR DESTRUCTION.**

13.1 Repair Obligations. In the event of damage or destruction to the improvements on the Premises from any cause other than the negligence of Landlord, Tenant shall, at its sole cost and expense, whether or not any such casualty is covered by insurance, either promptly repair or rebuild the same so as to make said damaged improvements as nearly similar to in character and quality as the improvements existed immediately prior to such casualty. Alternatively, in the event of damage or destruction materially interferes with Tenant's use and enjoyment of the Premises, Tenant may terminate this Lease by the giving of not less than thirty (30) days written notice to Landlord, and assigning to Landlord all insurance proceeds for the repair or replacement of the Premises.

13.2 Abatement of Rent. In the event of damage or destruction to the Premises not caused by the negligence of Tenant or any subtenant, the Rent payable by Tenant for the period required for the repair, remediation or restoration of such damage shall be abated in proportion to the degree to which Tenant's use of the Premises is impaired, and such abatement shall be Tenant's sole remedy for such impairment of use. All other obligations of Tenant hereunder shall be performed by Tenant.

### **14. CONDEMNATION.**

If the whole or if any material part of the Premises is taken or condemned for any public or quasi-public use under either state or federal law, by eminent domain or purchase in lieu thereof (a "**Taking**"), and (a) such Taking renders the Premises unsuitable, in Tenant's reasonable opinion, for the purposes for which they were leased; or (b) the Premises cannot be repaired, restored or replaced at reasonable expense to an economically profitable unit, then Tenant may, at its option, terminate this Lease as of the date possession vests in the condemning party. If twenty-five percent (25%) or more of the Premises is taken and if the Premises remaining after such Taking would be untenable (in Tenant's reasonable opinion) for the conduct of Tenant's business operations, Tenant shall have the right to terminate this Lease as of the date possession vests in the condemning party. The termination shall be effective as of the effective date of any order granting possession to, or vesting legal title in, the condemning authority. If this Lease is not terminated, Base Rent shall be appropriately adjusted to account for any reduction in the square footage of the Premises. Landlord shall be entitled to any and all compensation, damages, income, rent, awards or any interest thereon which may be paid or made in connection with any such Taking, and Tenant shall be entitled to receive a pro-rata portion of any award for the value of Tenant's fixture, equipment and personal property (specifically excluding components of the Premises which under this Lease or by law are or at the expiration of the Term will become the property of Landlord, including, without limitation, fixtures and Alterations).

### **15. DEFAULT.**

15.1 Events of Default. The occurrence of any of the following shall constitute a "**Default**" by Tenant:



(a) Tenant fails to make any payment of Rent when due, if payment in full is not received by Landlord within twenty five (25) days after written notice that it is past due.

(b) Tenant fails to perform or comply with any provision of this Lease and does not fully cure such failure within ninety (90) days after notice to Tenant or, if such failure cannot be cured within such ninety (90) day period, Tenant fails within such period to commence, and thereafter diligently proceed with, all actions necessary to cure such failure as soon as reasonably possible.

15.2 Remedies. Upon the occurrence of any Default under this Lease, whether enumerated in Section 15.1 or not, Landlord shall have the option to pursue any remedy provided by law, including:

(a) Terminate this Lease and Tenant's right to possession of the Premises;

(b) Employ the remedy described in California Civil Code § 1951.4 (Landlord may continue this Lease in effect after Tenant's breach and abandonment and recover Rent as it becomes due, if Tenant has the right to sublet or assign, subject only to reasonable limitations); or

(c) Notwithstanding Landlord's exercise of the remedy described in California Civil Code § 1951.4 in respect of an event or events of Default, at such time thereafter as Landlord may elect in writing, to terminate this Lease and Tenant's right to possession of the Premises and recover an award of damages as provided above.

15.3 No Waiver. The subsequent acceptance of Rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular Rent so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such Rent. No waiver by Landlord of any breach hereof shall be effective unless such waiver is in writing and signed by Landlord.

15.4 Landlord's Breach. If Landlord fails to perform any obligations, covenants, agreements or provisions contained herein to be observed or performed by Landlord for a period of twenty-five (25) days after written notice thereof from Tenant, the Landlord shall be deemed to be in default hereunder, and Tenant may take whatever action, at law or at equity, may appear necessary or desirable to enforce the observance or performance of such obligations, covenants, agreements or provisions including termination of this Lease.

## **16. SURRENDER OF PREMISES.**

At the termination of this Lease or Tenant's right of possession, Tenant shall remove Tenant's property including any furniture, fixtures, equipment installed by or for the benefit of Tenant from the Premises, and quit and surrender the Premises to Landlord in substantially the same condition as of the Commencement Date of this Lease Term, ordinary wear and tear and damage which Landlord is obligated to repair hereunder excepted. Landlord may, by notice to Tenant not less than ninety (90) nor more than One Hundred Eighty (180) days prior to the Expiration Date require Tenant, at Tenant's expense, remove any Alterations and repair any

damage caused by such removal. If Tenant fails to remove any of Tenant's property, or to restore the Premises to the required condition, Landlord, at Tenant's sole cost and expense, shall be entitled (but not obligated) to remove and store Tenant's property and/or perform such restoration of the Premises. Landlord shall not be responsible for the value, preservation or safekeeping of Tenant's property. Tenant shall pay Landlord, upon demand, the expenses and storage charges incurred. If Tenant fails to remove Tenant's property from the Premises or storage, within sixty (60) days after notice, Landlord may deem all or any part of Tenant's property to be abandoned and, at Landlord's option, title to Tenant's property shall vest in Landlord or Landlord may dispose of Tenant's property in any manner Landlord deems appropriate.

#### **17. HOLDING OVER.**

If Tenant fails to surrender all or any part of the Premises at the termination of this Lease, occupancy of the Premises after termination shall be that of a month to month tenancy. Tenant's occupancy shall be subject to all the terms and provisions of this Lease and Tenant shall pay an amount (on a pro-rata per month basis) equal to the amount of the Base Rent due for the period immediately preceding the holdover.

#### **18. NOTICE.**

All notices shall be in writing and delivered by hand or sent by registered, express, or certified mail, with return receipt requested or with delivery confirmation requested from the U.S. postal service, or sent by overnight or same day courier service at the party's respective Notice Address(es) set forth in the Basic Lease Information ("**Notice Address**"). Each notice shall be deemed to have been received on the earlier to occur of actual delivery or the date on which delivery is refused, or, if Tenant has vacated the Premises or any other Notice Address of Tenant without providing a new Notice Address, three (3) days after notice is deposited in the U.S. mail or with a courier service in the manner described above. Either party may, at any time, change its Notice Address (other than to a post office box address) by giving the other party written notice of the new address.

#### **19. EARLY TERMINATION BY TENANT.**

19.1 Debt Limitation. In the event the Palo Alto City Council does not appropriate funds for payment of the Rent due under this Lease in any year, this Lease shall terminate upon 120-day written notice thereof.

19.2 Gann Limit. Tenant may terminate this Lease in any fiscal year in which Tenant is not authorized by the Palo Alto Electorate to exceed the expenditure limitation imposed by the California Constitution in any other State or Federal legislative act, commencing with the fiscal year 2020-2021. In that event, Tenant may terminate this Lease upon the giving of six (6) months written notice which must be given within thirty (30) days of an unsuccessful election seeking such authorization.

19.3 Restriction on Taxing Power. If State or Federal law is enacted, an initiative measure passed or a court decision rendered which reduces the City's general fund revenue or restricts the City's authority to collect or levy general fund taxes which the City has the right to

collect or levy as of the Commencement Date of this Lease, the City may terminate this Lease in whole or in part as hereinafter set forth, by giving six (6) months prior written notice to Landlord after such law, measure or decision becomes effective; provided, however, there shall be no right of termination unless the effect of such law, measure or decision is to reduce the City's general fund revenue or taxing authority by one million, five hundred thousand dollars (\$1,500,000.00) from the previous fiscal year.

**20. RESERVED.**

**21. Reserved.**

**22. MISCELLANEOUS.**

22.1 Governing Law. This Lease shall be interpreted and enforced in accordance with the Laws of the State of California and Landlord and Tenant hereby irrevocably consent to the jurisdiction and proper venue of such state.

22.2 Severability. If any section, term or provision of this Lease is held invalid by a court of competent jurisdiction, all other sections, terms or severable provisions of this Lease shall not be affected thereby, but shall remain in full force and effect.

22.3 Attorneys' Fees. In the event of an action, suit, arbitration or proceeding brought by Landlord or Tenant to enforce any of the other's covenants and agreements in this Lease, the prevailing party shall be entitled to recover from the non-prevailing party any costs, expenses (including out of pocket costs and expenses) and reasonable attorneys' fees incurred in connection with such action, suit or proceeding.

22.4 Force Majeure. Whenever a period of time is prescribed for the taking of an action by Landlord or Tenant (other than the payment of Rent), the period of time for the performance of such action shall be extended by the number of days that the performance is actually delayed due to strikes, acts of God, shortages of labor or materials, war, terrorist acts, pandemics, civil disturbances, extreme weather and other causes beyond the reasonable control of the performing party ("**Force Majeure**").

22.5 Brokers. Landlord and Tenant each represents and warrants to the other that neither it nor its officers or agents nor anyone acting on its behalf has dealt with any real estate broker in the negotiating or making of this Lease. Each party agrees to indemnify, defend and hold harmless the other from any claim or claims, and costs and expenses, including attorneys' fees, incurred by the indemnified party in conjunction with any such claim or claims of any broker or brokers to a commission in connection with this Lease as a result of the actions of the indemnifying party.

22.6 Access by Landlord. In addition to access provided by this Lease, Landlord shall be allowed access to the Premises at all reasonable times throughout the term of this Lease, for any reasonable purpose upon prior written notice to Tenant. Landlord shall give Tenant a minimum of one (1) business day's prior notice of an intention to enter the Premises, unless the entry is reasonably required on an emergency basis for safety, environmental, operations or security purposes.

22.7 Waiver of Right to Jury Trial. Landlord and Tenant agree to make good faith efforts to resolve any dispute. If dispute cannot be resolved, Landlord and Tenant may assert their respective rights to a trial by jury of any contract or tort claim, counter claim, cross-complaint, or cause of action in any action, proceeding, or hearing brought by either party against the other on any matter arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, or Tenant's use or occupancy of the Premises, including without limitation any claim of injury or damage or the enforcement of any remedy under any current or future law, statute, regulation, code, or ordinance.

22.8 Article and Section Titles. The Article and Section titles used herein are not to be considered a substantive part of this Lease, but merely descriptive aids to identify the paragraph to which they referred. Use of the masculine gender includes the feminine and neuter, and vice versa.

22.9 Quiet Possession. Landlord covenants and agrees with Tenant that, upon Tenant's payment of Rent and observing and performing all of the terms, covenants, conditions, provisions and agreements of this Lease on Tenant's part to be observed or performed, Tenant shall have the quiet possession of the Premises throughout the Term.

22.10 Asbestos Notification for Commercial Property Constructed Before 1979. Tenant acknowledges that Landlord has advised Tenant that, because of their age, certain improvements may contain asbestos-containing materials ("ACMs"). If Tenant undertakes any Alterations as may be permitted herein, Tenant shall undertake the Alterations in a manner that avoids disturbing ACMs present in the Premises. If ACMs are likely to be disturbed in the course of such work, Tenant shall encapsulate or remove the ACMs in accordance with an approved asbestos-removal plan and otherwise in accordance with all applicable Environmental Laws, including giving all notices required by California Health & Safety Code Sections 25915-25919.7. In the event that money becomes available from the State of California for the cleanup or abatement of asbestos, Landlord shall use good faith efforts to obtain a share of such funds to be applied to any asbestos remediation work at the Premises. Any such money thus obtained by Landlord shall be assigned by Landlord to Tenant for the purpose of asbestos abatement.

22.11 Lead Warning Statement. Tenant acknowledges that Landlord has advised Tenant that buildings built before 1978 may contain lead-based paints ("LBP"). Lead from paint, paint chips and dust can pose health hazards if not managed properly.

22.12 Certified Access Specialist Disclosure. In accordance with Civil Code Section 1938, Landlord hereby discloses that the Premises have not undergone inspection by a Certified Access Specialist for purposes of determining whether the property has or does not meet all applicable construction related accessibility standards pursuant to Civil Code Section 55.53. A Certified Access Specialist (CASP) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the

CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the Premises. The forgoing notwithstanding, the parties agree that Tenant shall be solely responsible for the payment of all fees for the CASp inspection and for any repairs it deems necessary to correct violations of construction-related accessibility standards within the Premises as a result of the CASp inspection.

22.13 Time of the Essence. Time is of the essence of this Lease and each and all of its provisions.

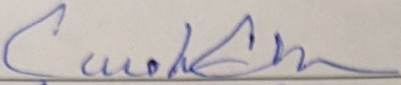
22.14 Entire Agreement. This Lease contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Lease, and no prior agreements or understandings pertaining to any such matter shall be effective for any purpose. No provision of this Lease may be amended or added except by an agreement in writing signed by the parties hereto or their respective successors-in-interest.

22.15 Counterparts. This Lease may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

Landlord and Tenant have executed this Lease as of the day and year first above written.

**LANDLORD:**

Palo Alto Unified School District

By:   
Name: Carolyn Chow  
Title: CBO  
Date: 6/7/20

Approved as to Form

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

**TENANT:**

City of Palo Alto

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

ATTEST

Approved as to Form

By: \_\_\_\_\_  
City Attorney  
Date: \_\_\_\_\_



**EXHIBIT A**  
**PROPERTY OUTLINED IN RED**





## EXHIBIT B PREMISES



### Map Legend

- Leased by City
- Owned by City

-  Accessible Parking
-  Restrooms

### Cubberley Community Center

4000 Middlefield Road, Palo Alto, CA 94303  
Tel. 650.329.2418  
Fax 650.856.8756

[www.cityofpaloalto.org](http://www.cityofpaloalto.org)  
[cubberley@cityofpaloalto.org](mailto:cubberley@cityofpaloalto.org)

Office Hours: Monday - Friday 8:30am to 5:30pm



**EXHIBIT C**  
**SPACE USED BY CITY (IN SQ. FT.)**

PAUSD space used by City	
Indoor area*	
(including addl	
spaces)	65,046
Room G5	1,656
Room G8	490
Gym A	5,500
Gym B	7,200
Theater only	7,800
N + Pavilion	17,500
S	5,700
Auditorium (JMZ)	13,200
Maintenance*	2,000
Boiler Room**	-
FOPAL* (near track)	4,000
Total City Use	65,046
	58.81%

\*Estimated sq ft, confirmation pending

\*\*Boiler room included in Common Areas

**EXHIBIT D**  
**SPACE USED BY PAUSD (IN SQ. FT.)**

PAUSD space used by PAUSD	
Indoor area	45,554
A	5,300
B	5,300
G4, G6, G7	13,354
I (two levels)	13,000
M2, M3, M4	5,000
Q	3,600
Total PAUSD Use	45,554
	41.19%