

City of Calistoga

Staff Report

TO: Honorable Mayor and City Council
FROM: Susan Sneddon, City Clerk
DATE: August 5, 2008
SUBJECT: Consideration of a Resolution authorizing a two-year extension of the lease with the Napa County Office of Education of City Land for the continuing operation of the Calistoga Preschool

APPROVAL FOR FORWARDING:


 James C. McCann, City Manager

1 **ISSUE:** Consideration of a Resolution authorizing a two-year extension of the lease with the
 2 Napa County Office of Education of City Land for the continuing operation of the Calistoga
 3 Preschool

RECOMMENDATION: Adopt Resolution.

4 **BACKGROUND:** The City Council authorized a lease of vacant city property (the Fair Way
 5 extension between Anna and Eddy Streets) in 2001, to the Napa County Office of Education
 6 (NCOE) for the purposes of establishing a preschool facility to serve Calistoga's children. The
 7 NCOE had received a grant which allowed them to acquire a modular building for preschool
 8 purposes, but required that they find a suitable public site to establish the program. After much
 9 effort, this unused public property was identified as being suitable for a temporary location for
 10 the facility. The facility has provided tremendous service to Calistoga families and continues to
 11 be very important to the community.

12 **DISCUSSION:** The lease initially had a five-year term with the ability for extensions. This term
 13 was established in anticipation of development in the area which might necessitate the need for
 14 improvement of this public land for parking and circulation purposes. Such development has
 15 not yet happened and a further extension of time for the continuation of the preschool is
 16 appropriate (a two year extension was granted in April of 2006). It is anticipated that
 17 development in this area will occur in the next few years which will likely necessitate relocation
 18 of the preschool facility.

19 There has been discussion regarding the desire to establish a Dog Park in this area as well.
 20 Conversations with the NCOE staff have indicated their willingness to accommodate the park
 21 users' parking needs as long as these are off hours and do not create a conflict with the
 22 preschool.

23 **FISCAL IMPACTS:** The terms of the lease require that the NCOE provide payment of at least
 24 \$1 per year. All costs of the operation are born by the NCOE.

25 **ATTACHMENTS:**

- 26 1. Draft Resolution
 27 2. Letter of request from NCOE
 28 3. Background materials
 29

RESOLUTION 2008-____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALISTOGA, COUNTY OF NAPA, STATE OF CALIFORNIA, AUTHORIZING THE CITY MANAGER TO EXECUTE AN AMENDMENT TO EXTEND THE LEASE OF CITY PROPERTY TO THE NAPA COUNTY OFFICE OF EDUCATION FOR THE CALISTOGA PRESCHOOL FACILITY

1 **WHEREAS**, In 2001, the City Council authorized a five year lease of unused City
2 property to the Napa County Office of Education (NCOE) to permit the installation of a
3 modular building to provide preschool services to Calistoga residents; and
4

5 **WHEREAS**, this lease had an initial term of five years (2001 – 2006) with the
6 ability for an extension of up to five years at the termination of the initial period.; and
7

8 **WHEREAS**, in April 2008 the NCOE was granted a two year extension on this
9 lease; and
10

11 **WHEREAS**, the Napa County Superintendent of Schools has requested that the
12 lease be renewed for an additional two years; and
13

14 **WHEREAS**, the NCOE has provided an outstanding service to many families in
15 the Calistoga area through their preschool facility; and
16

17 **WHEREAS**, authorizing a two year extension of the lease will allow this
18 tremendously valuable service which is beneficial to the community to continue; and
19

20 **NOW, THEREFORE BE IT RESOLVED** that the City Council of the City of
21 Calistoga hereby authorizes a two year extension to the lease of City property to the
22 Napa County Office of Education for the Calistoga preschool facility.
23

24 **PASSED, APPROVED, AND ADOPTED** by the City Council of the City of
25 Calistoga at a regular meeting held this 5th day of August 2008 following vote:
26

27 **AYES:**

28 **NOES:**

29 **ABSTAIN/ABSENT:**
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31
32
33
34
35

JACK GINGLES, Mayor

36 **ATTEST:**
37
38

SUSAN SNEDDON, City Clerk
39

of
Education

CITY OF CALISTOGA
JUL 28 2008
CITY MANAGER

July 24, 2008

Jim C. McCann, City Manager
City of Calistoga
1232 Washington Street
Calistoga, CA 94515

Barbara G. Nemko, Ph.D.
Superintendent
(707) 253-6810

RE: Renewal of Lease for Childcare Facility
Former Southern Pacific Right of Way

Business Services
(707) 253-6819

Dear Jim,

Fiscal Services
(707) 253-6833

In October of 2000, the Planning Commission approved a use permit authorizing the Napa County Office of Education to construct a temporary preschool on the former Southern Pacific Railroad right-of-way between Eddy and Earl Streets. The terms of the August 1, 2001 Lease of Public Lands for the Calistoga Preschool call for the payment of one dollar per year in rent to the City of Calistoga.

General Services
(707) 253-6828

After our original five year lease expired on August 1, 2006, we requested a five-year extension and were granted two years, in case the City needed the space for development. We feel fortunate that the land is still available to us, and request an extension of that lease for another two-year period, at the same terms.

Human Resources
(707) 253-6824

We understand that the City is planning to install a Dog Park adjacent to the Preschool, and that you would like to allow the public to use the Preschool parking lot during non-operational hours. We are happy to share the lot providing the City posts a sign clearly indicating that the lot is available to the public during specific, restricted hours and that violators will be towed. That's the only way to ensure that parents have access when bringing or picking up their children at school.

Educational Services
(707) 253-6810

We are very grateful that the City of Calistoga has always recognized the importance of providing preschool education and has been so gracious in working with us for the last seven years. We look forward to continuing our outstanding relationship.

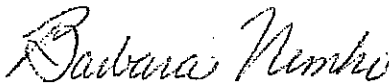
Court & Community Schools
(707) 253-6817

If you have any questions or need any additional information, please call me at (707) 253-6823 or email me at bnemko@ncoe.k12.ca.us.

Curriculum & Instruction
(707) 253-6999

Sincerely,

Early Childhood Services
(707) 253-6914



Barbara Nemko
Napa County Superintendent of Schools

Regional Occupational Program
(707) 253-6830

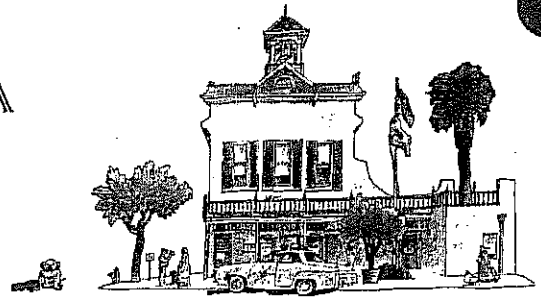
cc: Su Sneddon, City Clerk
Rose LeClerc, Head Teacher
Calistoga Preschool

Safe Schools/Healthy Students
(707) 259-5979

SELPA
(707) 253-6807

CITY OF CALISTOGA

1232 Washington Street • Calistoga, CA 94515
707.942.2800



April 19, 2006

Authorizing Agreement No. 0162

Barbara Nemko, Superintendent
Napa County Office of Education
2121 Imola Avenue
Napa, CA 94559

Re: Napa County Office of Education Lease of Public Land (Preschool)


Dear Barbara:

At the April 4, 2006 Calistoga City Council meeting the enclosed Resolution No. 2006-027 was adopted authorizing the City Manager to execute an amendment of the Lease of City property to the Napa County Office of Education for the Calistoga Preschool Facility. This amendment authorizes an extension of the Lease from August 1, 2006 to August 1, 2008 with the same terms and conditions of the Lease.

Please sign both original letters authorizing your approval of this amendment. Return one signed letter to Susan Sneddon, City Clerk. If you have any questions or comments please contact me at 707.942.2805.


Thank you for the outstanding service provided to our community.

Sincerely,


James C. McCann
City Manager

Enclosure

cc: David Spilman, Administrative Services Director
Connie Minnick, Senior Account Clerk
Correspondence
File


Barbara Nemko
Superintendent, Napa County Office of Education



2001-0027070

Recorded	REC FEE	.00
Official Records	CCN1-NO	.00
County Of		
NAPA		
JOHN TUTEUR		
Recorder		

Recording Requested By and
 When Recorded Mail To:
 City Clerk
 City of Calistoga
 1232 Washington Street
 Calistoga, California 94515
 Attention: City Manager

City of Calistoga

OCT 26 2001

08:01AM 09-Aug-2001

SS
Page 1 of 19

Received

Space Above This Line For Recorder's Use

Exempt from Recording Fees pursuant to Gov. Code § 6103

LEASE OF PUBLIC LANDS

This Lease is entered into effective August 1, 2001 between the CITY OF CALISTOGA, a California municipal corporation ("Landlord"), and the NAPA COUNTY OFFICE OF EDUCATION, a political subdivision of the State of California ("Tenant").

RECITALS

This Lease is entered into on the basis of the following facts, understandings and intentions of the parties:

- A. Landlord is the owner of that certain real property ("Property") located in the City of Calistoga within the former Southern Pacific right-of-way between Earl and Eddy Streets, depicted in the Site Plan attached hereto as Exhibit A and more particularly described in the Property Description attached hereto as Exhibit B.
- B. Tenant has applied for and received a State of California preschool program grant and a grant to provide a preschool program within the City of Calistoga but has been unable to find a suitable location for the necessary facilities.
- C. Landlord desires to assist Tenant in its efforts to utilize the grant monies by providing Tenant with a temporary location for its preschool facilities.
- D. On December 7, 1999, the Calistoga City Council adopted Resolution No. 99-82, authorizing the City Manager to execute a lease agreement providing for the lease of the Property by Landlord to Tenant on the terms set forth herein.
- E. On October 25, 2000, the Calistoga Planning Commission approved Conditional Use Permit No. 2000-5 which authorizes Tenant to install temporary, modular classroom units and to provide preschool services on the Property.

F. Landlord desires to lease to Tenant and Tenant desires to lease from Landlord the Property on the terms and conditions set forth in this Lease.

TERMS AND CONDITIONS

In consideration of the foregoing recitals and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

Section 1. Lease.

Landlord leases to Tenant and Tenant leases from Landlord that certain real property ("Property"), located in the City of Calistoga within the former Southern Pacific right-of-way between Earl and Eddy Streets, depicted in the Site Plan attached hereto as Exhibit A and more particularly described in the Property Description attached hereto as Exhibit B, on the terms and conditions set forth herein.

Section 2. Term of Lease; Extension Option; Landlord's Option to Terminate.

(a) Term. The initial term of this Lease shall be five (5) years commencing on August 1, 2001 ("Commencement Date") and expiring on August 1, 2006 ("Expiration Date"), unless extended as provided in subsection (b) below or sooner terminated pursuant to the terms of this Lease.

(b) Extension Option. Tenant shall have one (1) option ("Option") to extend the initial term of the Lease for a period of five (5) years ("Option Period") subject to the following conditions:

(i) At the time the Option is exercised and as of the commencement of the Option Period, the Lease shall be in full force and effect, and Tenant shall not be in material default hereunder;

(ii) The Option must be exercised by written notice given to Landlord not less than six (6) months prior to expiration of the initial term;

(iii) If the Option is timely and effectively exercised, the term of the Lease shall be extended for the Option Period, upon all of the terms and conditions of the Lease.

(c) Landlord's Option to Terminate. Tenant acknowledges and agrees that the parties have entered into this Lease for the purpose of providing a temporary site for Tenant's preschool facilities and that Landlord may need to terminate the Lease and retake possession of the Property to accommodate future public projects. Tenant agrees to continue to exercise good faith efforts to locate a permanent site for its

preschool facilities. Tenant further agrees that Landlord shall have an option to terminate this Lease on the following conditions:

(i) Landlord may exercise its option to terminate by written notice delivered to Tenant not less than ninety (90) days prior to the effective date of termination specified in Landlord's notice. If in Landlord's reasonable discretion certain conditions are satisfied as set forth below in this section 2(c)(i), upon written request by Tenant detailing efforts being made to relocate the preschool program authorized in Conditional Use Permit No. 2000-5, Landlord shall by written notice extend the effective date of termination to a date not more than (1) twelve (12) months from the effective date of termination specified in Landlord's notice, or (2) the Expiration Date of the Lease as set forth in Section 2(a) or, if Tenant has exercised its extension option under Section 2(b), to the Expiration Date so established. If Landlord has exercised its option to terminate by providing written notice as described above, and, prior to the effective date of termination specified in Landlord's notice, Tenant has not substantially completed relocation of the preschool program and has not chosen to discontinue the preschool program, Landlord shall by written notice extend the effective date of termination, provided, however, that, in Landlord's reasonable discretion, Tenant has cooperated with Landlord in identifying a relocation site and has not unreasonably withheld its approval of a relocation site. Prior to the effective date of termination specified in Landlord's notice or prior to the effective date of termination as it may be extended as set forth immediately above, whichever is later, Tenant shall remove the temporary, modular classroom units, together with all utilities and appurtenant improvements, from the Property, restore the site, and surrender and deliver possession of the Property to Landlord free of debris and in substantially the same condition as existed on the Commencement Date as provided in Section 10(a) below.

(ii) Should Landlord need to claim the Property before the Expiration Date, Landlord shall, within thirty (30) days of Tenant's written notice to Landlord, reimburse Tenant for all of Tenant's out-of-pocket expenses incurred in connection with relocating the preschool program authorized in Conditional Use Permit No. 2000-5, including but not limited to expenses incurred by Tenant in connection with the acquisition of a leasehold interest in real property, payment for site design and engineering services, and payment for physical relocation and site improvements ("Relocation Expenses"), provided such notice is accompanied by copies of invoices and other documentation reasonably requested by Landlord evidencing said Relocation Expenses.

Section 3. Rent.

The rent shall be One Dollar (\$1.00) per year for the term of this Lease. Rent shall be paid on the first day of each lease year commencing on the Commencement Date, without deduction, set-off, prior notice or demand. Rent for any partial year shall be prorated on the basis of a 365-day year.

Section 4. Use.

Tenant shall use the Property for preschool facilities and for no other purpose. Tenant shall comply with all conditions of approval contained in Resolution No. 2001-003 and in Conditional Use Permit No. 2000-5. Tenant shall not allow the commission of any acts on the Property, nor allow use of the Property in any manner, that might cause the cancellation of any insurance covering the Property. Tenant shall not allow the commission of any waste or any public or private nuisance upon the Property. Tenant shall, at its expense, comply with all laws, rules, regulations and orders of all federal, state, and local governments or agencies that may be applicable to use of the Property, including but not limited to the General Plan and Zoning Ordinance of the City of Calistoga, in their current form or as they may hereafter be amended.

Section 5. Utilities; Personal Property Taxes.

(a) Utilities. During the term, Tenant shall make arrangements for and pay, prior to delinquency, all utilities and services furnished to or used by it with respect to the Property, including without limitation electricity, natural gas, water, telephone, and solid waste collection and all charges related thereto.

(b) Personal Property Taxes. Tenant shall pay, prior to delinquency, any and all personal property taxes levied on the temporary, modular classroom units and other personal property installed on the Property pursuant to this Lease.

(c) City Permits and Fees. Landlord agrees to waive all fees relating to building permits, water hook-up fees and other related city fees for the installation of the temporary, modular classroom units and appurtenant improvements on the Property.

Section 6. Condition of Property.

Tenant acknowledges that it has inspected the Property and conducted all investigations of the Property which Tenant deems necessary or desirable. Tenant accepts the Property in its "as is" condition with no representations or warranties whatsoever from Landlord as to its suitability for Tenant's intended purposes.

Section 7. Repairs and Maintenance.

Tenant shall, at its sole expense, maintain the Property in first-class condition and repair throughout the term of this Lease. If, at any time during the term, Tenant fails to maintain the Property or to make any repairs or replacements as required by this Section 7, Landlord may, but shall not be required to, enter upon the Property and perform the maintenance or make the repairs or replacements for the account of Tenant; any sums expended by Landlord in so doing, together with interest at ten

percent (10%) per annum, shall be deemed additional rent and shall be immediately due in full from Tenant on demand of Landlord. Tenant waives the provisions of Civil Code sections 1941 and 1942 and any other law that would require Landlord to maintain the Property in a tenable condition or would provide Tenant with the right to make repairs and deduct the cost of those repairs from the rent.

Section 8. Temporary Improvements.

Tenant may, at its sole expense, cause the installation on the Property of temporary, modular classroom units, together with utilities and appurtenant improvements, as necessary to make the Property suitable for its intended use. Before commencing any work at the Property, Tenant shall notify Landlord of the expected date of commencement thereof, and shall furnish drawings and specifications describing such work as well as such other information as shall reasonably be requested by Landlord. Landlord shall then have the right at any time and from time to time to post and maintain on the Property such notices as Landlord reasonably deems necessary to protect the Property and Landlord from mechanics' liens or any other liens. In any event, Tenant shall pay when due all undisputed claims for labor or materials furnished to or for Tenant at or for use in the Property and shall bond against the full amount of all disputed claims. Tenant shall not permit any mechanics' liens to be levied against the Property for any labor or materials furnished to Tenant or claimed to have been furnished to Tenant or to Tenant's agents or contractors in connection with work of any character performed or claimed to have been performed on the Property by or at the direction of Tenant. All improvements in or about the Property performed by or on behalf of Tenant shall be done in a first-class, workmanlike manner and in material compliance with all applicable laws, ordinances, regulations and orders of any governmental authority having jurisdiction thereover, as well as the requirements of insurers of the Property.

Section 9. Entry.

Tenant shall permit Landlord and Landlord's agents, representatives, and employees to enter upon the Property at all reasonable times and upon reasonable notice (except in an emergency in which case no notice shall be required) to inspect the Property, to determine whether Tenant is complying with the terms of this Lease and to do other lawful acts that may be necessary to protect Landlord's interest in the Property.

Section 10. Surrender of Property; Holding Over.

(a) Surrender. By the Expiration Date or earlier termination of the term, Tenant, at its expense, shall (i) cause the temporary, modular classroom units, together with all utilities and appurtenant improvements installed by Tenant, to be removed from the Property; (ii) restore all landscaping; and (iii) promptly surrender and deliver

possession of the Property to Landlord free of debris and in substantially the same condition as existed on the Commencement Date.

(b) Holdover. In the event Tenant holds over with permission of the Landlord for any reason beyond the Expiration Date, in the absence of a written agreement to the contrary, the tenancy shall be from month-to-month.

Section 11. Indemnity.

As insurance is available to protect it, Tenant hereby waives all claims against Landlord for damage to any property or injury to or death of any person in, upon or about the Property arising at any time and from any cause, and Tenant shall hold Landlord harmless from and defend Landlord against all claims and liabilities for damage to any property or injury to or death of any person (i) arising from the use of the Property by Tenant, or (ii) arising from the negligence or willful misconduct of Tenant, its employees, agents or contractors in, upon or about the Property. The foregoing indemnity obligation of Tenant shall include reasonable attorneys' fees, investigation costs and all other reasonable costs and expenses incurred by Landlord from the first notice that any claim or demand is to be made or may be made with respect to such negligence or willful misconduct.

Landlord shall hold Tenant harmless and defend Tenant against all claims and liabilities for damage to any property or injury to or death of any person arising from the gross negligence or willful misconduct of Landlord, its employees, agents or contractors in, upon or about the Property. The foregoing indemnity obligation of Landlord shall include reasonable attorneys' fees, investigation costs and all other reasonable costs and expenses incurred by Tenant from the first notice that any claim or demand is to be made or may be made with respect to such gross negligence or willful misconduct.

The provisions of this Section 11 shall survive the termination of this Lease with respect to any damage, injury or death occurring prior to such termination.

Section 12. Insurance.

Tenant shall obtain and maintain during the term of this Lease commercial general liability insurance with a combined single limit for personal injury and property damage in an amount not less than Two Million Dollars (\$2,000,000), and employer's liability and workers' compensation insurance as required by law. Tenant's commercial general liability insurance policy shall be endorsed to provide that (i) it may not be canceled or altered in such a manner as adversely to affect the coverage afforded thereby without thirty (30) days prior written notice to Landlord, (ii) Landlord is named as additional insured, (iii) the insurer acknowledges acceptance of the waiver of claims by Tenant pursuant to Section 11 above, and (iv) such insurance is primary with respect to Landlord and that any other insurance or self-insurance maintained by Landlord is

excess and noncontributing with such insurance. If, in the reasonable opinion of Landlord's insurance adviser, based on a substantial increase in recovered liability claims generally, the specified amounts of coverage are no longer adequate, within fifteen (15) days following notice from Landlord such coverage shall be appropriately increased. Tenant shall also obtain and maintain insurance ("Property Insurance") covering the temporary, modular classroom units and all leasehold improvements paid for by Tenant and Tenant's personal property and fixtures from time to time in, on, or at the Property, in an amount not less than 100% of the full replacement cost, without deduction for depreciation, providing protection against events protected under "Fire and Extended Coverage," as well as against sprinkler damage, vandalism, and malicious mischief. Any proceeds from the Property Insurance shall be used for the repair or replacement of the property damaged or destroyed. Prior to the Commencement Date, Tenant shall deliver to Landlord a duplicate of the policies required hereunder or a certificate thereof with endorsements, and at least twenty (20) days prior to the expiration of such policies or any renewal thereof, Tenant shall deliver to Landlord a replacement or renewal binder, followed by a duplicate policy or certificate within a reasonable time thereafter. If Tenant fails to obtain such insurance or to furnish Landlord any such duplicate policy or certificate as herein required, Landlord may, at its election, following seven (7) days prior notice to Tenant (except where coverage has lapsed or threatens to lapse) and without any obligation so to do, procure and maintain such coverage and Tenant shall reimburse Landlord on demand as additional rent for any premium so paid by Landlord.

Section 13. Intentionally Omitted.

Section 14. Condemnation.

(a) Full Condemnation. If, during the term, the whole of the Property shall be taken pursuant to any condemnation proceeding, this Lease shall terminate as of the date that actual physical possession of the Property is taken, and after that, both Landlord and Tenant shall be released from all obligations under this Lease.

(b) Partial Condemnation. If, during the term only a part of the Property is taken pursuant to any condemnation proceeding and the remaining portion is not suitable or adequate for the purposes for which Tenant was using the Property prior to the taking, or if by reason of any law or ordinance the use of the Property for the purposes specified in this Lease shall become unlawful, then after the taking or the occurrence of the other above-described events, Tenant shall have the option to terminate this Lease upon ten (10) days written notice to Landlord.

(c) Restoration. If only a part of the Property is taken pursuant to any condemnation proceeding and provided Tenant does not have the option to terminate this Lease as provided in Subsection (b) above, or having the option to terminate

Tenant elects not to terminate, then Landlord shall at Landlord's expense promptly proceed to restore the remainder of the Property.

(d) Condemnation Award. Landlord shall be entitled to the entirety of any condemnation award in the event the whole or any part of the Property is taken pursuant to any condemnation proceeding.

Section 15. Assignment and Subletting.

Tenant shall not have any right to assign this Lease or sublease the Property.

Section 16. Default.

Any of the following events or occurrences shall constitute a material breach of this Lease by Tenant and, after the expiration of any applicable cure period, shall constitute an event of default (each an "Event of Default"):

(a) The failure by Tenant to pay any amount in full when it is due under this Lease;

(b) The failure by Tenant to perform any other obligation under this Lease, if the failure has continued for a period of ten (10) days after Landlord demands in writing that Tenant cure the failure. If, however, by its nature the failure cannot be cured within ten (10) days, Tenant may have a longer period as is necessary to cure the failure, in any event not to exceed thirty (30) days, but this is conditioned upon Tenant's promptly commencing to cure within the ten (10) day period and thereafter diligently completing the cure. Notwithstanding the foregoing, if Tenant has defaulted in the performance of the same obligation more than one time in any twelve (12) month period and notice of such default has been given by Landlord in each instance, no cure period shall thereafter be applicable hereunder. Tenant shall indemnify, defend and hold harmless Landlord against any liability, claim, damage, loss, or penalty that may be threatened or may in fact arise from that failure during the period the failure is uncured;

(c) The appointment of a trustee or receiver to take possession of all or substantially all of Tenant's assets; or the attachment, execution or other judicial seizure of all or substantially all of Tenant's assets located at the Property or of Tenant's interest in this Lease, unless the appointment or attachment, execution, or seizure is discharged within thirty (30) days; or the involuntary filing against Tenant, of (i) a petition to have Tenant declared bankrupt, or (ii) a petition for reorganization or arrangement of Tenant under any law relating to insolvency or bankruptcy, unless, in the case of any involuntary filing, it is dismissed within sixty (60) days;

(d) The abandonment of the Property by Tenant; and

(e) The failure by Tenant to continuously operate the Property for the permitted use described in Section 4 above.

Section 17. Remedies.

Upon the occurrence of an Event of Default, Landlord, in addition to any other rights or remedies available to Landlord at law or in equity, shall have the right to terminate this Lease and all rights of Tenant under this Lease by giving Tenant written notice that this Lease is terminated.

Except where inconsistent with or contrary to any express provisions of this Lease, no right or remedy conferred upon or reserved to either party is intended to be exclusive of any other right or remedy, or any right or remedy given or now or later existing at law or in equity or by statute.

Section 18. Default Interest.

If Tenant fails to pay any amount due under this Lease as and when due, that amount shall bear interest at the rate of ten percent (10%) per annum from the due date until paid, or at such lower rate as may be the highest rate legally permitted.

Section 19. No Waiver of Breach.

Any express or implied waiver of a breach of any term of this Lease shall not constitute a waiver of any further breach of the same or any other term of this Lease; and the acceptance of rent shall not constitute a waiver of any breach of any term of this Lease, except as to the payment of rent accepted.

Section 20. Estoppel Certificates.

At any time, with at least fifteen (15) days prior notice by Landlord, Tenant shall execute, acknowledge, and deliver to Landlord a certificate certifying: (a) the Commencement Date and the term; (b) the amount of the minimum annual rental; (c) that this Lease is unmodified and in full force and effect or, if there have been modifications, that this Lease is in full force and effect, as modified, and stating the date and nature of each modification; (d) that no notice has been received by Tenant of any default by Tenant that has not been cured, except, if any exist, those defaults as are specified by Tenant in the certificate; (e) that no default of Landlord is claimed by Tenant, except, if any, those defaults as are specified by Tenant in the certificate, and (f) other matters as may be reasonably requested by Landlord. Any certificate may be relied on by prospective purchasers, mortgagees, or beneficiaries under any deed of trust on the Property or any part thereof.

Section 21. Attorneys' Fees.

If any action at law or in equity is brought to recover any rent or other sums due under this Lease, or for or on account of any breach of, or to enforce or interpret any of, the covenants, terms, or conditions of this Lease, or for the recovery of the possession of the Property, the prevailing party shall be entitled to recover from the other party as part of prevailing party's costs reasonable attorneys' fees, the amount of which shall be fixed by the court and shall be made a part of any judgment rendered.

Section 22. Notices.

Except as otherwise expressly provided by law, all notices or other communications required or permitted by this Lease or by law to be served on or given to either party to this Lease by the other party shall be in writing and shall be deemed served when personally delivered to the party to whom they are directed, or three (3) business days after deposit in the United States Mail, first-class, postage prepaid, addressed as follows:

to Tenant at:

Napa County Office of Education
1015 Kaiser Road
Napa, CA 94558
Attn: Deputy Superintendent for Business

and

to Landlord at:

City of Calistoga
1232 Washington Street
Calistoga, California 94515
Attention: City Manager

Either party, Tenant or Landlord, may change the address for the purpose of this Section by giving written notice of the change to the other party in the manner provided in this Section.

Section 23. Successors in Interest.

Subject to the provisions of this Lease prohibiting assignment or subletting by Tenant, this Lease shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of Landlord and Tenant.

Section 24. Severability.

Should any provision of this Lease be held by a court of competent jurisdiction to be either invalid or unenforceable, the remaining provisions of this Lease shall remain in effect to the fullest extent allowed by law.

Section 25. Entire Agreement.

This Lease constitutes the sole agreement between Landlord and Tenant respecting the Property, the leasing of the Property to Tenant, and the specified lease term, and correctly sets forth the obligations of Landlord and Tenant. Any other oral or written understandings, agreements or representations respecting the Property or the leasing thereof by Landlord to Tenant not expressly set forth in this Lease are of no force or effect.

Section 26. Time of Essence.

Time is of the essence in this Lease.

Section 27. Amendments.

This Lease may be modified only in writing and only if signed by the parties at the time of the modification.

Section 28. Subordination.

(a) This Lease shall be subordinate to any ground lease, mortgage, deed of trust, or any other hypothecation for security now or later placed upon the Property and to any advances made on such security or Landlord's interest in the Property, and to all renewals, modifications, consolidations, replacements, and extensions thereof. However, if any mortgagee, trustee, or ground lessor elects to have this Lease prior to the lien of its mortgage or deed of trust or prior to its ground lease, and gives notice of such election to Tenant, this Lease shall be deemed prior to the mortgage, deed of trust, or ground lease, whether this Lease is dated prior or subsequent to the date of the mortgage, deed of trust, or ground lease, or the date of recording thereof. If any mortgage or deed of trust to which this Lease is subordinate is foreclosed or a deed in lieu of foreclosure is given to the mortgagee or beneficiary, Tenant shall attorn to the purchaser at the foreclosure sale or to the grantee under the deed in lieu of foreclosure. If any ground lease to which this Lease is subordinate is terminated, Tenant shall attorn to the ground lessor. Tenant agrees to execute any documents, in form and substance reasonably acceptable to Tenant, required to subordinate this Lease, to make this Lease prior to the lien of any mortgage or deed of trust or ground lease, or to evidence the attornment.

(b) If any mortgage or deed of trust to which this Lease is subordinate is foreclosed or a deed in lieu of foreclosure is given to the mortgagee or beneficiary, or if any ground lease to which this Lease is subordinate is terminated, this Lease shall not be barred, terminated, or foreclosed. Neither shall the rights and possession of Tenant under this Lease be disturbed, if Tenant is not then in default in the payment of rental and other sums due under this Lease or otherwise in default under the terms of this Lease, and if Tenant attorns to the purchaser, grantee, or ground lessor as provided in Section 28(a) or, if requested, enters into a new lease for the balance of the term of this Lease on the same terms and provisions in this Lease.

Section 29. Merger.

Subject to the provisions of this Lease prohibiting assignment or subletting by Tenant, the voluntary or other surrender of this Lease by Tenant, or a mutual cancellation of the Lease, or a termination by Landlord, shall not work a merger, and shall, at the option of Landlord, terminate all or any existing subtenancies or may, at the option of Landlord, operate as an assignment to Landlord of any of the subtenancies.

Section 30. Hazardous Materials.

Landlord and Tenant agree as follows with respect to the existence or use of Hazardous Materials on the Property.

(a) "Environmental Laws" shall mean all present and future applicable federal, state and local laws, ordinances or regulations or policies pertaining to Hazardous Materials (including, without limitation, the use, handling, transportation, production, disposal, discharge or storage thereof) or to industrial hygiene or the environmental conditions on, under or about the Property and to the protection of the environment or human or animal health and safety.

(b) "Hazardous Materials" shall mean any hazardous or toxic substance, material or waste the storage, use, or disposition of which is or becomes regulated by any local governmental authority, the State of California or the United States Government. The term Hazardous Material includes, without limitation, any material or substance which is (i) defined as hazardous or extremely hazardous pursuant to Article II of Title 22 of the California Administrative Code, Division 4, Chapter 20, (ii) defined as a hazardous waste pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., (iii) defined as a hazardous substance pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq. or (iv) is listed or defined as a hazardous waste, hazardous substance, or other similar designation by any regulatory scheme of the State of California or the U.S. Government that is similar to the foregoing.

(c) Tenant shall not use, generate, manufacture, produce, store, release, discharge, or dispose of, on, under or about the Property or transport to or from the Property any Hazardous Material or allow its employees, agents, contractors, licenses, invitees or subtenants (collectively, "Tenant's Agents") to do so. Tenant shall comply with and shall cause Tenant's Agents to comply with, and shall keep and maintain the Property and cause Tenant's Agents to keep and maintain the Property in compliance with all Environmental Laws.

(d) Tenant shall give written notice to Landlord promptly after Tenant receives notice of any of the following: (i) any proceeding or inquiry by, notice from, or order of any governmental authority (including, without limitation, the California State Department of Toxic Substances Control) with respect to the presence of any Hazardous Material on, under or about the Property or the migration thereof from or to other property; and (ii) all claims made or threatened by any third party against Tenant or the Property relating to any loss or injury resulting from any Hazardous Materials. Tenant shall give written notice to Landlord promptly after Tenant becomes aware of any spill, release or discharge of Hazardous Materials with respect to the Property by Tenant or Tenant's Agents.

(e) Tenant shall protect, defend, indemnify and hold harmless Landlord, its directors, officers, partners, employees, agents, successor and assigns from and against any and all claims, fines, judgments, penalties, losses, damages, costs, expenses or liability (including reasonable attorneys' fees and costs) to the extent directly or indirectly arising out of or attributable to the use, generation, manufacture, production, storage, release, threatened release, discharge or disposal of any Hazardous Material on, under or about the Property or the transportation of any Hazardous Material to or from the Property by Tenant or Tenant's Agents including, without limitation, the costs of any investigation, monitoring, removal, restoration, abatement, repair, cleanup, detoxification or other ameliorative work of any kind or nature (collectively, "Remedial Work"). Tenant's obligations under this Section 30(e) shall survive the expiration or earlier termination of this Lease.

(f) Upon any spill or release of Hazardous Materials by Tenant or Tenant's Agents, Tenant shall promptly notify Landlord of the spill or release of Hazardous Materials and shall, at its sole expense and promptly after demand by Landlord, commence to perform and thereafter diligently prosecute to completion such Remedial Work as is required under Environmental Laws.

Section 31. Governing Law.

This Lease shall be governed by and construed in accordance with the laws of the State of California and the City of Calistoga.

Section 32. Recordation.

In accordance with Government Code Section 37393, the City Clerk shall record this Lease in the Office of the Napa County Recorder.

Section 33. Authority.

If Tenant is a corporation, each individual executing this Lease on behalf of Tenant (not in his/her individual capacity, but only in his/her capacity as an officer of Tenant) represents and warrants that he is duly authorized to execute and deliver this Lease on behalf of the corporation in accordance with a duly adopted resolution of the Board of Directors and that this Lease is binding upon the corporation in accordance with its terms.

Section 34. Joint & Several Liability.

If more than one person or corporation is named as Landlord or Tenant in this Lease and executes the same as such, then and in such event, the words "Landlord" or "Tenant" wherever used in this Lease are intended to refer to all such persons or corporations, and the liability of such persons or corporations for compliance with and performance of all the terms, covenants and provisions of this Lease shall be joint and several.

Section 35. Relocation Assistance Waiver.

In consideration of the covenants and agreements of Landlord set forth herein, including without limitation Landlord's obligation to pay moving expenses as provided in Section 2(a)(ii), above, Tenant hereby agrees to waive any claims which it may have for relocation payments and other relocation assistance under Government Code Section 7260 et seq. or any successor statute ("Relocation Assistance Law"), arising out of the exercise by Landlord of its option to terminate this Lease pursuant to Section 2(c), above. Tenant understands and acknowledges that the Relocation Assistance Law currently provides, among other things, for: (a) advisory assistance, including referral to comparable facilities and (b) for payment of actual, reasonable moving and related expenses or for a fixed expense and dislocation allowance. Except as otherwise provided in Section 2(a)(ii), above, Tenant has determined not to claim any benefits which might be available to it under the Relocation Assistance Law in the event of Landlord's exercise of its option to terminate, and hereby fully waives such benefits and releases the Landlord from all obligations and liability regarding such benefits.

Tenant is aware of and familiar with the provisions of Section 1542 of the California Civil Code which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

As such relates to this Section 35, Tenant hereby waives and relinquishes all rights and benefits which it may have under Section 1542 of the California Civil Code.

B.N.

Tenant Initials

IN WITNESS WHEREOF, the parties have executed this Lease as of the date first above written.

TENANT:

NAPA COUNTY OFFICE OF EDUCATION,
a political subdivision of the State of
California

By: Barbara Nemko
Barbara Nemko, Superintendent of
Napa County Office of Education

LANDLORD:

CITY OF CALISTOGA, a California
municipal corporation

By: Mario Callegari
Mario Callegari, Mayor of City of
Calistoga

ATTEST:

By: Robert Sayce
City Clerk

APPROVED AS TO FORM:

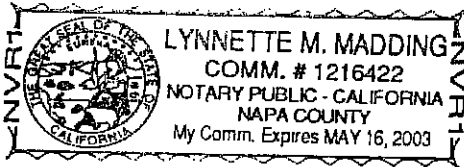
McDonough, Holland & Allen
By: Michelle Kenyon
Michelle Kenyon, City Attorney

STATE OF CALIFORNIA)
) ss.
COUNTY OF NAPA)

On this 31ST day of JULY, 2001, before me, the undersigned Notary Public, personally appeared BARBARA NEMKO proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and acknowledged that she executed the same in her authorized capacity, and that by her signature on the instrument, the entity upon behalf of which the person acted executed the instrument.

WITNESS my hand and official seal.

Lynette M. Madding
Notary Public



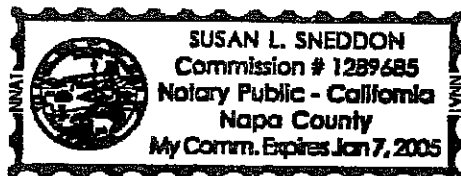
STATE OF CALIFORNIA)
) ss.
COUNTY OF NAPA)

On this 27th day of July, 2001, before me, the undersigned Notary Public, personally appeared Mario Callegari proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and acknowledged that she executed the same in her authorized capacity, and that by her signature on the instrument, the entity upon behalf of which the person acted executed the instrument.

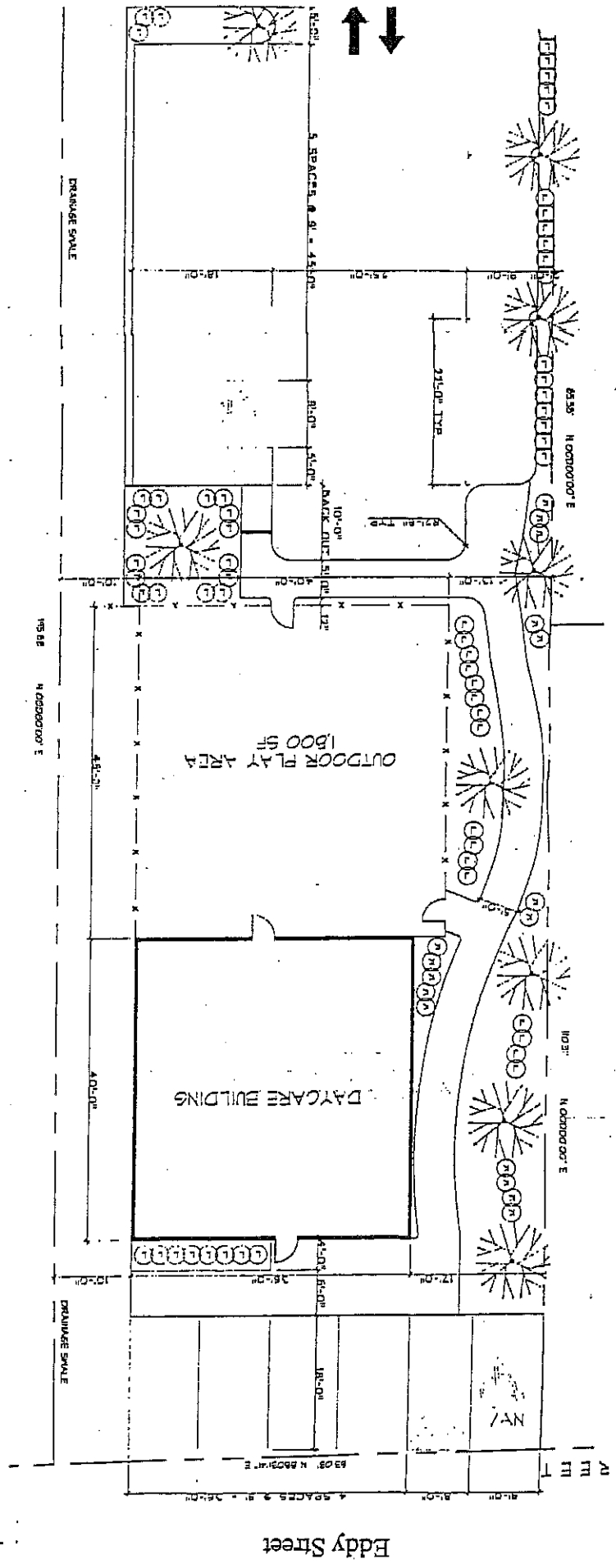
WITNESS my hand and official seal.

Susan L. Sneddon

Notary Public



Preschool Property Located in the City of Calistoga



Eddy Street

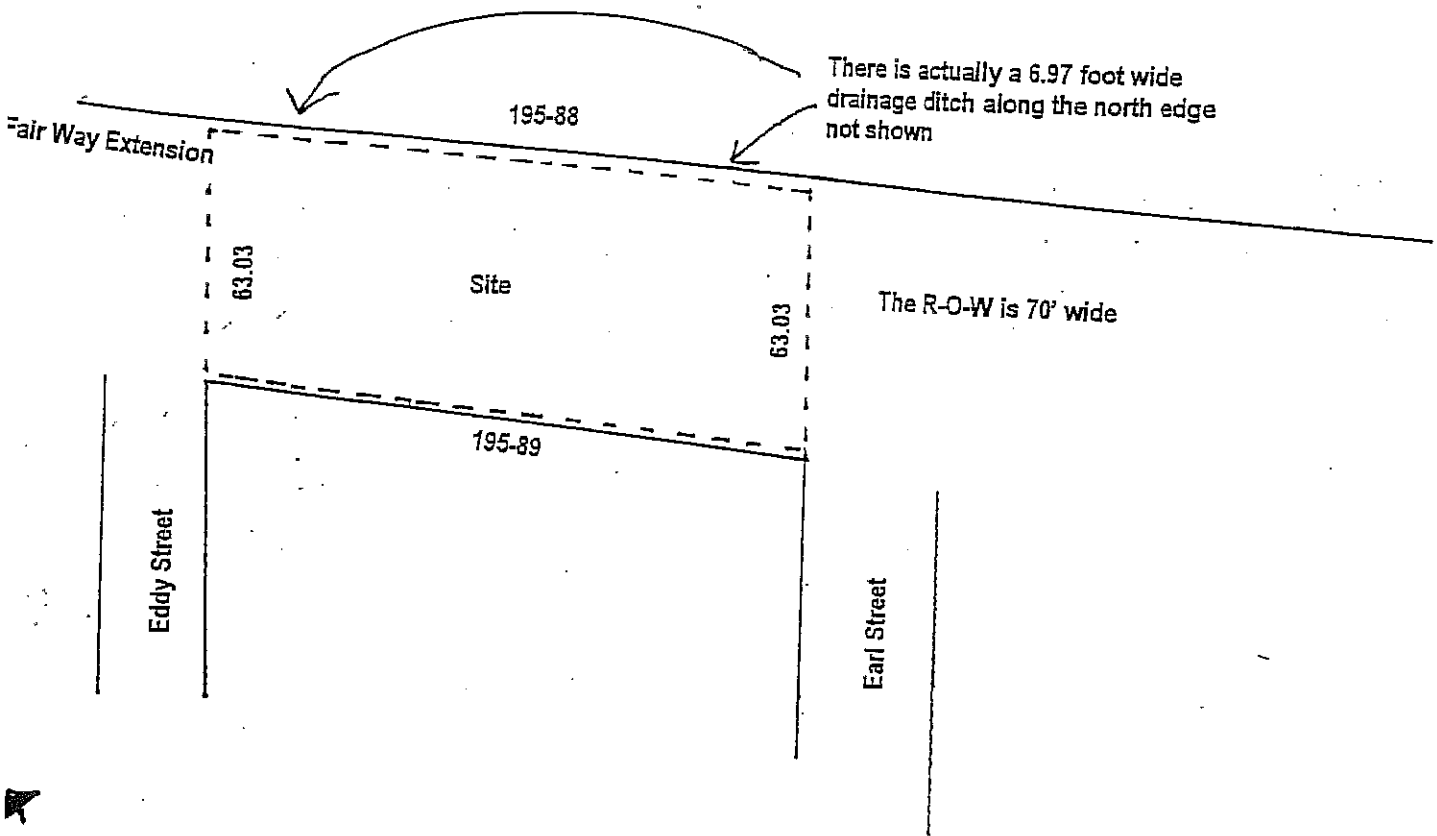
North

City of Calistoga

Preschool Legal Description

Portion of APN 11-210-001
Owner: City of Calistoga

A portion of the former Southern Pacific Railroad right-of-way, now known as the Fair Way Extension, which extends from Lincoln Avenue east to the City Limits. The 12,352 square foot site commences at the most northeasterly corner of 11-215-011 in book 11 of Parcel Maps; or Page 21 of the Napa County Recorder, extending 195.89 feet west to the most northwesterly corner of 11-215-001; thence extending 63.03 feet north across the Fair Way Extension; thence in an easterly direction parallel to the southerly property line of 11-210-001, 195.88 feet; thence extending 63.03 feet to the south to the northeastern corner of 11-215-011.



North