

ALBANY UNIFIED SCHOOL DISTRICT  
BOARD OF EDUCATION

REGULAR MEETING

**Albany Community Center**

1249 Marin Avenue  
Albany, CA 94706

**TUESDAY**

December 1, 2009

**A G E N D A**

**I. OPENING BUSINESS**

**6:30 p.m.**

- A) Call to Order
- B) Roll Call
- C) Identify Closed Session Pursuant to Agenda Section III Below

**II. PUBLIC COMMENT PERIOD FOR CLOSED SESSION ITEMS**

*General public comment on any Closed Session item will be heard. The Board may limit comments to no more than three (3) minutes.*

**III. CLOSED SESSION**

**6:35 p.m.**

- A) With respect to every item of business to be discussed in Closed Session pursuant to Education Code Section 35146: Student Personnel Matters
- B) With respect to every item of business to be discussed in Closed Session pursuant to: Government Code Section 54957: Public Employee Appointment  
**Certificated**
  - 1. Corrections -- none
  - 2. Extra Assignment
    - a. Boys Basketball -- 8<sup>th</sup> Grade
    - b. Girls Basketball -- 6<sup>th</sup> Grade
  - 3. New Hire
    - a. After School Intervention Teacher
    - b. ELD Teacher
    - c. Home Hospital Instructor
    - d. Sp Ed Teacher
    - e. Substitute Teacher
  - 4. Resignation
    - a. ELD Teacher
  - 5. Status Change -- none
  - 6. Termination -- none

**Classified**

1. Corrections – none
2. Extra Assignment
  - a. Girls Basketball – 7<sup>th</sup> Grade
3. New Hire
  - a. Girls Basketball – 8<sup>th</sup> Grade
  - b. Hourly Facilities Director
  - c. Music Assistant
  - d. Substitute Para-Educator
  - e. Substitute Sp Ed Para-Educator
  - f. Women's Varsity Soccer Coach
  - g. Yard Aide
4. Resignation
  - a. Para-Educator
5. Status Change
  - a. Lead Para to Para-Educator
6. Termination – none

- C) With respect to every item of business to be discussed in Closed Session Pursuant to Government Code Section 54957.6: CONFERENCE WITH LABOR NEGOTIATOR (Superintendent Marla Stephenson, District Representative), Regarding Negotiations as pertains to:
- a. California School Employees Association (CSEA)
  - b. Albany Teachers Association (ATA)
  - c. SEIU Local 1021

**IV. OPEN SESSION****7:30 p.m.**

*Depending upon completion of Closed Session items, the Board of Education intends to convene to Open Session at 7:30 p.m. to conduct the remainder of its meeting, reserving the right to return to Closed Session at any time.*

- A) Reconvene to Open Session
- B) Roll Call
- C) Pledge of Allegiance
- D) Report of Action Taken in Closed Session
- E) Reorganization of Board of Education 2009-10
  1. Conduct Annual Reorganization Meeting, Board of Education 2009-10
    - a. Election of President of the Board (Superintendent to preside)
    - b. Election of Vice President of the Board (New Board President to preside)
- F) Approval of Agenda
- G) Approval of Consent Calendar

*(The Consent Calendar includes routine items that may be handled with one action. Board Members may request any item be removed from the Consent Calendar without formal action)*

1. **Approval of Minutes**
  - a) November 17, 2009
  - b) November 4, 2009
  - c) October 6, 2009
  
2. **Personnel Assignment Order**
  - a) **Certificated Personnel – Public Employee Assignment, Employment, Appointment, Evaluation, Leave Requests:**
    1. Corrections – none
    2. Extra Assignment
      - a. Boys Basketball – 8<sup>th</sup> Grade
      - b. Girls Basketball – 6<sup>th</sup> Grade
    3. New Hire
      - a. After School Intervention Teacher
      - b. ELD Teacher
      - c. Home Hospital Instructor
      - d. Sp Ed Teacher
      - e. Substitute Teacher
    4. Resignation
      - a. ELD Teacher
    5. Status Change – none
    6. Termination – none
  - b) **Classified Personnel – Public Employee Assignment, Appointment Employment, Leave Requests:**
    1. Corrections – none
    2. Extra Assignment
      - a. Girls Basketball – 7<sup>th</sup> Grade
    3. New Hire
      - a. Girls Basketball – 8<sup>th</sup> Grade
      - b. Hourly Facilities Director
      - c. Music Assistant
      - d. Substitute Para-Educator
      - e. Substitute Sp Ed Para-Educator
      - f. Women's Varsity Soccer Coach
      - g. Yard Aide
    4. Resignation
      - a. Para-Educator
    5. Status Change
      - a. Lead Para to Para-Educator
    6. Termination – none
  
3. **Curriculum and Instruction**
  - a) Approve the Memorandum for Understanding Between Albany Unified School District (AUSD) and the California Healthy Kids Survey (CHKS) for 2009-10

Pg 6

- b) Approve Extended Field Trip from Ocean View School to Point Bonita from Wednesday, May 5, 2010 to Friday, May 7, 2010 to Participate in the Point Bonita Outdoor Education Program Pg 11

4. **Business and Operations**

- a) Approve the Annual Accounting of Developer Fees for the 2008-09 Fiscal Year Pg 16

5. **Student Services**

- a) Approve one (1) Independent Contractor Agreement between Albany Unified School District and Dyana Vukovich to conduct a Comprehensive Bilingual Psycho-Educational assessment on one (1) student. Cost not to Exceed \$1,000.00. Funding Source: Special Education Pg 20

V. **STUDENT BOARD MEMBERS**

- A) Student Reports

VI. **STAFF REPORTS**

- A) Parks & Recreation Report

VII. **PERSONS TO ADDRESS THE BOARD ON MATTERS NOT ON THE AGENDA**

*Board practice limits each speaker to no more than three (3) minutes. The Brown Act limits Board ability to discuss or act on items which are not on the agenda; therefore, such items may be referred to staff for comment or for consideration on a future agenda.*

VIII. **REVIEW AND ACTION ITEMS**

*(Members of the public will have the opportunity to speak on all issues.)*

- A) Open Public Hearing for Public Disclosure of a Ratified Agreement between California School Employees Association (CSEA) and Albany Unified School District Pg 24
- B) Close Public Hearing and Ratify Agreement between California School Employees Association (CSEA) and Albany Unified School District
- C) Approve the Facilities Reorganization Plan as follows: Pg 26
- Move Albany Children's Center from 800 Red Oak Street to 720 Jackson Street. Related tenant improvements not to exceed \$75,000 in deferred maintenance funds.
  - Move Albany Unified District Office from 904 Talbot Avenue and Special Education Office from 601 San Gabriel to 1051 Monroe Street. Related tenant improvements not to exceed \$50,000 in deferred maintenance funds.
  - Move MacGregor High School from 720 Jackson Street to 601 San Gabriel. Related tenant improvements not to exceed \$150,000 in deferred maintenance and capital facilities funds.

- Approve the Move of Albany Adult Education Offices from 601 San Gabriel to Albany High School at 1259 Brighton Avenue. Related tentative improvements not to exceed \$20,000 in deferred maintenance funds.
- D) Approve Resolution 2009-10-06 for ACOE Authorizing Signatures – Payroll Warrants and Disbursements Pg 29
- E) Approve Resolution 2009-10-07 for ACOE Authorizing Signatures – Official Documents and Reports Pg 33
- F) Approve the Notice of Completion for Cougar Field Sound Fence Project Pg 34

#### **IX. REVIEW AND DISCUSSION ITEMS**

- A) Review Lease of Vending Machine Contract with Vend-ucation Pg 36

#### **X. BOARD AND SUPERINTENDENT COMMENTS**

#### **XI. FUTURE AGENDA ITEMS**

- |                                       |          |
|---------------------------------------|----------|
| A) 1 <sup>st</sup> Interim Report     | January  |
| B) Consolidated Applications Part I   | January  |
| C) Parcel Tax Rate Increase           | January  |
| D) Parcel Tax Review                  | January  |
| E) Facilities Director Report         | January  |
| F) Measure A – Annual/Final Report    | February |
| G) Measure E – Annual Report          | February |
| H) Student Accountability Report Card | February |

#### **XII. FUTURE BOARD MEETINGS**

- A) Tuesday, January 5, 2010, 7:30 p.m., Regular Meeting, Albany Community Center, 1249 Marin Avenue, Albany
- B) Tuesday, January 19, 2010, 7:30 p.m., Regular Meeting, Albany Community Center, 1249 Marin Avenue, Albany
- C) Tuesday, February 2, 2010, 7:30 p.m., Regular Meeting, Albany Community Center, 1249 Marin Avenue, Albany

#### **XIII. ADJOURNMENT**

*The Board believes that late night meetings deter public participation, can affect the Board's decision-making ability, and can be a burden to staff. Regular Board Meetings shall be adjourned at 10:00 p.m. unless extended to a specific time determined by a majority of the Board.*

The Board of Education meeting packet is available for public inspection at the Albany Public Library, 1247 Marin Avenue, all school sites, and the lobby of the Albany Unified School District office, 904 Talbot Avenue, Albany. The agenda is available on the Albany Unified School District web site: [www.albany.k12.ca.us](http://www.albany.k12.ca.us)

If you provide your name and/or address when speaking before the Board of Education, it may become a part of the official public record and the official minutes will be published on the Internet

In compliance with the Americans with Disability Act (ADA), if you need special assistance to participate in this meeting, please contact the Superintendent's Office at 510-558-3766. Notification must be give forty-eight (48) hours prior to the meeting to make reasonable arrangements for accessibility (28 CFR 35.102.104 ADA Title II).

**ALBANY UNIFIED SCHOOL DISTRICT  
BOARD AGENDA BACKUP**

**Regular Meeting of December 1, 2009**

**ITEM: APPROVE THE MEMORANDUM FOR UNDERSTANDING BETWEEN  
ALBANY UNIFIED SCHOOL DISTRICT (AUSD) AND THE CALIFORNIA  
HEALTHY KIDS SURVEY (CHKS) FOR 2009-10.**

**PREPARED BY:** Lynda Hornada, Director of Curriculum and Instruction 

**TYPE OF ITEM:** *Consent*

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**BACKGROUND INFORMATION:**

This memorandum of understanding will begin the process of administering the CHKS to 5, 7, 9, and 11 grade students along with the School Climate Survey for all staff. AUSD is required to administer this survey every other year through state and federal legislation.

**FINANCIAL INFORMATION: Not to exceed \$375.00**

**RECOMMENDATION:**

**APPROVE THE MEMORANDUM FOR UNDERSTANDING BETWEEN ALBANY  
UNIFIED SCHOOL DISTRICT (AUSD) AND THE CALIFORNIA HEALTHY KIDS  
SURVEY (CHKS) FOR 2009-10.**



# Memorandum Of Understanding

2009-2010 School Year

District Name: \_\_\_\_\_

Albany Unified School District

This agreement outlines conditions to be met by the above named district and the California Healthy Kids Survey (CHKS) Regional Center as they relate to the administration of the CHKS. *The answer sheets will not be sent until a signed copy (or fax) of this Memorandum of Understanding (MOU) is received.*

## *District agrees to the following conditions:*

### **SURVEY ADMINISTRATION**

- **Grades and Schools.** Survey grades 5, 7, 9 and 11 as appropriate within the district, as well as all continuation and community day school students, regardless of grade. This includes locally-funded charter schools that receive Safe and Drug-Free Schools and Communities (SDFSC) or Tobacco Use Prevention Education (TUPE) funding through the district. Districts may stagger administration of the 5th grade and survey this grade at a different time than the middle/high schools.
- Provide private schools that choose to receive SDFSC services from the district with the opportunity to participate in the survey.
- **Parent Consent.** Use the active parental consent process with grades below seven, and either active or passive parental consent with grade seven and above (model consent forms are available online).
- Adopt a written school board policy for active and/or passive consent, and provide beginning of the year notification to parents of the approximate date(s) of survey administration and the availability of survey instruments for review at school and/or district offices. This is required regardless of consent type.
- **Coordination.** Provide one, district-level contact person.
- **Surveys.** Administer the Elementary survey to elementary students, and the Core Module A, which includes the school and community asset questions, formerly in the Resilience & Youth Development Module, to secondary students.
- Use only the most recent, current version of the survey and the answer sheet. This is H12 & M12 for High School and Middle School, E12 for Elementary, and their bilingual counterparts. Elementary answer sheets are brown, and secondary answer sheets are green.
- Use of incorrect version of the survey or answer sheet will result in a substantial delay and increased cost of report production. If students use a photocopy of an answer sheet or answer on the questionnaire, the district is responsible for transferring the data to an appropriate CHKS answer sheet.

### **SAMPLING**

- Larger districts may request that CHKS staff develop a sampling plan; however, sampling is not required and districts may choose to survey all students in the required grades, particularly if they would like school-level reports. Eligibility for sampling is based on the following criteria:
- **Number of students.** If a district has 900 or fewer regular students enrolled per grade level, all students must be surveyed, regardless of the number of schools. (Note: This is total enrollment, not the number who consented to the survey.) If grade-level enrollment is more than 900, the district may choose to sample. CHKS staff will randomly select

classrooms across all schools to reach the target sample of 900. *However, we recommend that sampling be done only if the district has 1600 or more students per grade.* This is recommended, as enrollments below 1600 tend to leave out just a few classes per school, which could lead to possible resentment on the part of teachers and/or inability to easily schedule a "grade-wide" survey day.

- **Number of schools.** If a district has ten or fewer schools at a surveyed grade level, all schools must be surveyed. A random sample of schools can be selected for districts with more than ten schools with the grades involved AND more than 900 students per grade.
- These are **minimum** requirements; districts can always survey more students, grade levels, and schools.
- **School reports and sampling.** If sampling, schools must survey at least 50% of students in appropriate grades in order to qualify for a school report. If school reports are desired, districts are strongly encouraged not to use a sampling plan.

#### **PAYMENT**

- Pay the 30 cents per student Basic Fee based on the approved sampling plan as outlined above.
- CHKS will not refund money for unused answer sheets.
- Postage and handling will be added to the total amount charged.
- Additional fees apply for answer sheet rush orders.
- The district must provide a purchase order or check prior to receipt of report.
- *Note: Higher fees apply to any survey conducted in addition to the required, on-cycle, biennial surveys. Please see [www.wested.org/chks](http://www.wested.org/chks) for all fees.*

#### **DATA SUBMISSION AND REPORT PREPARATION**

*If the following conditions are not met, there will be a delay in data processing and report generation.*

- Provide complete information on the transmittal envelopes.
- Complete and return the Answer Sheet Return Checklist (sent with answer sheets).
- Submit completed answer sheets and materials to your Regional Center by Friday June 11, 2010.

#### **RESPONSE RATES**

In order for the CHKS data to be representative of the students in your district, minimally meet standards A through C and either standard D or E as listed below.

- A) 100% of all district schools participated, or 100% of all selected schools participated in an approved sampling plan.
- B) An appropriate class subject or class period was identified and used.
- C) 100% of selected classrooms participated.
- D) The number of completed, usable answer forms obtained per grade was 60% or more of the selected sample, or
- E) If active parental consent is used, 70% or more parents within each grade's selected sample returned signed permission forms, either consenting or not consenting to their child's participation.

If active consent is used and less than 60 percent of parents have not consented to their child's participation two days before the scheduled administration date, the survey should be postponed until either condition D or E can be met. *Note: If less than 25 students take the survey in a specific grade, the district may not be eligible for a report in that grade.*



### SCHOOL CLIMATE SURVEY FOR STAFF

- Conduct the online School Climate Survey (SCS) at each school participating in the district's CHKS. To facilitate planning and administration, this should be done around the same time the students are taking the CHKS.  
**Please note:** we are encouraging all districts to complete their CSCS for school year 2009-10 and to aim for a 70% participation rate to coincide with the CHKS. A CSCS specific workshop and TA has been put in place to aid participation and use of this survey. Furthermore, CHKS staff will actively monitor on-line participation and will contact you if there is no or low participation during the 30-day survey window.
- The survey must be anonymous and should minimally be given to **all certificated staff working with grades five through twelve**, as well as by all staff involved in health, safety, and prevention. It is recommended that it be completed by other school staff at the district's discretion.
- Staff participation is voluntary. Staff who do not wish to participate shall not be required to do so.
- There are no additional fees for the basic administration of the SCS. Additional fees will be charged for special requests (such as paper surveys) and custom work.

### OTHER MISCELLANEOUS CONDITIONS

- Read the *Guidebook for the California Healthy Kids Survey, Part I: Administration*, paying special attention to the section on active and passive consent procedures. In BOTH cases, specific tasks **MUST** be completed to insure that the rights of parents and pupils are protected.
- Read the *Guidebook for the California Healthy Kids Survey, School Climate Survey for Teachers and Other Staff*.
- Provide current student enrollment figures (or target sample if you are sampling) for all schools by grade level, and provide accurate staff counts by school.
- Download the master copy of the survey and produce the number of questionnaires needed.
- Provide survey proctors for each classroom.
- Have all surveyors (teachers or proctors) sign the Assurance of Confidentiality Agreement and read the Introductory Script to students. These are provided in the Proctor Instructions (available online).
- Notify the County Office of Education of intent to administer the survey.
- Send a copy of the district-level *Key Findings* report to the County Office of Education.
- Contribute district's data to the aggregated CHKS dataset for statewide analysis.
- Agree to keep confidential any information about an individual student's responses that might be inadvertently revealed from the printed report provided at the district or school level.

### *The CHKS Regional Center agrees to the following conditions:*

#### FOR THE BASIC FEE

- Ongoing technical assistance including phone consultation on module selection, sampling, and parent consent strategies.
- Training at CHKS Regional Offices or via the Internet on the administration of the CHKS and SCS.
- Downloadable master copy of elementary, middle & high school surveys (all modules), and access to the SCS online system.
- Downloadable *CHKS Guidebook* for the district coordinator, and master copies of instructions for school-level contacts, classroom teachers and proctors.
- Access to the CHKS Website and Listserv.
- Answer sheets, transmittal envelopes, and school-specific SCS logins and passwords.
- Scanning services.

- District-level reports (Includes CHKS *Technical Report* and *Key Findings* summary, and the results of the staff School Climate Survey). This is provided as a PDF.

#### FOR ADDITIONAL FEES, UPON REQUEST

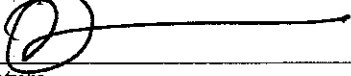
- School-level reports, if a district has surveyed enough students at their school.
- School-level breakdowns for the SCS, if enough staff took the survey.
- Paper and electronic (pdf) copies of reports.
- Assistance in adding custom questions to your CHKS or SCS.
- Evaluation services and custom data analysis.
- On-site training for your district or schools.
- Raw datasets, pending a Memorandum of Understanding specific to data release.
- Presentations of results to stakeholders
- Other services by request.

#### Confidentiality Agreement

CDE requires local CHKS results be publicly reported in compliance with the No Child Left Behind Act of 2001 (NCLB). District data on the California state-identified Performance Indicators will be available through the California Department of Education's (CDE) Safe and Healthy Kids Program Office Annual Reports. District *Key Findings* and *Technical Reports* will be posted on the CHKS website. In addition, under the Public Records Act, any outside agency (for example, the media) can request already-produced district or school reports from CDE. Raw data will be provided to public and research agencies for analyses only under conditions of strict confidentiality in compliance with state and federal regulations.

*By signing this document the LEA and CHKS Regional Center staff signify that each party understands and will comply with the conditions stated above.*

LEA Representative:

  
Signature

Lynda Hornada  
Printed name

11/10/09  
Date

CHKS Contact Person (if different from above)

(510) 558-3771  
Contact person telephone

lhornada@ausdk12.org  
Contact person email

CHKS Regional Center Staff:

Signature

Printed name

Date

*For office use only*

Southern Region  
Office: LA  
WestEd  
Fax 562.799.5151

Northern Coast/Bay Area Region  
Office: Oakland  
WestEd  
Fax 510.302.4354

North Central Region  
Office: Chico  
Duerr Evaluation  
Fax 530.893.0409

## ALBANY UNIFIED SCHOOL DISTRICT

**EXTENDED FIELD TRIP BEYOND REGULAR SCHOOL HOURS**  
**OVERNIGHT FIELD TRIP**  
**OUT OF STATE FIELD TRIP**

Page 1 of 4

<b>MUST BE SUBMITTED FOUR WEEKS PRIOR TO FIELD TRIP</b>
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Date of Request:

November 19<sup>th</sup> 2009

Sponsoring Teacher(s):

Margaret Gholley, Dina Yoo, Judy Sinclair

School:

Ocean View Elem.

Class(es) Involved:

Rm 31, 32 + 35

Grade Level(s):

4<sup>th</sup>

Days and Dates of Trip:

May 5<sup>th</sup> through 7<sup>th</sup> 2010

Number of Students Involved:

93

Each adult will be assigned responsibility for 6 students  
 (Refer to page 4 for guidelines)

Day and Time of Departure:

May 5<sup>th</sup> 9:30am

Day and Time of Return:

May 7<sup>th</sup> 2:00pmGeneral Statement of Proposed Trip:

3 day/ 2 night trip to YMCA Point Bonita  
 Where students will participate in hands-on  
 ecologically focused learning opportunities,  
 led by experienced naturalists.

**Objectives to be Accomplished by Students:**

Students will

- Identify plants native and not native to California and recall basic facts about these plants
- Identify animal species in the Marin Headlands and explain natural adaptations of these animals
- Identify and explain evidence of geological changes around us
- Explain why conservation of natural resources is needed, and participate in conservation efforts
- Participate in physical and intellectual challenges as a group, using communication and conflict resolution skills

**Proposed Itinerary:**

May 5<sup>th</sup>

8:30 Students arrive to school

9:15 Buses arrive and are loaded

9:30 Departure to Marin Headlands

10:30 Orientation (YMCA Point Bonita Program begins)

see attached Point Bonita Schedule

May 6<sup>th</sup>

Program Continues

May 7<sup>th</sup>

1:00 Depart from Point Bonita

2:00 Arrive at school

**Estimated Costs to District:**

Teacher stipend

Extended Hourly Rate of 1 SDC Aid

**Estimated Cost to Students:**

Requested donations of-

\$215/student- Point Bonita Program

\$30/student- Bus Transportation Cost

**Name of Adult Sponsors:**

Margaret Goldberg

Dina Yoo

Judy Sinclair

## YMCA Point Bonita Outdoor Education Program

## OCEANVIEW SCHOOL

Day 1

Day 2

May

Schedule subject to change.

Day 3

THURSDAY


FRIDAY

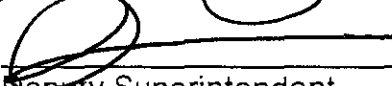
	7:00	WAKE UP!	7:00	ROOSTER CROW		
	7:45	Breakfast Prep	7:45	Breakfast Prep		
	8:00	BREAKFAST	8:00	BREAKFAST		
	8:45	Community Projects	8:45	Community Projects		
10:30	ARRIVAL		9:15	CLOSURE:		
	* Orientation			* Short Hike		
		<i>Everything's Connected!</i>		* Closing Circle		
		* Rocky Shore				
11:30	LOCAL HIKE	* Pond/Lagoon	12:00	DINING HALL LUNCH		
	* Group Building	* Grasslands				
	* Area Familiarity	* Beach	1:00	DEPARTURE		
	* Sensory Awareness					
	(lunch on the trail)	(lunch on the trail)				
4:15	RECREATION TIME	4:15	RECREATION TIME			
5:30	Dinner Prep	5:45	Dinner Prep			
6:00	DINNER	6:00	DINNER			
7:15	NIGHT PROGRAM	7:15	NIGHT PROGRAM			
8:45	TEACHER TIME	8:45	TEACHER TIME			
9:30	Lights Out	9:30	Lights Out			
9:45	SWEET DREAMS	9:45	GOOD NIGHT			

OVERNIGHT EXTENDED FIELD TRIP APPLICATION

Page 3 of 4

Principal's Recommendation:

  
Principal's Signature  
11/20/09  
Date

  
Deputy Superintendent  
11/20/09  
Date

BOARD ACTION:

(Required for out of state field trips)

Approved as Requested:

☐

Approved with Following Changes:

☐

\_\_\_\_\_  
Superintendent's Signature      Date

**OVERNIGHT EXTENDED FIELD TRIP APPLICATION**

Page 4 of 4

**MINIMUM GUIDELINES FOR ADULT SUPERVISION ON FIELD TRIPS****VEHICLE FIELD TRIPS**

<u>Grade</u>	<u>Adult/Student Ratio</u>
Pre K-2	1:5
3-5	1:6
6-8	1:10
9-12	1:15

**WATER TRIPS\***

<u>Grade</u>	<u>Adult/Student Ratio</u>
Pre K-2	1:3
3-5	1:5
6-8	1:8
9-12	1:10

\*Excludes Albany Pool

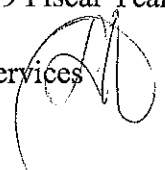
**FORMS TO BE SUBMITTED PRIOR TO FIELD TRIP:**  
**(to be completed by Principal)**

- ☐ K-12 FIELD TRIP PERMISSION FORM
- ☐ HIGH SCHOOL FIELD TRIP/CLASS ABSENCE FORM
- ☐ OVERNIGHT EXTENDED FIELD TRIP APPLICATION
- ☐ ASSUMPTION OF RISK AND WAIVER, RELEASE AND INDEMNITY AGREEMENT  
(for a trip beyond regular school hours, Student participation in school sports and water trips)
- ☐ PERSONAL VEHICLE USE PERMISSION FORM  
(for Vehicle Field Trips)

**ALBANY UNIFIED SCHOOL DISTRICT  
BOARD AGENDA BACKUP**

**Regular Meeting of December 1, 2009**

**ITEM:** Annual Accounting of Developer Fees for the 2008-09 Fiscal Year

**PREPARED BY:** Laurie Harden, Assistant Superintendent, Business Services 

**TYPE OF ITEM:** *Consent Agenda*

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**BACKGROUND INFORMATION:**

In accordance with Government Code Section 66006 (b), the Albany Unified School District must provide an annual accounting of the Capital Facilities Fund for the collection and accounting of Developer Fees.

Government Code Section 66006 (b) requires local agencies, including school districts, which collect developer fees, to provide an annual accounting of those fees within 180 days of the close of each fiscal year.

Each accounting must include:

1. The amount of the fee;
2. The beginning and ending balances of the account;
3. The amount of the fees collected and the interest earned during the fiscal year;
4. An identification of each public improvement project for which fees were expended.
5. A description of each inter-fund transfer or loan made from the account, including the public improvement on which the transferred or loaned fees will be expended.
6. The amount of refunds made pursuant to subdivision (e) of section 66001

During the 2008-09 fiscal year, the Albany Unified School District levied developer fees at the following rates:

Residential Developer Fees in the amount of \$2.97 per square foot of assessable space of residential construction.

Commercial Developer Fees in the amount of \$ .47 cents per square foot of covered and enclosed space of commercial/industrial construction.

**RECOMMENDATION:** It is recommended that the Board approve the Annual Accounting of Developer Fees report for the 2008-09 fiscal year.



## ANNUAL REPORT OF DEVELOPER FEES

<b>School District Name:</b>	<u>Albany Unified School District</u>
<b>Reporting Period:</b>	<u>July 1, 2008 - June 30 , 2009</u>
<b>Date Report Made Available to the Public:</b>	<u>December 1, 2009</u>
<b>Date Report Presented to the Board:</b>	<u>December 1, 2009</u>

### DESCRIPTION OF THE TYPE AND AMOUNT OF THE FEE

This district has levied school facilities fees pursuant to various resolutions, the most recent of which is dated June 4, 2008. These resolutions were adopted under the authority of Government Code Section 53080 for the purpose of funding the construction or reconstruction of school facilities.

The amount collected by this district is \$2.97 per square foot of assessable space of residential construction; and \$.47 per square foot of covered and enclosed space of commercial/industrial construction; but subject to the district's determination that a particular project is exempt from all or part of these fees.

**ANNUAL DEVELOPER FEE REPORT**  
**STATEMENT OF REVENUES, EXPENDITURES AND CHANGES IN FUND BALANCE**  
**FOR THE YEAR ENDED JUNE 30, 2009**

DESCRIPTION	ACCOUNT CODE	TOTALS	GENERAL	PROJECT 001 Cornell Portables	PROJECT	PROJECT	PROJECT
<b>BEGINNING BALANCE</b>		40,612.00	-	-	-	-	-
<b>REVENUE</b>							
Mitigation/Developer Fees (Schedule A)	8681	24,739.49	-	-	-	-	-
Interest Income	8660	1,399.93	-	-	-	-	-
Other Income	8699	-	-	-	-	-	-
Refund (Schedule C)	8681	-					
<b>TOTAL REVENUE</b>		26,139.42	-	-	-	-	-
<b>EXPENDITURES</b>							
Books and Supplies	4000-4999	-					
Materials and Supplies	4300	-					
Non-Capitalized Equipment	4400	-					
		-					
Services, Other Operating Expenses	5000-5999	-					
Travel & Conference		-					
Architect/Construction Services		925.53		925.53			-
Rentals, Leases and Repairs		15,952.67		15,952.67			-
Other Services & Operating Expenses		755.68	755.68				-
Utility Costs		-		-			
		-					
Capital Outlay	6000-6599	-					
Sites & Improvements of Sites		-					-
Buildings & Improvements		-					-
		-					
<b>OTHER FINANCING SOURCES/USES</b>		-					
Transfers Out	7610-7629	-					-
Inderect	7630-7699	-	-	-	-	-	-
Debt Service		-					
		-					
<b>TOTAL OTHER SOURCES/USES</b>		-					
<b>TOTAL EXPENDITURES</b>		17,633.88	755.68	16,878.20	-	-	-
<b>ENDING BALANCE</b>		<u>\$ 49,117.54</u>					

**ANNUAL DEVELOPER FEE REPORT  
SCHEDULE OF MITIGATION/DEVELOPER FEES  
FOR THE PERIOD ENDED JUNE 30, 2009**


[illegible]

**ALBANY UNIFIED SCHOOL DISTRICT  
BOARD AGENDA BACKUP**

**Regular Meeting of December 1, 2009**

**ITEM:** Approve Independent Contractor Agreement for Dyana Vukovich

**PREPARED BY:** Diane Marie, Director of Special Education



**TYPE OF ITEM:** Consent Calendar – Student Services

---

**BACKGROUND INFORMATION:**

Approve one (1) Independent Contractor Agreement between Albany Unified School District and Dyana Vukovich to Conduct a Comprehensive Bilingual Psychoeducational Assessment on one (1) student. Cost not to exceed \$1,000.00.

---

**FINANCIAL INFORMATION:**

Funding Source: Special Education

**RECOMMENDATION:** Approve Independent Contractor Agreement at a cost not to exceed \$1,000.00.

NOV 2 2009  
Special Services Office  
Albany Unified School District

## Albany Unified School District Independent Contractor Agreement

THIS AGREEMENT, made this 3rd day/date of September, 2009, between Dyana Vukovich, an independent contractor ("Contractor") having a principal

place of business at 720 Madison St., Albany, CA. 94706, and the **Albany Unified School District** ("District"), mutually agree as follows:

I. TERMS OF THE CONTRACT

A. This Agreement will become effective as of the date above and will continue in effect through June 30, 2010, unless sooner terminated.

II. SCOPE OF WORK TO BE PERFORMED BY CONTRACTOR

A. Contractor agrees to perform the services specified in the "Description of Services" attached to this Agreement and incorporated by reference herein as Exhibit "A".

B. Contractor shall perform within the time set forth in Exhibit "A": everything required to be performed.

III. COMPENSATION

A. In consideration for the services and/or materials referenced in Article II, scope of work by contract, District agrees to pay \$ no more than \$1000.00. Unless otherwise provided for in Article II, payment of expenses shall be made within sixty (60) days upon completion/delivery of goods and accompanied by invoices and appropriate supporting documentation. Invoices shall be submitted to the attention of the Albany Unified School District, Attention: Accounts Payable, along with completed W-9 Form (copy attached).

B. The District reserves the right to withhold payment until order is completed and/or accepted by the District.

IV. OBLIGATION OF CONTRACTOR

A. While performing services hereunder, Contractor is an independent contractor and not an officer, agent or employee of the District.

B. The Contractor shall provide and furnish all necessary tools, labor, materials, equipment and all transportation services as described and required to perform the services under this Agreement. The Contractor shall assume all other expenses incurred in connection with the performance of this contract and the District shall not be responsible for payment of any other expenses. The Contractor is personally liable for among other things, taxes, personal health and car insurance. Workers' Compensation for his/her own employees and business expenses for maintaining his/her office.

District and contains all the covenants and agreements between the parties. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding. Any modification of this Agreement will be effective only if it is in writing, signed and dated by both the Contractor and the District.

If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

#### VIII. ATTORNEY FEES

If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing party will be entitled to reasonable attorney fees, which may be set by the court in the same action or in a separate action brought for the purpose, in addition to any other relief to which the party may be entitled.

This Agreement will be governed by and construed in accordance with the laws of the State of California.

EXECUTED AT Albany, California, on the date first written above.

#### ALBANY UNIFIED SCHOOL DISTRICT

By: \_\_\_\_\_  
District Superintendent

  
\_\_\_\_\_  
Independent Contractor

11-20-2009

Date

Social Security or Federal I.D. #

## Exhibit "A"

**Description of Services****Description of Services**

Comprehensive bilingual psychoeducational assessment of Albany Unified student. Services to include home visit, records review, teacher consultation, full assessment, report writing, and parent feedback regarding evaluation results.

**Date(s) of Services to be performed:**

December, 2009 through January, 2010

**ALBANY UNIFIED SCHOOL DISTRICT  
BOARD AGENDA BACKUP**

**Regular Meeting of December 1, 2009**

**ITEM:                    OPEN PUBLIC HEARING FOR PUBLIC DISCLOSURE OF  
A RATIFIED AGREEMENT BETWEEN CALIFORNIA  
SCHOOL EMPLOYEES ASSOCIATION (CSEA) AND  
ALBANY UNIFIED SCHOOL DISTRICT**

**PREPARED BY:**     Marla Stephenson, Superintendent

**TYPE OF ITEM:**    ACTION

---

**BACKGROUND INFORMATION:**

The Board is required to conduct a public hearing on the financial impact of any tentative agreement for the salary adjustments with any collective bargaining organization. A tentative agreement has been reached with CSEA.

---

**FINANCIAL INFORMATION:**

No fiscal impact.

**RECOMMENDATION:** CONDUCT PUBLIC HEARING FOR DISCLOSURE OF FINANCIAL IMPACT OF TENTATIVE AGREEMENT OF NEGOTIATED SALARY ADJUSTMENTS WITH THE CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION (CSEA).



## TENTATIVE AGREEMENT

The Albany Unified School District ("District") and the California School Employees Association, Albany Chapter 679 (CSEA) agree to revise and amend the 2007-2010 Collective Bargaining Agreement as follows:

### F. WAGES AND SALARY SCHEDULE PROVISIONS

#### 1. Salary Schedules

The District and CSEA agree to a 0% increase to the salary schedule for the 2009-2010 school year.

### G. HEALTH AND WELFARE BENEFITS

1. Benefits for each full-time employee shall be set forth in Exhibit D. All benefits for part-time employees shall be prorated based on 7.5 hour day (37.5 hours/week) on the same basis as his/her salary proration.

2. The District will provide payment of medical premiums up to the Kaiser or Blue Shield HMO family plans offered by CalPERS, whichever is higher. An employee may choose any available CalPERS plan. The employee shall pay for any cost of the plan that exceeds the higher of Kaiser or Blue Shield HMO individual, two party, or family plans.

This agreement on medical benefits shall not be changed, or modified without mutual agreement of the parties through June 30, 2006 June 30, 2010.

Dated:

For the District

\_\_\_\_\_  
\_\_\_\_\_

Dated:

For CSEA

\_\_\_\_\_  
\_\_\_\_\_

**ALBANY UNIFIED SCHOOL DISTRICT  
BOARD AGENDA BACKUP**

**Regular Meeting of December 1, 2009**

**ITEM:                   APPROVE THE FACILITIES REORGANIZATION PLAN**

- Move Albany Children's Center from 800 Red Oak Street to 720 Jackson Street.
- Move Albany Unified District Office from 904 Talbot Avenue and Special Education Office from 601 San Gabriel to 1051 Monroe Street
- Move MacGregor High School from 720 Jackson Street to 601 San Gabriel
- Move Albany Adult Education Offices from 601 San Gabriel to Albany High School at 1259 Brighton Avenue

**PREPARED BY:**     Marla Stephenson, Superintendent

**TYPE OF ITEM:**    **ACTION**

---

**BACKGROUND INFORMATION:**

Albany Unified School District has long been impacted by a lack of District owned property with which to expand educational programs. This is compounded by the lack of available land within the City boundaries. The District owns seven school sites, and operates eight schools.

The Board has been and remains committed to building, modernizing and maintaining District facilities. Within the past ten years the District has built a new high school, a new middle school, modernized three elementary schools and a high school sports complex. The Albany community has committed tax dollars to support all of the above referenced projects and passed a recent bond to build a new District swimming complex.

While the majority of District facilities have been modernized, the Albany Children's Center has not. The Albany Children's Center building is owned by UC Berkeley and is on UC property. While the District is committed the preschool program, it is not fiscally prudent to commit dollars to the modernization of a building that is not owned by the District.

The 601 San Gabriel facility has not been modernized or upgraded. The adult school, special education offices and five older portable buildings are located there. The portables are in poor condition.

District operations are hampered by the lack of space at the current location at 904 Talbot. Eight members of District office staff are housed at a separate location. The

technology department is housed in an inadequate 11 X 35 ft. trailer behind OceanView School. While this creates difficulties for the District office staff, the impacts on Cornell School (the current site of the District office) are severe. Cornell operates six classrooms in portables on the blacktop. With 551 students, play space is at a premium. Supplementary programs such as speech services, English Language Learner services, etc. do not have dedicated space. There is no space to operate a District child care facility.

From a programmatic standpoint, MacGregor Continuation High School and the Adult Education School are geographically located in problematic sites. MacGregor High School operates a continuation program of approximately 35 students. These students, by law, cannot be younger than sixteen years of age. The continuation model does not encompass freshman and sophomore students who do not fit into a comprehensive high school program. These students must endure two years of school failure before being able to transfer to MacGregor. The Western Association of Schools and Colleges (WASC) report for MacGregor identified this problem. As a result, staff created a new program titled "Project Forward" for freshman and sophomores. These students are concurrently enrolled at MacGregor and take classes at both school sites. Parents and staff have expressed concern over the distance that students must travel to get to both sites. The travel time has put serious restrictions on when classes can be taken. The Albany High School and MacGregor High School staff has worked collaboratively to offer vocational classes that meet the needs of many of our students. An ROP culinary class offered by AHS is housed at MacGregor, where once again distance and travel time constrain when the class may be offered and prevents expansion of the program.

Albany Adult School is focusing on meeting community needs by increasing evening classes for working people. There is a need to increase access to computer labs including Mac labs. The majority of the program is scheduled at Albany High School at night. The Adult School office is not at a convenient location for enrollment nor for supervision of classes.

The proposed facilities relocations address the above referenced concerns. By moving the Adult Education office to Albany High School and reconfiguring office hours, the program is better able to meet the needs of the community. Space at Albany High School was designed to house the Adult school.

Moving MacGregor Continuation School to an upgraded 601 San Gabriel facility enhances the District's ability to meet the needs of our secondary students. Project Forward can expand and more Albany High School courses may be housed at MacGregor. The new site is only three blocks from Albany High School

Albany Children's Center would be relocated to a District owned former K-2 elementary site at 720 Jackson. The site has a much larger play area and the building better meets the

educational program needs of the preschool. The new location is within walking distance of many of the preschool families who live at University Village.

Reuniting the District office by moving to 1051 Monroe not only makes the District operations more efficient but frees up space for educational programs at Cornell Elementary. The space becomes immediately available to Cornell staff when the District office moves. The facility has already been modernized.

There are additional related benefits to the proposed District reorganization of District facilities:

1. The technology department would be relocated to an upgraded standard portable at 601 San Gabriel.
2. A state of the art technology training classroom would be created at 601 San Gabriel for the use of both MacGregor students and District staff.
3. Two portables and one 11 X 35 trailer all in very poor condition would be removed from District properties.
4. A 1440 square foot portable building with bathrooms would be added to the child care program at OceanView. This enables the District to house all Ocean View child care on District property.
5. Albany Middle School classes would move from 601 San Gabriel. Future classes will be housed solely on the middle school campus. This move increases student safety Portables will be added if necessary.
6. UC Berkeley will financially assist the District by paying \$10,000 towards the moving costs of the 1440 square foot building to be located behind OceanView.
7. UC Berkeley will financially assist the District by making an annual contribution of \$63,000 to the general fund.
8. UC Berkeley will lease 1051 Monroe to the District for five years at a deeply discounted rate.
9. The City of Albany will allow the District to take possession of two leased city portable buildings at 1051 Monroe at no charge to the District.

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#### **FINANCIAL INFORMATION:**

Approximate costs are \$230,000. The funds will come out of the differed maintenance account and developers fees, both of which are restricted to facilities improvement and expansion.

#### **RECOMMENDATION: APPROVE THE FACILITIES REORGANIZATION PLAN**

Move Albany Children's Center from 800 Red Oak Street to 720 Jackson Street.

Move Albany Unified District Office from 904 Talbot Avenue and Special Education Office from 601 San Gabriel to 1051 Monroe Street

Move MacGregor High School from 720 Jackson Street to 601 San Gabriel.

Move Albany Adult Education Offices from 601 San Gabriel to Albany High School at 1259 Brighton Avenue.

**ALBANY UNIFIED SCHOOL DISTRICT  
BOARD AGENDA BACKUP**

**Regular Meeting of December 1, 2009**

**ITEM:** Annual Authorized Signatures

**PREPARED BY:** Laurie Harden, Assistant Superintendent, Business Services

**TYPE OF ITEM:** Action

---

**BACKGROUND INFORMATION:**

Education Code Section 42632 require that signatures of all governing board members and signatures of persons authorized by the governing board to sign orders must be filed with the County Superintendent of Schools.

**RECOMMENDATION:** Approved authorized signatures.

**ALBANY UNIFIED SCHOOL DISTRICT****RESOLUTION NO. 2009-10-06****AUTHORIZING SIGNATURES  
PAYROLL WARRANTS AND DISBURSEMENTS**

WHEREAS, Education Code Section 42641 and 42650 provides that the Governing Board may issue payroll orders to be drawn for the payment of salaries and wages of employees; and

WHEREAS, Education Code Section 42631 provides that the Governing Board may make payments from district funds; and

WHEREAS, Education Code Sections 42632 and 42633 require the Governing Board to file with the County Superintendent of Schools verified signatures of all persons authorized to sign orders in its name.

NOW, THEREFORE, BE IT RESOLVED that the Albany Unified Governing Board authorizes and empowers any of the following to sign any and all orders in the name of the district drawn on the funds of the district:

Administrators:     Marla Stephenson  
                             Laurie Harden  
                             Lynda Hornada

PASSED AND ADOPTED by the Governing Board of the Albany Unified School District on this 1<sup>st</sup> day of December by the following vote:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

\_\_\_\_\_  
President of the Board of Trustees  
Albany Unified School District  
Alameda County, California

**Albany Unified School District**  
School District

**AUTHORIZED AGENTS' SIGNATURE CARD**  
**AUTHORIZED SIGNATURES**  
**PAYROLL WARRANTS AND DISBURSEMENTS**

TO THE ALAMEDA COUNTY SUPERINTENDENT OF SCHOOLS:

Pursuant to Education Code Section 42632 for K-12 Education and Section 85232 for Community Colleges, each order drawn on the funds of our school district shall be signed by at least a majority of the members of the governing board of the district or by a person(s) authorized by the governing board to sign orders in its name; and the governing board of each school district shall be responsible for filing signatures with the County Office per Education Code Section 42633.

The following signature(s) is/are the person(s) authorized by the governing board to sign orders in its name:

1. \_\_\_\_\_ Marla Stephenson  
Signature Type Name  
  
\_\_\_\_\_  
Superintendent  
Title
2. \_\_\_\_\_ Laurie Harden  
Signature Type Name  
  
\_\_\_\_\_  
Assistant Superintendent, Business Services  
Title
3. \_\_\_\_\_ Lynda Hornada  
Signature Type Name  
  
\_\_\_\_\_  
Director of Curriculum and Instruction  
Title
4. \_\_\_\_\_  
Signature Type Name  
  
\_\_\_\_\_  
Title
5. \_\_\_\_\_  
Signature Type Name  
  
\_\_\_\_\_  
Title

This is to certify that the signatures that appear on this card are true and were affixed in my presence.

\_\_\_\_\_  
Date

\_\_\_\_\_  
President of the Board of Trustees

**Albany Unified School District**  
School District

**BOARD MEMBERS' SIGNATURE CARD**  
**AUTHORIZED SIGNATURES**

TO THE ALAMEDA COUNTY SUPERINTENDENT OF SCHOOLS:

Pursuant to Education Code Section 42632 for K-12 Education and Section 85232 for Community Colleges, each order drawn on the funds of our school district shall be signed by at least a majority of the members of the governing board of the district.

The following signatures are those of each member presently serving on the governing board.

- |                       |  |
|-----------------------|--|
| 1. _____<br>Signature | _____<br>David Glasser<br>Type Name    |
| 2. _____<br>Signature | _____<br>Ronald Rosenbaum<br>Type Name |
| 3. _____<br>Signature | _____<br>Patricia Low<br>Type Name     |
| 4. _____<br>Signature | _____<br>Paul Black<br>Type Name       |
| 5. _____<br>Signature | _____<br>Miriam Walden<br>Type Name    |
| 6. _____<br>Signature | _____<br>Type Name                     |
| 7. _____<br>Signature | _____<br>Type Name                     |

This is to certify that the signatures that appear on this card are true and were affixed in my presence.

\_\_\_\_\_  
Date

\_\_\_\_\_  
President of the Board of Trustees



**ALBANY UNIFIED SCHOOL DISTRICT**

RESOLUTION NO. 2009-10-07

**AUTHORIZING SIGNATURES  
OFFICIAL DOCUMENTS AND REPORTS**

**WHEREAS**, the Board of Trustees of the Albany Unified School District, at a regular meeting held on December 1, 2009, approved the signing of all official documents; and all local, State, and Federal reports, including Transportation and Class Size Reduction, by the persons names below:

Administrators: Marla Stephenson, Superintendent  
Laurie Harden, Assistant Superintendent, Business Services

**NOW, THEREFORE, BET IT RESOLVED** that the above-named persons shall be duly authorized to sign all documents and reports pertinent to conducting the business of the Albany Unified School District.

**THIS** resolution supersedes all previous resolutions authorizing signatures and declares said prior resolution null and void.

**PASSED AND ADOPTED** by the Governing Board of the Albany Unified School District of Alameda County, State of California, this 1<sup>st</sup> day of December 2009, the following vote:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

---

Clerk of the Board of Trustees  
Albany Unified School District  
Alameda County, California

**ALBANY UNIFIED SCHOOL DISTRICT  
BOARD AGENDA BACKUP**

**Regular Meeting of December 1, 2009**

**ITEM:** NOTICE OF COMPLETION FOR COUGAR FIELD SOUND  
FENCE PROJECT

**PREPARED BY:** MARLA STEPHENSON, SUPERINTENDENT 

**TYPE OF ITEM:** ACTION

---

**BACKGROUND INFORMATION:**

The Cougar Field Sound Fence Project was awarded to Fencecorp, Inc. by the Board at its February 3, 2009 Board Meeting.

The contractor has met the requirements set forth in the construction documents and the work has been completed to the satisfaction of Marla Stephenson, Superintendent.

---

**RECOMMENDATION: APPROVE THE NOTICE OF COMPLETION FOR THE  
COUGAR FIELD SOUND FENCE PROJECT.**

RECORDING REQUESTED BY

WHEN RECORDED MAIL TO

Albany Unified School District  
904 Talbot Avenue  
Albany, CA 94706

---

**NOTICE OF COMPLETION**

NOTICE IS HEREBY GIVEN that the undersigned

ALBANY UNIFIED SCHOOL DISTRICT (owner), 904 Talbot Avenue, Albany, CA 94706, caused certain construction work to be performed within the County of Alameda, which work is generally described as follows:

***Cougar Field Sound Fence***

That the contract for the performance of such work was awarded to

***Fencecorp, Inc.***

that said work was completed and was accepted by the District on the 1<sup>th</sup> day of December, 2009 that said Fencecorp, Inc. was the contractor; and First Pacific Bonding was surety on the contractor's bonds.

This notice is given pursuant to Sections 3181, 3184, 3185, 3187, 3193 and 3196 of the Civil Code of the State of California.

DATED: December 1, 2009Albany Unified School District

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

Title: Marla Stephenson, Superintendent

STATE OF CALIFORNIA     )  
                                      )     ss.  
County of Alameda     )

Marla Stephenson, being first duly sworn, deposes and says: That she is the Superintendent of the Albany Unified School District and that she makes this verification on behalf of said Board; that she has read the foregoing Notice of Completion and knows the contents thereof; that the same is true of her own knowledge, except as to those matters therein stated on his information and belief, and as to those matters that he believes it to be true.

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

---

Marla Stephenson, Superintendent

---

Notary Public in and for the County of  
Alameda, State of California

**ALBANY UNIFIED SCHOOL DISTRICT  
BOARD AGENDA BACKUP**

**Regular Meeting of December 1st, 2009**

**ITEM:**                                      **Lease of Vending Machines**

**PREPARED BY:**                      Clell Hoffman, Executive Chef

**TYPE OF ITEM:**                      *Review and Discussion*

---

**BACKGROUND INFORMATION:**

Albany Unified School District is seeking Board of Education approval for the lease to purchase food vending machines for Albany High School

**FINANCIAL INFORMATION:** See attached

**RECOMMENDATION:**

**Review information regarding leasing vending machines. Review contract with Vend-ucation.**

## Vending

The two vending machines will be placed at the high school. One of the machines will be placed in the lobby of the theater building and one on the second floor. There is a need for these vending machines for several reasons:

- 1) The break is not long enough to serve all of students who would like to purchase food.
- 2) There is a need for students to be able to purchase food when the cafeteria is closed. After school and for those who do not have a first period.
- 3) The implementation of these machines will increase a la carte sales to help food services reach the goal of eliminating the contribution from the general fund.


The foods to be sold in the vending machines will adhere to the AUSD wellness policy. By providing better access to food for students, the vending program will contribute to the success of the student's educational experience.

The financial breakdown is as follows:

	Unit cost	Total Cost
2 Vending machines	\$5,450	\$10,900
2 Credit card & vend management program	\$395	\$790
2 Delivery, installation	\$350	\$700
Training, internet connection	\$300	\$300
<b>Total Cost</b>		<b>\$12,690</b>
<b>Initial cash outlay</b>		<b>\$0.00</b>
<b>Four year Municipal Lease: 10 payments per year</b>	<b>\$409.28</b>	<b>per month</b>
<b>Cost per day</b>		<b>\$22.73</b>
<b>Total cost over 4 year</b>		<b>\$16,371</b>
<b>Present Vending Net Revenue (beverages only)</b>		<b>\$50.00 per day</b>

The lease may be terminated at the end of the 1<sup>st</sup>, 2<sup>nd</sup> or 3<sup>rd</sup> year. After the 40<sup>th</sup> payment, the machines would be owned by AUSD.

The credit card & vend management program will enable the monitoring of customer usage by computer. This would increase efficiency of restocking and enable analysis of sales for maximum profits. The credit card capability would allow students to use debit or credit cards for purchases and would make the machines more user friendly for the adult school students, again increasing sales. The credit card purchases are automatically \$.25 more. This added cost pays for the credit card capability. There is no obligation to AUSD to become a credit card merchant in the vending arena. The money generated by credit and debit card sales would be deposited directly into AUSD Food Services account. Reconciliation is done through the vend management program.



# Vend-ucation

## Healthy Vending Machines for Public Schools

October 14, 2009

Clell Hoffman

Albany Unified School District

904 Talbot Ave Albany CA 946001

Clell:

Since financial success is extremely important to your proposal I would recommend starting with two machines instead of three. I am confident three would be successful, but you can always add a third machine if there is value. Two machines would be very successful financially with the low free & reduced percentage, the ability to purchase throughout the day and the convenient locations you described.

The machine I am recommending is the Automatic Ala Carte (PDF brochure attached). This machine can merchandise and sell anything that can possibly be sold from any vending machine... beverages in bottles, cartons, pouches, tubes, sandwiches, bag snacks, crackers, cookies, bagels, muffins, cereal and even large clear, snap lid containers for salads, pastas, etc. This machine has the I vend guaranteed vend program which means no one loses their money. Sensors ring the delivery area and will not allow a credit to be cancelled until the selected product falls past the sensors into the retrieval bin. This machine will accept \$1 & \$5 & \$10 bills (since it pays out change in dollar coins as well as the usual quarters, dimes & nickels). This is the most energy efficient refrigerated vending machine in the USA. It has the Energy Star Tier 2 certification. This is a very substantial machine, weighing 1,000 pounds empty.

We can also create value meal deals that can offer value to your students and school visitors while increasing your average sale price. You can tie from two to five different selections together into a "Value Meal Deal" if you choose with just some simply programming. You could make the combination of a milk, muffin and cereal into a single purchase for a slightly lower price than buying them separately. You can even offer a range of selections for each component of a "Value Meal Deal." This is what we use when we set this machine up to dispense government approved reimbursable lunches and breakfasts... although this would need a connection to your POS system

for meal qualification verification and the ability to charge the fee to their account. You would have the capacity to do this in the future if you desired. We build this capacity into every machine for your future potential.

You were interested in our vending management software program. If you took advantage of our credit card acceptance feature you would automatically get free use of our highly regarded, internet based vending machine management program. This would mean that students and adult staffers and evening adult education students and school visitors could all use their Visa or MC, etc for making vending purchases. However, you would pay no credit card fees. There would be a two-tiered price structure for every selection. There would be a standard 'list' price for an item where credit cards could be used for a purchase. There would also be a cash discount price that would be 25 cents less than the list price. The credit card processing company (VendNovation, out of Bellevue WA) would regularly deposit into your bank account the sales amounts less that 25 cent difference. This 2-tier pricing structure is often used at self-operated gas pumps in a number of states. Although this is quite new to vending, this dual pricing issue is not new to retailing. We would need a hardwire internet connection wherever you wanted to place a vending machine that would accept credit cards. This credit card acceptance also gives you access to a web based program for managing your machines. You can call up the website displaying all activity in your machines in real time, just by using your unique access ID. You will not only see exactly what is selling at what time in which machine, you can assign par levels for every selection so that you can be notified with an email and even a cell phone text message when selection inventory drops below your par level. You can then print out a pick list so that you know exactly what products to bring to each machine for restocking. This is not only a tremendous time saver, it creates more sales because you are alerted before out-of-stock situations decrease sales. You can even run instant reports for each machine and together that show what products sell the best and what doesn't sell. Using the credit card feature gets you about \$2,000 worth of software for free and also eliminates hundreds of dollars of annual support fees if you wanted the management program without the credit card feature.

A well stocked vending machine offering an attractive variety should easily create more Food Service Dept. sales. It is very common to see \$1.00 per student per week in vending sales per machine.

Our municipal lease program is also quite unique. The vending manufacturer that builds these machines to my school specifications is the only vending manufacturer in this hemisphere that finances out of pocket. They own several finance companies. They offer a municipal lease to schools where there is no up-front money and no payments in any July or August. If the lease continues each year to the conclusion of the fourth year

you automatically own the machine(s) with no surprise balloon payment. You can even prepay without penalties and eliminate any remaining interest expense. There are no hidden trapdoors with crocodile pits below like so many other finance companies I have seen.

I have been selling this model for several years, although some of the programming features are new. I get an average of one service request per year per machine on this model. We have over 400 service centers across the USA. They service all of the Wittern Group marketing divisions along with the school market. We also sell the same machines (but with very advanced software) to hospitals and ambulance centers to inventory and dispense controlled substances and EMS supplies. We inventory and dispense manufacturing supplies for most of the major companies in the USA. We also sell standard vending machines to the thousands of vending companies in America. This is why we have maintained a national service network for over 20 years.

Here is a breakdown of cost for you on the two machines I recommend:

	Unit	Total	
2 Automatic Ala Carte ST5000	\$5,450	\$10,900	
2 credit card & vend mgmt program	\$ 395	\$ 790	
2 Delivery, installation	\$ 350	\$ 700	
Training, internet connection,	\$ 300	\$ 300	<b>Total</b>
<b>Investment \$12,690</b>			

Four year Municipal Lease: \$409.28 (10 payments per year) for all fees noted above.

Our warranty is for one year on all parts and ninety days for on-site technical service. Beyond that time frame we continue to offer free phone support by trained techs and engineers at our factory during normal business hours (Central Time: 8AM-4:30PM) and make our paid-for service network available to our customers.

If you have follow up questions, please do not hesitate to call or email.

Thank you,  
 Jim Dillingham  
 Vend-ucation  
 PO Box 97  
 Goffstown NH 03045  
 800-633-1200  
 Cell 603-943-1200  
[venducate@aol.com](mailto:venducate@aol.com)



**MUNICIPAL LEASE  
INLAND FINANCE COMPANY  
8040 University, Des Moines, Iowa, USA 50325**

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**1. LESSEE**

(Name) \_\_\_\_\_ (D/B/A) \_\_\_\_\_  
(Address) \_\_\_\_\_  
(City) \_\_\_\_\_ (State) \_\_\_\_\_ (County) \_\_\_\_\_ (Zipcode) \_\_\_\_\_

**2. LEASE AGREEMENT**

Inland Finance Company (INLAND) hereby leases to Lessee, and Lessee hereby leases from INLAND, the personal property described below, together with attachments and accessories, all herein referred to as "Equipment", upon the terms and conditions set forth in this lease.

**EQUIPMENT:**

Quantity	Equipment Model & Description	Accessories	Serial Number
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

**TRANSACTION TERMS:**

MONTHLY RENTAL	\$ _____	LEASE TERM _____ MONTHS
SALES AND USE TAX	\$ _____	NUMBER OF ADVANCE PAYMENTS (If applicable): _____
AMOUNT OF MONTHLY PAYMENTS	\$ _____	SECURITY DEPOSIT \$ _____

EQUIPMENT LOCATION (If different from Lessee address above) \_\_\_\_\_  
(Address) \_\_\_\_\_ (City) \_\_\_\_\_ (State) \_\_\_\_\_ (County) \_\_\_\_\_ (Zipcode) \_\_\_\_\_

**3. TERM, RENT**

(A) The Term of this Agreement will commence on the date of its acceptance by INLAND and will expire on the last day of the \_\_\_\_\_ full calendar month after the day the Equipment is received ("Receipt"). However, such expiration will not release the Lessee from its duty to perform any and all obligations under the Agreement. (B) Rent will be payable 30 days after Receipt of the equipment (unless the Lessee has complied with (C) hereunder) and in all events on the same day of each month thereafter.

**4. END OF TERM AGREEMENT**

Lessee and INLAND hereby agree that the Lessee will purchase AS-IS-WHERE-IS interest in all, but not less than all, of the equipment leased or otherwise included under the lease at the expiration of the term thereof for \$1.00 from INLAND, it being understood that there is no voluntary right of early termination under the lease.

**5. NON-APPROPRIATION OF FUNDS LEASE.**

The parties understand that as long as Lessee has sufficient appropriated funds to make the payments above, it will keep this agreement in effect through the term of the agreement and make all payments. The Lessee may terminate this agreement at the end of the first, second or third year in the event the Lessee fails to appropriate sufficient funds to meet its obligation thereunder. The obligation of the Lessee to make Base Payments under the agreement is payable from funds of the Lessee lawfully available therefor. Such obligation does not constitute debt of the Lessee within the meaning of any constitutional or statutory limitation and does not constitute a liability or a lien or a charge upon the funds or property of the Lessee beyond the fiscal year for which the Lessee has allocated funds to pay Base Payments. At the end of each year the Lessee shall have the right to end the Lease by returning the equipment, less reasonable wear, or purchasing the equipment at a cost less than the remaining total lease payments. After the \_\_\_\_\_ payments are made the equipment will become the property of the Lessee.

**6. AUTHORIZED SIGNER:** a duly authorized signer for the Lessee must execute This Lease and the signer's title or representative capacity must be indicated. The signer warrants that he/she has authority to bind the named Lessee.

LESSEE: \_\_\_\_\_  
BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
DATE: \_\_\_\_\_

ACCEPTED: Inland Finance Company

BY: \_\_\_\_\_  
DATE: \_\_\_\_\_

THIS LEASE INCLUDES ALL THE TERMS AND CONDITIONS ON THE REVERSE SIDE

Inland Municipal Lease 040506

**7. NOTICE OF DEFECTS.** Upon Receipt of the Equipment, Lessee immediately will inspect the Equipment and notify INLAND of any defects in the Equipment. No defect in the equipment will relieve Lessee of Lease obligations after delivery is accepted.

**8. TITLE.** The Equipment is and shall at all times be and remain, the sole and exclusive property of INLAND, and the Lessee shall have no right, title, or interest therein except as expressly set forth in this Lease. Lessee shall have no rights to mortgage or encumber the Equipment and Lessee covenants that it will keep said Equipment free and clear of all liens and encumbrances. The Equipment is and shall at all times be and remain, personal property notwithstanding that the Equipment or any part thereof may now or hereafter become in any manner affixed or attached to real property or any building thereon, and, upon expiration or termination of this Lease for any reason, Lessee consents to the taking or possession and/or removal by INLAND of such Equipment regardless of the manner or degree to its attachment to the premises or improvements thereon and also waives against INLAND and its successors any and all claims for damages to said premises by reason of the taking possession or and/or removal of said Equipment.

**9. INSURANCE.** Lessee, at its expense will provide and maintain physical damage insurance coverage against all risks of direct physical loss or damage to the Equipment in an amount at least equal to the replacement cost. INLAND is to be named as an additional loss payee of such insurance. Within ten (10) business days after the commencement of this lease, Lessee shall provide IFC with a certificate or other proof of insurance required by this paragraph. If Lessee fails to do so, Lessee shall pay Lessor the sum of \$75 per leased machine.

**10. TAXES.** If applicable, Lessee will pay any and all Federal, state and local taxes (including sales, use excise, gross receipts, personal property, ad valorem stamp, documentary and other taxes), including penalties, interest and fines, whether payable by INLAND or Lessee, with respect to the Equipment, its ownership, use, value, delivery, transportation, registration, or operation, on or with respect to rental payments due or to become due hereunder, and on or relating to the Lease. When legally possible, Lessee agrees to pay such taxes directly to the taxing authority and to prepare and file all returns and schedules required by taxing authorities in connection therewith and furnish copies to INLAND at its request. Upon notice, Lessee will immediately reimburse INLAND for any of the above-described taxes, permits and licenses paid for by INLAND that are the responsibility of Lessee under REIMBURSEMENT BY LESSEE listed below.

**11. GENERAL.** This Lease constitutes the entire agreement between INLAND and Lessee with respect to the Equipment and supersedes all prior communications including all oral and written proposals. This Lease may not be modified, amended, altered or changed except by a written agreement signed by both INLAND and Lessee. All matters arising under or with respect to this Lease shall be governed by Iowa law, and any action to enforce this Lease or to obtain judgment for any amounts owing hereunder may be commenced in the District Court of Iowa in and for Polk County, and Lessee consents to the jurisdiction of such court over the person of the Lessee and agrees that service of process as provided by the statutes and rules of procedure of Iowa for nonresident persons or foreign corporations deemed to be doing business in Iowa shall be sufficient. Any provision of this Lease prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remaining provisions of the Lease. All notices to be given under this Lease shall be made in writing and mailed to the other party at its address set forth herein or at such address as such party may provide in writing from time to time. If there is more than one lessee named herein, the liability of each shall be joint and several. No obligation of INLAND hereunder shall survive the Lease term or the earlier termination of this Lease. This Lease is not binding on INLAND until accepted in writing by an official of INLAND.

**12. AUTHORITY.** The signer of this Lease, executing this Lease on behalf of Lessee, hereby certifies that he has been duly authorized by Lessee to execute and deliver this Lease and related documents to INLAND, and that the execution and delivery of this Lease is in the ordinary course of business for Lessee and the undersigned is acting within the scope of his authority to bind Lessee to this agreement.

**13. REIMBURSEMENT BY LESSEE.** Lessee shall reimburse INLAND forthwith for any and all payments of any type which may be made by INLAND and for which Lessee is liable by the terms of this Lease.

**14. RISK OF DAMAGE TO EQUIPMENT.** Until the Equipment has been returned to INLAND as provided herein, the Lessee shall bear all risks of loss, theft, damage or destruction, partial or complete of the Equipment from whatever source arising, and will hold INLAND harmless therefrom and from all claims and liens for storage, labor, materials and unpaid rent on any premises on which the Equipment is located, incurred by or on behalf of the Lessee in connection with the Equipment. No loss, theft, destruction or damage of the Equipment shall relieve Lessee of the obligation to pay rent or any other obligation under the Lease. In the event of loss, theft or damage of any kind whatsoever to the Equipment or any part thereof, Lessee, at the option of INLAND, shall (a) repair or restore the Equipment to good condition and working order; or (b) replace the same with like property in good repair, condition and working order, which shall become the property of INLAND.

**15. REPAIRS, USE, ALTERATIONS.** Lessee, at its own cost and expense, will shelter the Equipment and will keep the Equipment in good repair and proper working order, ordinary wear and tear excepted, and will furnish and all parts or devices required to keep the Equipment in such condition. Lessee will use the Equipment in a careful manner and will comply with all Federal, state, municipal, and other laws, regulations and ordinances relating to the possession, use or maintenance of the Equipment. INLAND will have the right from time to time during reasonable business hours to enter upon Lessee's premises or elsewhere to confirm the existence, condition or proper maintenance of the Equipment. Lessee shall not make alterations, changes, additions or improvements to the Equipment, except as constitute ordinary maintenance and repairs or except for improvements and additions which are previously approved in writing by INLAND and are readily removable without causing material damage to the Equipment, which such latter improvements or additions shall be the property of Lessee. The Equipment will be delivered to and kept at Lessee's address specified herein, and will not be removed without INLAND's prior written consent.

**16. OFFSET.** Lessee waives any and all existing and future claims and offsets against any rent or other payments due hereunder and agrees to pay the rent and other amounts due hereunder regardless of any offset or claim which may be asserted by Lessee or on its behalf.

**17. LIMITATION OF LIABILITY.** In no event shall INLAND be liable for loss of profits, loss of use, or direct, indirect, special, incidental or consequential damages of any kind, in connection with or arising out of the furnishing, performance, maintenance or use of any item of Equipment or services provided for in this Lease or out of any breach of this Lease or obligations under this Lease. If the intended use of the Equipment by Lessee is declared to be in violation of existing or future enacted federal, state or local regulations or statute, Lessee must continue to make the lease payments contemplated by this lease.

**18. INDEMNIFICATION.** Lessee will indemnify INLAND against and hold harmless INLAND from any and all claims, actions, proceedings, expenses, damages, liabilities, losses, obligations, injuries, penalties, liens, costs and expenses, including attorneys' fees arising in connection with the Equipment, including, but not limited to, its manufacture, selection, purchase, delivery-possession, use ownership, location, installation, leasing, renting, control, maintenance, repair, operation or return and the recovery of claims under insurance policies thereon. Lessee agrees that upon written notice by INLAND of the assertion of any Claims against INLAND, Lessee will assume full responsibility for the defense thereof. The provisions of this paragraph will survive the termination or expiration of this Lease whether by passage of time or otherwise.

**19. RELATIONSHIP OF LESSOR AND VENDOR.**

(a) **Vendor Not an Agent.** Lessee understands and agrees that neither vendor nor any salesman or other agent of vendor, is an agent of INLAND. No salesman or agent of vendor is authorized to waive or alter any term or condition of this Lease and no representation as to equipment or any other matter by vendor shall in any way affect Lessee's duty to pay rent or perform its other Lease obligations.

(b) **Lessee Selects Equipment.** Lessee has selected both the leased property and the supplier from whom INLAND is to purchase the leased property. INLAND makes no warranties, either express or implied, as to any matter whatsoever including the condition of the leased property, its merchantability or fitness for a particular purpose and no other warranty express or implied. Lessee acknowledges that INLAND has made no statements, representations or warranties of any kind with respect to the leased property including delivery of product for the leased property or any other ancillary services.

(c) **Limitations of Liability.** INLAND shall not be liable for any consequential or incidental damages, including but not limited to personal injuries, repairs to the Equipment or the real or personal property where the Equipment is located, or loss of profits and earnings, loss of property, loss of sales, claims of Lessee's customers, or other costs which are the fault of Lessee or of the Equipment, or any failure of the Equipment.

(d) **Claim Against Vendor.** If Equipment is not properly installed, does not operate as represented or warranted by Vendor, or is unsatisfactory for any reason, Lessee shall make any claim on account thereof solely against Vendor and shall nevertheless pay INLAND all rent payable under this Lease. INLAND hereby assigns to Lessee, solely for the purposes of making and presenting any said claim, all of the rights which INLAND has against Vendor for breach of warranty or other representations respecting the Equipment. Lessee agrees to hold INLAND free and harmless from any defect or other problem with the equipment. Lessee further recognizes that regardless of profits or lack of profitability through the use of this equipment, Lessee agrees to make the monthly payment expressed above for the entire lease term.

**20. OTHER CONTRACTS.** Lessee warrants and represents that the lease of the equipment being herein leased by Lessee is not in violation of any contractual obligation of Lessee to any third party including, but not limited to, any contractual obligation respecting the sale, use, lease or maintenance of vending machines and Lessee as a part of the consideration herein agrees to indemnify and hold harmless INLAND or assigns from and against all loss, damage, cost and expenses, actions, or causes of action arising directly or indirectly by virtue of any breach of this warranty and representation by Lessee.

**21. DEFAULT, REMEDIES, LIQUIDATED DAMAGES.**

(a) **Events of Default.** Except for the Non-Appropriation of Funds under Section 5, Lessee will be in default under this Lease upon the happening of any one or more of the following events or conditions ("Events of Default"); (1) if Lessee fails to pay any rent or other amount due under this Lease within 30 days after the same is due and payable; or (2) if Lessee fails to observe, keep or perform any other provision of this Lease required to be observed, kept or performed by Lessee, unless Lessee cures this default within 10 days after receiving written notice from INLAND specifying such default; or (3) if any levy, seizure or attachment is made upon any or all of the Equipment or Lessee's interest therein.

(b) **Remedies Upon Default.** Upon the occurrence of any Event of Default and at any time thereafter, INLAND without any further notice may exercise any one or more of the following remedies: (1) declare all unpaid rentals and other amounts due and to become due under this Lease by INLAND to be immediately due and payable; (2) take possession of the Equipment, wherever found, and for such purpose enter into any premises of, or under control of, Lessee or any agent of Lessee and remove all or any part of the Equipment, Lessee hereby waiving all further rights to possession of the Equipment and all claims for injuries suffered through or loss caused by such repossession; (3) cause Lessee at its expense to return the Equipment promptly to INLAND; (4) sell or lease the Equipment or any part thereof at public auction or by private sale or lease at such time or times and upon such terms as INLAND may determine, free and clear of any rights of Lessee and, if notice thereof is required by law, the mailing of written notice of any such sale or lease by INLAND to Lessee not less than five days prior to the date thereof shall constitute reasonable notice to Lessee unless otherwise required by applicable law; (5) proceed by appropriate action either by law or in equity to enforce performance by Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; (6) terminate this Lease as to any or all items of Equipment; provided, however, that a termination hereunder will be effective only upon written notice by INLAND to Lessee and only with respect to such item or items of Equipment as INLAND specifically elects to terminate in such notice; (7) exercise any and all rights accruing to a lessor under any applicable law upon default by a Lessee. None of the remedies under this Lease are exclusive, but they will be cumulative and each remedy will be additional to any other remedy referred to in this Subparagraph (b) or otherwise available to INLAND in law or in equity. Any repossession or subsequent sale or lease by INLAND of any item or Equipment shall not bar an action for a deficiency as herein provided and the bringing of an action or entry or judgment against the Lessee shall not bar INLAND's right to repossess any or all items of Equipment.

(c) **Liquidated Damages.** As an alternative to the remedies contained in Subparagraph (b) above, upon the occurrence of an Event of Default and at any time thereafter, INLAND may elect to terminate this Lease and receive liquidated damages from Lessee equal to: (1) all rentals and other amounts due and unpaid at the date of lease termination, plus (2) 25% of the supplier's then current suggested retail price for new equipment of the same type as the Equipment. Lessee acknowledges that the amount of such liquidated damages is reasonable considering the expenses of recovery of possession, transportation, reconditioning and set-up which must be incurred by INLAND in order to re-lease or sell the Equipment after such lease termination.

**23. LATE CHARGES.** If Lessee fails to pay within 10 days after the due date thereof, any part of the rent hereunder or any other sum required to be paid by Lessee to INLAND hereunder, Lessee will pay to INLAND a late charge of 5 cents per dollar overdue, in addition to all other amounts owing hereunder.

**24. ASSIGNMENT.** INLAND may assign this Lease and/or mortgage the Equipment, in whole or in part, without notice to Lessee; and its assignee or mortgagee may reassign this Lease and/or such mortgage, without notice to Lessee. Each such assignee and/or mortgagee will have all of the rights but none of the obligations of INLAND under this lease. Lessee will recognize each such assignment and/or mortgage and will not assert against the assignee and/or mortgagee any defense, counterclaim, or setoff that Lessee may have against INLAND. In the event of any assignment of rental payments hereunder and written notice thereof to Lessee, Lessee will pay directly to any such assignee all rentals and other sums due or to become due under this Lease.

**25. NONWAIVER.** No covenant or condition of this lease can be waived except by the written consent of INLAND. Forbearance or indulgence by INLAND in any regard whatsoever will not constitute a waiver of the covenant or condition to be performed by Lessee to which the same may apply, and, until complete performance by Lessee of said covenant or condition, INLAND shall be entitled to invoke any remedy available to INLAND under this Lease or by law or in equity despite said forbearance or indulgence.

**26. ADDITIONAL DOCUMENTS, MODIFICATION.** Lessee will execute and deliver to Lessor such additional documents as INLAND may deem necessary or desirable for purposes of recording, filing or otherwise protecting the interest of INLAND in the Equipment and this Lease. This Lease can be modified only by a written addendum to the Lease executed by INLAND and Lessee.

**25. ATTORNEY'S FEES.** In the event that Lessor shall commence any legal action against Lessee by reason of the alleged failure of Lessee to perform or keep any term, covenant or condition of this Lease to be performed or kept by Lessee, INLAND shall be entitled to recover, in addition to its court costs, a reasonable attorney's fee to be fixed by the court, and such recovery shall include court costs and attorney's fees on appeal, if any.