# LEASE TERMINATION AND SURRENDER AGREEMENT
(2118 Milvia Street)

THIS LEASE TERMINATION AGREEMENT ("**Agreement**") is made as of October 30, 2015 ("**Effective Date**") between the City of Berkeley, a charter city organized and existing under the laws of the State of California ("**City**") and the Peralta Community College District, a community college district organized and existing under the laws of the State of California ("**District**"). City and District are at times referred to in this Agreement individually as a "**Party**" or collectively as the "**Parties.**"

## RECITALS

**A.** On May 7, 2015, the District closed escrow and completed the purchase of certain real property and improvements located at 2118 Milvia Street in the City of Berkeley, County of Alameda, State of California ("**Property**"), previously owned by the N.E.W. Milvia Property, LLC, a California limited liability company ("**Previous Owner**").

**B.** In accordance with that certain Office Building Lease, including Addenda #1 and #2, dated November 6, 1995 between the City and the Previous Owner ("**Original Lease**"), as amended by that First Amendment to Lease dated August 31, 2006 ("**First Amendment**"), that Second Amendment to Lease dated January 18, 2008 ("**Second Amendment**") and that Third Amendment to Lease dated July 8, 2011 ("**Third Amendment**"), the Property is leased for use by the City's Planning and Development Department. The Original Lease and the First, Second and Third Amendments are collectively referred to in this Agreement as the "**Lease.**" A copy of the Lease is attached hereto and incorporated herein as **Exhibit A**.

**C.** As part of the District's purchase of the Property and in accordance with Section 26 of the Lease, the Lease was assigned to the District, which assignment and assumption of the Lease by the District is memorialized in the attached Assignment and Assumption Agreement between the District and the Previous Owner, incorporated herein as **Exhibit B**.

**D.** The Lease provides that the term of the Lease shall expire on August 31, 2018 ("**Original Expiration Date**") notwithstanding the option to extend provided in the Lease.

**E.** In order to commence its renovation of the Property and have classrooms ready for District use in or around January of 2017, District will require possession of the Property on or before July 31, 2016.

**F.** District and City have agreed to terminate the Lease early and City agrees it will vacate the Property under the terms and conditions in this Agreement.

## AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are acknowledged, District and City agree as follows:

1. **Termination of Lease**. Notwithstanding anything in the Lease to the contrary, City and District agree to terminate the Lease effective as of July 31, 2016 ("**New Expiration Date**"), subject to the terms and conditions of this Agreement. The Parties understand and agree that the New Expiration Date shall completely replace the Original Expiration Date and eliminate any options of City to further extend under the Lease.

2. **Consideration**. In consideration of the City terminating the Lease early, vacating the Property on or before the New Expiration Date and conveying to District all right, title, and interest the City may have in the Lease and the Property, District shall provide the following:

2.1 Rent Abatement. Upon (i) approval of this Agreement by each Party's governing body, as applicable and (ii) full execution by the Parties, payment of rent due under the Lease shall be abated from November 1, 2015 until the New Expiration Date. In the event of a default by City of a material provision of the Lease or if the City does not surrender and vacate the Property by the New Expiration Date, City's continued right to rent abatement shall terminate and Section 17 of the Lease (Holding Over) shall immediately apply based on the rent amount due pursuant to the Lease as if no rent abatement has been provided to the City.

2.2 No Abatement of Other Costs. Any abatement of rent in accordance with Section 2.1 above shall not relieve the City of any obligations to pay for any utilities, services or operating costs in accordance with the Lease and related to City's ongoing use and enjoyment of the Property.

3. **Surrender of Property, Leasehold Interest and Removal of Personal Property**. District and City agree that the Lease terminates on the New Expiration Date. City shall surrender the Property in broom-clean condition on the New Expiration Date, unless Section 17 of the Lease (Holding Over) applies. On or before the New Expiration Date and in accordance with Section 13 of the Lease, City shall remove all articles of personal property and all business and trade fixtures, machinery and equipment, furniture and movable partitions owned by City or installed by City in the Property. If City fails to remove all of its effects from the Property by the New Expiration Date, then District may, at its option, store the personal property without liability for loss or damage, and City agrees to reimburse District for any expenses incurred by such storage, or District may, at its option, after thirty (30) days, sell the personal property without any liability to the City at a private sale, for such price as District may obtain and apply the proceeds against any expenses incident to the removal, storage and sale of the personal property.

4. **Security Deposit**. City's security deposit will be returned to City by District in accordance with Section 7 of the Lease, except that District shall return the security deposit (described in paragraph 14 of the Third Amendment) to City within thirty (30) days after the New Expiration Date.

5. **Insurance**. In accordance with Section 22 of the Lease, City acknowledges that it maintains all insurance required under the Lease. Additionally, City will ensure District is named as an Additional Insured under all applicable insurance policies up to and until City surrenders the Property to District.

6. **No Assignment**. City represents and warrants that City has made no assignment, sublease, transfer, or other disposition of the Lease, and that no obligations, liabilities, or causes of action currently exist regarding the Lease.

7. **Entire Agreement**. This Agreement contains the entire agreement between the Parties regarding the matters covered in this Agreement. There have been no other statements, promises, or representations made by the Parties that are intended to alter, modify, or complement this Agreement.

8. **Amendment**. This Agreement may not be altered, amended, modified, or otherwise changed in any respect, except by a writing executed by an authorized representative of each Party.

9. **Counterparts**. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all taken together shall constitute one and the same instrument.

10. **Cooperation**. The Parties agree to cooperate in the performance of any acts which may be reasonably necessary to effectuate the intent of this Agreement.

11. **Authorization**. The undersigned represent and warrant that they are authorized to execute this Agreement, and have obtained all necessary approvals from their respective governing bodies, as applicable, to ensure this Agreement has full force and effect under the law.

12. **Terms of Lease**. Except as provided in this Agreement, all other terms and conditions of the Lease shall remain in full force and effect during the remainder of City's possession of the Property. In the event of any inconsistencies between the Lease and this Agreement, the terms of this Agreement shall govern.

13. **Governing Law**. This Agreement shall be governed by the laws of the State of California.

In Witness Whereof, City and District have executed this Agreement as of the Effective Date.

PERALTA COMMUNITY COLLEGE DISTRICT

By: _____
Name: _____
Title: _____

CITY OF BERKELEY

By: D. Williams-Ridley
Name: Dee Williams-Ridley
Title Interim City Manager