

LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease"), dated ~~September~~ ^{October 12} 25, 2017 for identification, is by and between the COUNTY SCHOOL BOARD OF ALBEMARLE COUNTY, VIRGINIA ("Landlord" or "Albemarle County"), and THE PIEDMONT REGIONAL EDUCATION PROGRAM JOINT BOARD OF CONTROL ("Tenant"), who mutually covenant, promise and agree as follows:

1. Recitals.

a. Landlord is a political subdivision of the Commonwealth of Virginia with its principal offices at 401 McIntire Road, Charlottesville, Virginia 22902 and is a member of a cooperative regional education program known as the Piedmont Regional Education Program ("PREP"). In addition to Albemarle County, the other School Boards comprising the PREP Joint Board of Control ("Joint Board") are the School Board of the City of Charlottesville and the School Boards of the Counties of Culpeper, Fluvanna, Greene, Louisa, Madison, Nelson, and Orange.

b. Tenant is a Joint Board of Control governing PREP composed of a representative from each of its constituent School Boards. Tenant is responsible for establishing policy and making decisions related to the operation of the programs and services provided by PREP, in accordance with Virginia Code §22.1-26, the regulations established by the Virginia Board of Education for jointly-operated school programs, and the by-laws governing PREP. PREP operates a school known as the Ivy Creek School for students with emotional disabilities who are placed there by member School Boards, as permitted by applicable state and federal laws and in accordance with the Operating Agreement for Ivy Creek School dated May 10, 2012.

2. Demise and Premises. Landlord does hereby lease to Tenant, and Tenant does hereby lease from Landlord, for the term and upon the covenants, terms and conditions hereinafter set forth, certain real estate and improvements (the "Premises") as shown in "Exhibit A" annexed hereto. Tenant and Landlord also agree that in addition to the shaded area on "Exhibit A", the Landlord will share use of certain common space with Tenant. Tenant's total leased square footage of the Ivy Creek School shall be 11,485.4 square feet and this amount of leased square footage shall comprise the Premises for purposes of the terms and conditions of this Lease.

3. Term. The Initial Term of this Lease shall commence on July 1, 2016 ("Commencement Date"), and shall terminate and expire on June 30, 2026 ("Termination Date"), unless extended or sooner terminated as hereinafter provided.

4. Renewal. Provided that all rent has been paid and Tenant has substantially complied with all other material conditions of this Lease, and provided that Landlord has not exercised its right to terminate the Lease as provided for hereinafter, Tenant may at its option extend this Lease beyond the Initial Term for up to two (2) consecutive five (5) year Renewal Terms. To exercise its option to renew this Lease, Tenant must give Landlord written notice of renewal no later than six (6) months before the Termination Date or before the expiration of any subsequent Renewal Term. In the event of such renewal, all the terms and conditions of this

Lease shall continue in full force and effect, except that the amount of annual rent payable during the Renewal Term(s) shall be modified and communicated by Landlord to Tenant prior to the effective date of the Renewal Term(s).

5. **Termination.** Prior to the expiration of the Initial Term or any Renewal Term thereafter under this Lease, either Landlord or Tenant may terminate the Lease as provided for in this paragraph. To exercise this right, the party terminating the Lease shall notify in writing the other party to the Lease at least two (2) calendar years in advance of the termination date ("Termination Date"), which shall be June 30 of the year of Lease termination, of its intention to terminate the Lease. In such event, this Lease shall terminate on the Termination Date. Notwithstanding the termination right provided for in this paragraph 5, neither party shall have the right to terminate the Lease prior to June 30, 2022, and except as provided hereunder, this Lease shall remain in effect until the expiration of the Initial Term or any subsequent Renewal Term(s).

6. **Rent.** Tenant agrees to pay annual rent to Landlord during the Initial Term and any Renewal Term(s) of this Lease (the "Rent") in the following amounts: \$126,683.95 in Fiscal Year 2017 (July 1, 2016 to June 30, 2017); \$121,056.12 in Fiscal Year 2018 (July 1, 2017 to June 30, 2018); and \$115,313.45 in Fiscal Year 2019 (July 1, 2017 to June 30, 2019).

Beginning in Fiscal Year 2020 (July 1, 2019 to June 30, 2020), the annual rent shall be \$120,596.70. The annual rent shall increase by 3% per Fiscal Year through Fiscal Year 2026. The annual rent for Fiscal Year 2021 shall be \$124,272.03. The annual rent for Fiscal Year 2022 shall be \$127,947.36. The annual rent for Fiscal Year 2023 shall be \$131,737.54. The annual rent for Fiscal Year 2024 shall be \$135,642.57. The annual rent for Fiscal Year 2025 shall be \$139,662.46. The annual rent for Fiscal Year 2026 shall be \$143,797.21. All Fiscal Years shall begin on July 1 of one calendar year and end on June 30 of the succeeding calendar year.

Tenant shall pay all Rent owed under this Lease to Landlord on an annual or more frequent basis and in no event later than thirty (30) days following receipt of written notice from Landlord that such amount is due and owed.

7. **Use.** Tenant shall have the right to use the leased Premises solely for the purpose of operating the Ivy Creek School and for activities related to the operation and administration of PREP. Any other proposed use requires the prior written consent of the Landlord, which consent Landlord may withhold in its sole and absolute discretion. Tenant acknowledges that the Premises is located upon property owned by Landlord and utilized for Albemarle High School and other school division purposes, and agrees that it shall not interfere with Landlord's ability and right to operate and manage Albemarle High School or other school division facility located on the Premises. In the event Tenant's use of the Premises interferes with Landlord's operation of Albemarle High School or any other school division facility located on Landlord's property, Landlord shall provide Tenant with written notice of such interference and shall provide Tenant with fourteen (14) days to take all reasonable steps required by Landlord to cure and eliminate such interference. In the event Tenant is unable to cure or eliminate such interference as provided for herein, then Landlord shall have the right to terminate this Lease at its sole

discretion after giving written notice to Tenant at least ninety (90) days prior to the date that Tenant is required to vacate the Premises.

8. **Maintenance, Repairs and Utilities.** Landlord and Tenant shall oversee and be responsible for the maintenance of the Ivy Creek Facility and any related improvements constructed thereon, to ensure that the Premises are kept in good condition and repair. Responsibility for the costs of such repairs and maintenance, including maintenance personnel costs, shall be based on the percentage of the Ivy Creek Facility used by the Tenant and Landlord. Tenant and Landlord shall therefore be responsible for all routine repairs and maintenance for the Premises, including repairs to and maintenance of all heating, air conditioning, plumbing and electrical systems. Tenant and Landlord shall also be responsible for all exterior maintenance, including landscaping, trimming of shrubs and mowing of grass. Tenant shall have the right to contract with Landlord to provide these services, provided that Landlord shall be compensated at Landlord's prevailing rates for such services. Landlord shall be solely responsible for any structural repairs to the Premises that are necessary. Landlord and Tenant shall be responsible for utility costs based on the percentage use of the Premises by each.

9. **Improvements.** Tenant shall have the right, at its own cost and expense, except as otherwise provided in this Lease, to construct on any or all of the Premises, at any time and in accordance with the terms and conditions of this Lease, such improvements, alterations, changes, replacements and additions (collectively the "Improvements") as Tenant shall from time to time determine, provided that Tenant has satisfied the other provisions of this Lease. Prior to the commencement of any such Improvements, Tenant shall provide notice in writing to Landlord. Landlord shall have the right in its sole and absolute discretion to approve or reject any proposed Improvements. Landlord shall also have the right to inspect the Improvements during construction to ensure that they are being constructed in substantial accordance with the approved final plans. Landlord may notify Tenant in writing of any noted material deviations from approved formal plans, which Tenant shall remedy, if practicable, or seek approval of such deviation from Landlord within thirty (30) days of the written notice by Landlord, and such approval shall not be unreasonably withheld.

10. **Title to Improvements.** Title to all Improvements constructed on the Premises, including but not limited to the Ivy Creek School, shall be held by and remain in the Landlord at all times.

11. **Condition of Premises.** Tenant shall keep the Premises in good order and repair and in a clean, sanitary and safe condition in accordance with all state and local laws, regulations and ordinances. Upon vacating the Premises after expiration or termination of this Lease, Tenant shall deliver the Premises to the Landlord without delay and in the condition in which Tenant agreed to maintain it pursuant to this Lease (ordinary wear and tear excepted, given its use) free and clear of all lettings and occupancies, and free and clear of all liens and encumbrances other than those authorized by Landlord.

12. Operating Agreement and Costs. The Joint Board members have entered into by-laws effective July 1, 1984 (and amended on January 25, 1985, August 9, 1995, October 18, 2000, March 19, 2003, and October 27, 2010) to control the operations and management of PREP and its programs. In addition, the constituent School Boards have entered into an Operating Agreement annexed hereto as **Exhibit "B,"** which shall control and govern the allocation of student spaces and other ongoing operating costs of PREP.

13. Insurance.

(a) **Fire and Other Insurance.** Starting on the Commencement Date, and during the entire Lease term hereof, Tenant and Landlord shall be responsible for maintaining any fire and casualty insurance on the Premises. The cost of such fire and casualty policies shall be based on the percentage use of the Ivy Creek Facility by the Tenant and Landlord. Such policies shall insure the Premises at replacement value against loss or damage by fire or by any other cause, and shall also cover the contents of the Premises. In addition, during the entire term of this Lease, whether Initial or Renewal Term(s), Tenant shall, at its sole cost and expense, keep in full force and effect a policy or policies of general or comprehensive public liability and property damage insurance with respect to the Premises of not less than one million dollars (\$1,000,000) per occurrence, against any claims for bodily injury, death or property damage, occurring on, in or about the Premises and any improvements.

(b) **Insurers.** All insurance required by this section, except in the instances of self-insurance, shall be effected under valid and enforceable policies issued by insurers of recognized responsibility authorized to conduct business in Virginia that are well-rated by national ratings organizations.

(c) **Insureds.** All policies of insurance provided for in this section shall name Landlord as an additional insured.

(d) **Blanket Insurance Policies.** Nothing in this Lease shall prevent Tenant from taking out insurance of the kinds required by this section under a blanket insurance policy or policies maintained by Tenant; provided, however, that:

(i) any such policy of blanket insurance shall specify therein, or Tenant shall furnish Landlord with a written statement from the insurer under such policy so specifying, the amount of the total insurance allocated to the Premise and improvements, which amount shall be not less than the amount required herein;

(ii) any such policy of blanket insurance of the kind specified by Section 13(b) hereof shall specify that any loss payable hereunder shall be payable first in respect of the Premises and improvements without regard to the contents thereof;

(iii) any policy of blanket insurance hereunder shall comply in all respects with the other provisions of this section; and

(iv) the protection afforded Landlord and Tenant pursuant to Section 13(b) under any policy of blanket insurance shall be no less than that which would have been afforded under a separate policy or policies relating only to the Premises and improvements.

(e) Notice of Cancellation. Each policy or certificate of insurance obtained by Tenant pursuant to this section shall contain an express agreement by the insurer that such policy shall not be canceled or modified without at least thirty (30) days' prior written notice to Landlord.

(f) Certificate of Insurance. Prior to the Commencement Date, and during the term of this Lease, whether Initial or Renewal term(s), Tenant shall provide Landlord with certificates of insurance as evidence of Tenant's compliance with the requirements of this section.

(g) Landlord's Insurance Coverage. The parties may mutually agree for Landlord to add the Premises to its insurance policies because of cost-effectiveness, rather than for the Tenant to procure separate insurance. In such event, the Tenant shall be billed by Landlord for the costs of insuring the Premises and Tenant shall be responsible for the payment of such insurance costs.

14. Damage or Destruction. If the Ivy Creek School or other Improvements to the Premises are partially destroyed by fire or other casualty and thereby rendered untenable only in part, Landlord shall, except as stated herein, promptly cause the damage to be repaired to substantially the same condition as existed immediately prior to such damage. Tenant's obligation to pay Rent pursuant to Section 6 of this Lease shall be adjusted and shall abate in an amount that correlates to that percentage of the total square footage that is untenable because of fire or other casualty. Tenant's obligation to pay rent, in an unabated amount, shall resume upon the restoration of the Premises to a tenable condition. If by reason of fire or other casualty, the Ivy Creek School or other improvements are rendered completely untenable, Landlord may elect to terminate this Lease or to continue this Lease provided that Landlord agrees to repair such damage. Notwithstanding the foregoing, Landlord is under no obligation to repair the Premises and reserves unto itself the sole right to decide whether to make the necessary repairs in the event of fire or casualty to all or part of the Premises or improvements. In the event Landlord declines to make such repairs, it shall provide written notice to Tenant of its decision not to repair, in which event this Lease shall thereupon be terminated.

15. Default. Tenant shall not be deemed to be in default hereunder unless one or both of the following events has occurred. Either of the following events shall constitute a default by Tenant hereunder:

(a) Failure on the part of Tenant to pay rent or any other sum of money called for herein, or any part thereof, when due, and continuance of such failure for sixty (60) days after written notice from Landlord to Tenant;

(b) Failure on the part of Tenant to materially comply with or perform any other term, covenant, condition or agreement to be complied with or performed by Tenant and continuance of such failure for sixty (60) days after written notice from Landlord to Tenant, unless such failure is excused by Landlord in writing.

In the event Tenant has defaulted under (a) or (b) of this section, and said default has continued beyond those periods of time herein granted to cure the same, then Landlord may give Tenant notice of Landlord's intention to terminate this Lease on a date specified in such notice, which date shall not be less than ninety (90) days after the date on which the notice is mailed or delivered. Upon the expiration of the notice period, the term of this Lease and the estate hereby granted with respect to the Premises shall terminate on the date specified in the notice. The termination provisions in this section shall be in addition to, and not in lieu of, the termination provisions in Section 5 of the Lease.

16. Remedies. In the event of default by Tenant, and failure to remedy said default as provided by Section 15 of this Lease, Landlord shall have, in addition to all other remedies under this Lease and applicable law, the right to re-enter the Premises either with or without legal process and remove all persons and property therefrom. Tenant expressly agrees that the exercise by Landlord of the right of re-entry shall not prejudice in any way any other legal remedies available to Landlord, and every right and remedy of Landlord shall be cumulative and in addition to any other right or remedy given hereunder or now or hereafter existing at law. Landlord shall also be entitled, to the extent permitted by law, to injunctive relief in case of the violation, or attempted or threatened violation, of any covenant, agreement, condition or provision of this Lease, or to a decree compelling performance of any covenant, agreement, condition or provision of this Lease, in addition to any other remedies allowed by law or in equity.

17. Waiver of Performance. No failure by Landlord or Tenant to insist upon the strict performance of any covenant, agreement, condition or provision of this Lease on the part of either party to be performed, or to exercise any permitted right or remedy consequent upon a default therein, and no acceptance of payment of full or partial rent by Landlord during the continuance of any such default, shall constitute a waiver by either party of such default. No waiver of any default shall otherwise affect or alter this Lease, but each and every covenant, agreement, condition and provision of this Lease shall continue in full force and effect with respect to any other then-existing or subsequent default therein.

18. Assignment or Subletting. Tenant may not assign this Lease without the prior written consent of Landlord, which consent Landlord may withhold in its sole and absolute discretion.

19. Notices. All notices to be given hereunder shall be in writing and shall be deemed to have been properly given if and when delivered personally or sent by registered or certified mail, postage prepaid, addressed as follows:

If to Tenant:

Piedmont Regional Education Program Joint Board
1434 Rolkin Court, Suite 201 Charlottesville, Virginia 2291 1

If to Landlord:
Albemarle County Public Schools
Office of the Superintendent
401 McIntire Road
Charlottesville, Virginia 22902

With a copy to:
School Board Attorney
Albemarle County Attorney's Office
401 McIntire Road
Charlottesville, Virginia 22902

20. Successors and Assigns. The obligations of this Lease shall bind and benefit the assignees and successors of the parties hereto.

21. Annual Appropriations. The obligations of Landlord and Tenant under this Lease are contingent upon sufficient annual funding and appropriation by their respective governing bodies and approval by their constituent school boards.

22. Governing Law. This Lease Agreement shall be governed by the laws of the Commonwealth of Virginia. The exclusive venue of any litigation arising hereunder shall be the Albemarle County Circuit Court.

IN WITNESS WHEREOF, the parties hereto have, by formal action taken at lawfully called and constituted meetings, approved this Lease Agreement and authorized their respective representatives to execute it on their behalves.

Landlord:
COUNTY SCHOOL BOARD OF ALBEMARLE COUNTY, VIRGINIA

By: _____
Chair

COMMONWEALTH OF VIRGINIA,
COUNTY/CITY OF _____, to-wit:

The foregoing Lease Agreement was signed and acknowledged before me this _____ day of _____, 2017.

Notary Public

My Commission Expires: _____

Registration No.: _____

Tenant:

PIEDMONT REGIONAL EDUCATION PROGRAM JOINT BOARD
OF CONTROL

By: Elizabeth S. Hutchins
Chair

COMMONWEALTH OF VIRGINIA,
COUNTY/CITY OF Charlottesville, to-wit:

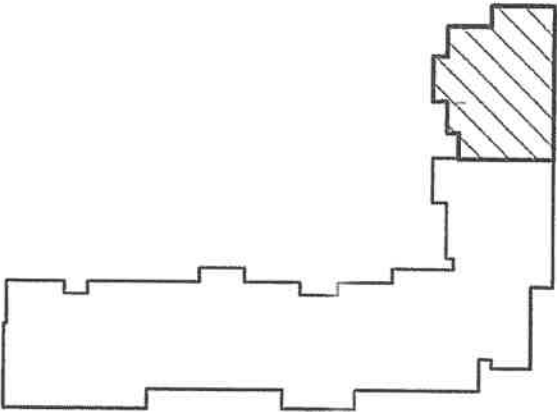
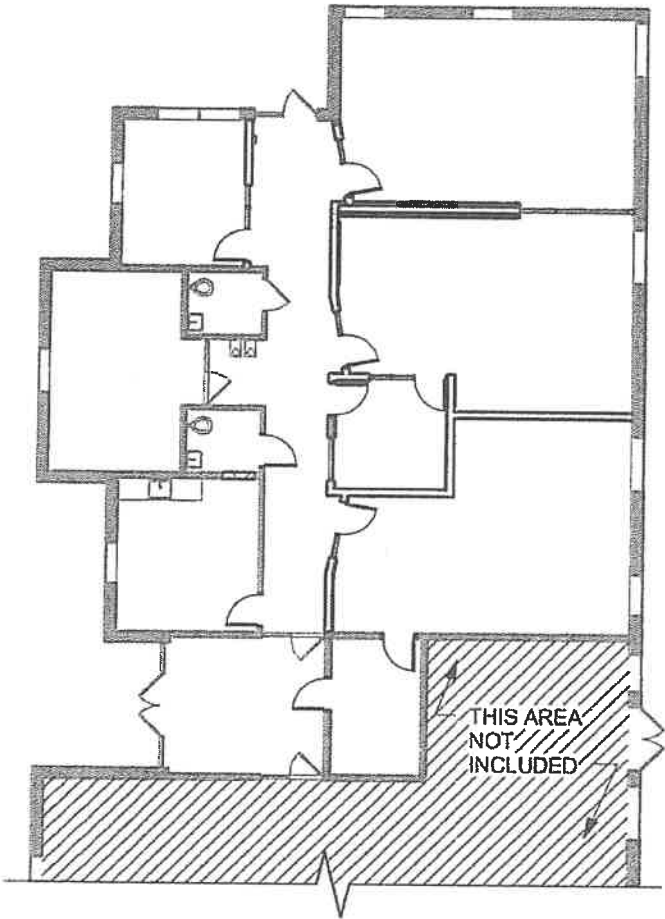
The foregoing Lease Agreement was signed and acknowledged before me this 25
day of October, 2017.

Bonnie L. Lynn
Notary Public

My Commission Expires: 10/31/2019

Registration No.: 7102050

EXHIBIT A



② KEY PLAN
1" = 80'-0"

IVY CREEK SCHOOL

ALBEMARLE COUNTY, VA

EXHIBIT B

LAW OFFICES
TIMBERLAKE, SMITH, THOMAS & MOSES, P.C.

THE VIRGINIA BUILDING
25 N. CENTRAL AVENUE
STAUNTON, VIRGINIA 24401

TELEPHONE (540) 885-1517
FACSIMILE (540) 885-4537
REAL ESTATE FACSIMILE (540) 885-6780

G. RODNEY YOUNG, II
Cell Phone: (540) 255-1223
Email: ryoung@istm.com

Mailing Address:
POST OFFICE BOX 108
STAUNTON, VIRGINIA 24402-0108

May 24, 2016

By Electronic Mail (jblair@albemarle.org)

John C. Blair, II, Esq.
Senior Assistant County Attorney
Albemarle County
401 McIntire Road
Charlottesville, Virginia 22902

Re: Piedmont Regional Education Program/Ivy Creek Lease

Dear John:

The purpose of this letter is to outline the final agreement in principle (Agreement) to be approved by the Joint Board of the Piedmont Regional Education Program (PREP) and the Albemarle County School Board (Board) regarding the transition of possession of the PREP Ivy Creek administrative offices to the Board. As we have discussed before, Dr. Elitharp and Vincent Scheivert have discussed technology transition issues. As explained to me by Dr. Elitharp, if PREP moves to new office space with the same internet provider used by Albemarle, PREP will be able to keep its existing email addresses and will continue to be able to access Albemarle's server and programs as it does now. PREP has located such commercial office space. Dr. Elitharp has disclosed PREP's proposed new location for its administrative offices to Mr. Scheivert and he has agreed to work with CenturyLink, the internet service provider for the location, to assist PREP with connectivity to Albemarle's server and programs.

The PREP Joint Board (Joint Board) meets on March 25, 2016, at which time I anticipate that Dr. Elitharp will recommend that the Joint Board take formal action to approve the Agreement. She will also seek authority from the Joint Board to enter into a lease for new office space where the PREP administrative offices will be located beginning July 1, 2016. The authority to enter into such a lease and the Joint Board's approval of this Agreement will have to be contingent upon the Board approving the terms of this Agreement at its meeting on May 26, 2016. The Agreement is as follows:

TIMBERLAKE, SMITH, THOMAS & MOSES, P.C.

John C. Blair, II, Esq.
Senior Assistant County Attorney
Albemarle County
May 24, 2016
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1. Albemarle and the Joint Board will execute a new lease to provide for PREP's continued occupancy of Ivy Creek (less occupancy of space currently occupied by PREP's administrative offices) with a corresponding reduction in rent in an agreed upon amount based on square footage to be vacated by PREP plus Ivy Creek "common area" square footage "partially vacated" by PREP to the extent such common area space will be used by Albemarle, calculated as a percentage of total use. See item 2.
2. For the Fiscal Years 2017, 2018, and 2019, PREP's rent for use of Ivy Creek shall continue to be calculated based on a price per square foot. The price per square foot is based on the annual debt payment to be made by Albemarle on the Ivy Creek facility, which varies in each of the remaining three years.¹ The rental price per square foot for FY2017 is \$11.03.² The total square footage to be vacated by PREP will be 3,746.60 square feet.³ At the \$11.03 per square foot rental cost, PREP's rent for FY17 shall be reduced by \$41,325.00.⁴
3. The new lease will provide for a term to end June 30, 2026 without any early termination provision through June 30, 2021, and with provision for either party to terminate the lease as of June 30 of any year thereafter provided the party seeking termination provides the other party with a minimum of two (2) years written notice in advance of the termination date. The lease will further provide for a renewal provision similar to the current lease. The parties will agree on a rental rate per square foot for the years FY20 through FY25. Albemarle will initiate this discussion by proposing a rental rate per square foot for those lease

¹ Albemarle's debt payment for FY17 is \$168,074.53; in FY2018 it will be \$160,472.05; and in FY2019 it will be \$152,869.57.

² The total square footage of the Ivy Creek facility is 15,232 square feet. The rent per square foot of \$11.03 for FY17 is determined by dividing 168,074.53 by 15,232. Applying the same formula for FY18 and FY19 yields a square foot rental price of \$10.54 and \$10.04 for those respective years.

³ PREP will completely vacate the all of the administrative office space, which is 3074 total square feet, less a mechanical room space of 234 square feet, resulting in a total vacation of administrative office space of 2840 square feet. PREP will share certain common areas with Albemarle in the Ivy Creek school building as follows: gymnasium, two gymnasium bathrooms, mechanical room and kitchen. The total square footage of these common area spaces is 3022 square feet. See the attached spreadsheet. Assuming Albemarle will occupy and use these common area spaces 30% of the time, PREP will effectively vacate 30% of the 3022 square feet of common area space, or 906.6 square feet. As a consequence of its move, PREP will be vacating a total of 3746.60 square feet (2840 + 906.6 = 3746.60).

⁴ $3746.60 \times 11.03 = 41,325.00$

TIMBERLAKE, SMITH, THOMAS & MOSES, P.C.

John C. Blair, II, Esq.
Senior Assistant County Attorney
Albemarle County
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years.

4. Albemarle will provide PREP with a one-time \$5,000.00 technology support payment to assist PREP with its technology costs associated with the move to new space. Albemarle will make this payment by no later than July 1, 2016.
5. Albemarle will elect to either assume responsibility for moving PREP to its new space or the reasonable costs incurred by PREP to accomplish the move.
6. Albemarle shall take possession of and commence occupancy of the administrative office space on July 1, 2016. PREP shall attempt to fully vacate the administrative office space by July 1, 2016. If PREP is unable to vacate the administrative office space by July 1, 2016, Albemarle shall have the right to store any PREP personal property at an offsite facility until July 31, 2016. Albemarle shall store PREP's personal property at an offsite facility at no charge to PREP from July 1, 2016 to July 31, 2016.
7. Based on the respective percentage use of Ivy Creek by PREP and Albemarle, the parties will agree to share routine repairs and maintenance costs, landscaping costs, and insurance costs, as those costs are described and previously exclusively borne by PREP under the terms of the existing lease.

Once you have had an opportunity to review this with your client, please let me know as soon as possible if we have agreement on the essential terms of PREP's move. I look forward to hearing from you.

Very truly yours,



G. Rodney Young, II

GRY:pd
Attachment

cc: Elizabeth Hutchins, PREP Joint Board Chair
Dr. Toni Elitharp, PREP Executive Director