

**SITE LEASE**

This Site lease ("**Site Lease**") dated March \_\_, 2023 ("**Effective Date**"), is made and entered into by and between the **Piedmont Unified School District**, as lessor ("**District**"), and **Kevin M. Sullivan & Associates, Inc.**, as lessee ("**Contractor**") (together, the "**Parties**").

**WHEREAS**, the District currently owns a parcel or parcels of land located at:

<b>School Site(s) or Site(s)</b>	<b>Address</b>
Piedmont Middle School	740 Magnolia Avenue, Piedmont, CA 94611
Piedmont High School	800 Magnolia Avenue, Piedmont, CA 94611

and as more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference ("**School Site(s) or Site(s)**"); and

**WHEREAS**, the District desires to provide for the construction of HVAC retrofit work at both school sites. ("**Project(s)**"); and

**WHEREAS**, the District determines that a portion of the Site(s) are adequate to accommodate the Project, as more particularly described in **Exhibit A** ("**Project Site(s)**") attached hereto and incorporated herein by this reference; and

**WHEREAS**, District desires to have the construction of the Project completed and to lease it back, as more particularly described in the facilities lease between the Parties dated as of the Effective Date whereby the Contractor agrees to perform the work of the Project and then lease the Project Site(s) back to the District ("**Facilities Lease**"), which Facilities Lease is incorporated herein by this reference; and

**WHEREAS**, the Board of Education of the District ("**Board**") has determined that it is in the best interests of the District and for the common benefit of the citizens residing in the District to construct the Project by leasing the Project Site(s) to Contractor and by immediately entering into the Facilities Lease under which the Contractor will perform the work of the Project and the District will lease back the Project from Contractor; and

**WHEREAS**, the District further determines that it has entered into this Site Lease and the Facilities Lease pursuant to Education Code section 17406 as the best available and most expeditious means for the District to satisfy its substantial need for the facilities to be provided by the Project and to accommodate and educate District students; and

**WHEREAS**, the District is authorized under Education Code section 17406 to lease the Project Site(s) to Contractor and to have Contractor develop and cause the construction of the Project thereon and lease the Project Site(s) back to the District by means of the Facilities Lease, and the Board has duly authorized the execution and delivery of this Site Lease in order to effectuate the foregoing, based upon a finding that it is in the best interest of the District to do so; and

**WHEREAS**, Contractor as lessee is authorized and competent to lease the Project Site(s) from District and to develop and cause the construction of the Project on the Project Site(s), and has duly authorized the execution and delivery of this Site Lease; and

**WHEREAS**, the Parties have performed all acts, conditions and things required by law to exist, to have happened, and to have been performed prior to and in connection with the execution and entering into this Site Lease, and those conditions precedent do exist, have happened, and have been performed in regular and due time, form, and manner as required by law, and the Parties hereto are now duly authorized to execute and enter into this Site Lease;

**NOW, THEREFORE**, in consideration of the promises and of the mutual agreements and covenants contained herein, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto do hereby agree as follows:

- 1. Definitions.** Unless the context clearly otherwise requires, or expressly stated otherwise, all words and phrases defined in the Facilities Lease, and attachments thereto, shall have the same meaning in this Site Lease.
- 2. Exhibits.** The following Exhibits are attached to and by reference incorporated and made a part of this Site Lease.
  - 2.1. Exhibit A: Site(s) Information and Project(s) Information**
- 3. Lease of the Project Site(s).** The District hereby leases to the Contractor, and the Contractor hereby leases from the District, the Project Site(s), subject only to Permitted Encumbrances, in accordance with the provisions of this Site Lease, to have and to hold for the term of this Site Lease. This Site Lease shall only take effect if the Facilities Lease is executed by the District and Contractor within three (3) days of execution of this Site Lease.
  - 3.1. Work in Phases.** If the Work of the Project is to be performed in phases, then the only areas bound by the terms of this Site Lease are:
    - 3.1.1. As indicated to be within specific phases of the Project and
    - 3.1.2. For which portions of the Lease Payments as provided for in the Facilities Lease are still owing,
- 4. Leaseback of the Project Site(s).** The Parties agree that the Project Site(s) will be leased back to the District pursuant to the Facilities Lease for the term thereof.
- 5. Term.** The term of this Site Lease shall commence as of the Effective Date and shall terminate on the last day of the Term of the Facilities Lease, provided the District has paid to the Contractor, or its assignee, all payments which may be due under the Facilities Lease, and provided this Site Lease has not been terminated pursuant to the termination provisions of the Facilities Lease.
- 6. Payment.** In consideration for the lease of the Project Site(s) by the District to the Contractor and for other good and valuable consideration, the Contractor shall pay One Dollar (\$1.00) per year to the District upon execution of this Site Lease until the expiration or early termination of this Site Lease and/or the Facilities Lease.
- 7. Termination.** This Site Lease may be terminated only as permitted in the Facilities Lease. If the District terminates the Facilities Lease pursuant to the provisions in the Facilities Lease, then this Site Lease shall also terminate.
- 8. Title to Site(s).** During the term of this Site Lease, the District shall hold fee title to the Site(s), including the Project Site(s), and nothing in this Site Lease or the Facilities Lease shall change, in any way, the District's ownership interest in the Site(s).
- 9. Improvements.** Title to all improvements made on the Project Site(s) during the term hereof shall be held, vest and transfer pursuant to the terms of the Facilities Lease.
- 10. No Merger.** The leaseback of the Project Site(s) by the Contractor to the District pursuant to the Facilities

Lease shall not effect or result in a merger of the estates of the District in the Project Site(s), and the Contractor shall continue to have a leasehold estate in the Project Site(s) pursuant to this Site Lease throughout the term hereof.

- 11. Right of Entry.** The District reserves the right for any of its duly authorized representatives to enter upon the Project Site(s) at any reasonable time to inspect the same, provided the District follows all safety precautions required by the Contractor.
- 12. Quiet Enjoyment.** Subject to any rights the District may have under the Facilities Lease (in the absence of an Event of Default) to possession and enjoyment of the Project Site(s), the District hereby covenants and agrees that it will not take any action to prevent the Contractor from having quiet and peaceable possession and enjoyment of the Project Site(s) during the term hereof and will, at the request of the Contractor, to the extent that it may lawfully do so, join in any legal action in which the Contractor asserts its right to such possession and enjoyment.
- 13. Waste.** The Contractor agrees that at all times that it is in possession of the Project Site(s), it will not commit, suffer or permit any waste on the Project Site(s), and that it will not willfully or knowingly use or permit the use of the Project Site(s) for any illegal purpose or act.
- 14. Further Assurances and Corrective Instruments.** The Parties shall, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Project Site(s) hereby leased or intended so to be or for carrying out the expressed intention of this Site Lease and the Facilities Lease.
- 15. Representations of the District.** The District represents, covenants and warrants to the Contractor as follows:
  - 15.1. Due Organization and Existence.** The District is a school district, duly organized and existing under the Constitution and laws of the State of California.
  - 15.2. Authorization.** The District has the full power and authority to enter into, to execute and to deliver this Site Lease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution of this Site Lease.
  - 15.3. No Violations.** To the best of the District's actual knowledge, neither the execution and delivery of this Site Lease nor the Facilities Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the District is now a party or by which the District is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the District, or upon the Project Site(s), except Permitted Encumbrances.
  - 15.4. CEQA Compliance.** The District has complied with all requirements imposed upon it by the California Environmental Quality Act (Public Resource Code Section 21000 *et seq.* ("**CEQA**") in connection with the Project, and no further environmental review of the project is necessary pursuant to CEQA before the construction of the Project may commence.
  - 15.5. No Litigation.** To the best of the District's actual knowledge, there is no pending or threatened action or proceeding before any court or federal, state, municipal, or other government authority or administrative agency which will materially adversely affect the ability of District to perform its obligations under this Site Lease.

**15.6. Condemnation Proceedings.**

15.6.1. District covenants and agrees, but only to the extent that it may lawfully do so, that so long as this Site Lease remains in effect, the District will not seek to exercise the power of eminent domain with respect to the Project so as to cause a full or partial termination of this Site Lease and the Facilities Lease.

15.6.2. If for any reason the foregoing covenant is determined to be unenforceable or in some way invalid, or if District should fail or refuse to abide by such covenant, then, to the extent they may lawfully do so, the Parties agree that the financial interest of Contractor shall be as indicated in the Facilities Lease.

**15.7. Use and Zoning.** To the best of the District's actual knowledge, the Project Site(s) is properly zoned for its intended purpose and the use or activities contemplated by this Site Lease will not conflict with local, state or federal law.

**15.8. Taxes.** To the best of the District's actual knowledge, all taxes and assessments are paid current and such taxes and assessments will continue to be paid to the extent that the District is not exempt.

**15.9. Hazardous Materials.** District is not currently aware of any contamination to the Project Site(s) by Hazardous Materials, except for Hazardous Materials of which District has already informed Contractor. If District becomes aware of any act or circumstance which would change or render this representation incorrect, in whole or in part, District will give immediate written notice of such changed fact or circumstance to Contractor.

**16. Representations of the Contractor.** The Contractor represents, covenants and warrants to the District as follows:

**16.1. Due Organization and Existence.** The Contractor is a California corporation licensed to provide such services in the state of California, duly organized and existing under the laws of the State of California, has power to enter into this Site Lease and the Facilities Lease; is possessed of full power to lease, leaseback, and hold real and personal property and has duly authorized the execution and delivery of all of the aforesaid agreements.

**16.2. Authorization.** The Contractor has the full power and authority to enter into, to execute and to deliver this Site Lease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution of this Site Lease.

**16.3. No Violations.** Neither the execution and delivery of this Site Lease or the Facilities Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Contractor is now a party or by which the Contractor is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the Contractor, or upon the Project Site(s), except for Permitted Encumbrances.

**16.4. No Bankruptcy.** Contractor is not now nor has it ever been in bankruptcy or receivership.

**16.5. No Litigation.** There is no pending or, to the knowledge of Contractor, threatened action or proceeding before any court or administrative agency which will materially adversely affect the ability of Contractor to perform its obligations under this Site Lease or the Facilities Lease.

**17. Insurance and Indemnity.** The Contractor and the District shall comply with the insurance requirements and the indemnity requirements as indicated in the Facilities Lease.

**18. Assignment and Subleasing.** This Site Lease may be assigned and/or the Project Site(s) subleased, as a whole or in part, by the Contractor only upon the prior written consent of the District to such assignment or sublease, which shall not be unreasonably withheld.

**19. Restrictions on District.** The District agrees that it will not mortgage, sell, encumber, assign, transfer or convey the Project Site(s) or any portion thereof during the term of this Site Lease in any way that would interfere with or diminish Contractor's interests indicated in this Site Lease.

**20. Liens and Further Encumbrances.** Contractor agrees to keep the Project Site(s) and every part thereof free and clear of any and all encumbrances and/or liens, including without limitation, pledges, charges, encumbrances, claims, mechanic liens and/or other liens for or arising out of or in connection with work or labor done, services performed, or materials or appliances used or furnished for or in connection with the Project Site(s) or the Project. Pursuant to the Facilities Lease, Contractor further agrees to pay promptly and fully and discharge any and all claims on which any encumbrance and/or lien may or could be based, and to save and hold District free and harmless from any and all such liens, mortgages, and claims of liens and suits or other proceedings pertaining thereto. This subsection does not apply to Permitted Encumbrances.

**21. Notices.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed to have been received as indicated below and to the parties indicated below.

**21.1.** If notice is given by personal delivery thereof, it shall be considered delivered on the day of delivery.

**21.2.** If notice is given by overnight delivery service, it shall be considered delivered on (1) day after date deposited, as indicated by the delivery service.

**If to District:**  
**Piedmont Unified School District**  
760 Magnolia Drive  
Piedmont, CA 94611  
ATTN: Donald Evans, Ed.D

**With a copy to:**  
Orbach Huff & Henderson LLP  
6200 Stoneridge Mall Rd., Ste. 225  
Pleasanton, CA 94588  
ATTN: Glenn Gould, Esq.

**If to Contractor:**  
**Kevin M. Sullivan & Associates**  
431 N. Buchanan Circle, Ste.2  
Pacheco, CA 94553  
ATTN: Kevin Sullivan

**With a copy to:**  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, CA 9\_\_\_\_\_  
ATTN: \_\_\_\_\_

The Contractor and the District, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent.

**22. Binding Effect.** This Site Lease shall inure to the benefit of and shall be binding upon the Contractor and the District and their respective successors and assigns.

**23. No Additional Waiver Implied by One Waiver.** In the event any agreement contained in this Site Lease should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive future compliance with any term hereof or any other breach hereunder.

**24. Severability.** In the event any provision of this Site Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof,

unless elimination of such invalid provision materially alters the rights and obligations embodied in this Site Lease or the Facilities Lease.

- 25. Amendments, Changes and Modifications.** Except as to the termination rights of both Parties as indicated in the Facilities Lease, this Site Lease may not be amended, changed, modified, altered or terminated without the written agreement of both Parties hereto.
- 26. Execution in Counterparts.** This Site Lease may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.
- 27. Contractor and District Representatives.** Whenever under the provisions of this Site Lease approval by the Contractor or the District is required, or the Contractor or the District is required to take some action at the request of the other, such approval or such request shall be given for the Contractor by the Contractor Representative and for the District by the District Representative, and any party hereto shall be authorized to rely upon any such approval or request.
- 28. Applicable Law.** This Site Lease shall be governed by and construed in accordance with the laws of the State of California, and venue shall be in the County within which the Site(s) is located.
- 29. Attorney's Fees.** If either party brings an action or proceeding involving the Site(s) or to enforce the terms of this Site Lease or to declare rights hereunder, each party shall bear the cost of its own attorneys' fees.
- 30. Captions.** The captions or headings in this Site Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Site Lease.
- 31. Prior Agreements.** This Site Lease and the corresponding Facilities Lease collectively contain all of the agreements of the Parties hereto with respect to any matter covered or mentioned in this Site Lease and no prior agreements or understanding pertaining to any such matter shall be effective for any purpose.
- 32. Further Assurances.** Parties shall promptly execute and deliver all documents and instruments reasonably requested to give effect to the provisions of this Site Lease.
- 33. Recitals Incorporated.** The Recitals set forth at the beginning of this Site Lease are hereby incorporated into its terms and provisions by this reference.
- 34. Time of the Essence.** Time is of the essence with respect to each of the terms, covenants, and conditions of this Site Lease.
- 35. Force Majeure.** A party shall be excused from the performance of any obligation imposed in this Site Lease as indicated in the Facilities Lease.
- 36. Interpretation.** None of the Parties hereto, nor their respective counsel, shall be deemed the drafters of this Site Lease or the Facilities Lease for purposes of construing the provisions of each. The language in all parts of this Site Lease shall in all cases be construed according to its fair meaning, not strictly for or against any of the Parties hereto.

**IN WITNESS WHEREOF**, the Parties have accepted and agreed to this Site Lease, as of the Effective Date, and have directed and authorized their respective officers to execute this Site Lease:

**Piedmont Unified School District**

**Kevin M. Sullivan & Associates**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

Print Title: \_\_\_\_\_

**EXHIBIT A  
TO SITE LEASE**

**(IDENTICAL TO EXHIBIT A TO THE FACILITIES LEASE)**



**FACILITIES LEASE**

This Facilities lease (“**Facilities Lease**”) dated March \_\_, 2023 (“**Effective Date**”), is made and entered into by and between the **Piedmont Unified School District**, as lessor (“**District**”), and **Kevin M. Sullivan & Associates, Inc.**, as lessee (“**Contractor**”) (together, the “**Parties**”).

**WHEREAS**, the District currently owns a parcel or parcels of land located at:

<b>School Site(s) or Site(s)</b>	<b>Address</b>
Piedmont Middle School	740 Magnolia Avenue, Piedmont, CA 94611
Piedmont High School	800 Magnolia Avenue, Piedmont, CA 94611

and as more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference (“**School Site(s) or Site(s)**”); and

**WHEREAS**, the District desires to provide for the construction of **@ProjectName** (“**Project (s)**”); and

**WHEREAS**, the District has determined that a portion of the Site(s) are adequate to accommodate the Project, as more particularly described in **Exhibit A** (“**Project Site(s)**”) attached hereto and incorporated herein by this reference; and

**WHEREAS**, District and Contractor have executed a site lease at the same time as this Facilities Lease whereby the District is leasing the Project Site(s) to the Contractor (“**Site Lease**”); and

**WHEREAS**, Contractor represents that it has the expertise and experience to perform the services set forth in this Facilities Lease; and

**WHEREAS**, the District is authorized under Section 17406 of the Education Code of the State of California to lease the Project Site(s) to Contractor and to have Contractor develop and construct the Project on the Project Site(s) and to lease back to the District the Project Site(s) and the Project, and has duly authorized the execution and delivery of this Facilities Lease; and

**WHEREAS**, Contractor is authorized to lease the Project Site(s) as lessee and to develop the Project and to have the Project constructed on the Project Site(s) and to lease the Project and the Project Site(s) back to the District, and has duly authorized the execution and delivery of this Facilities Lease; and

**WHEREAS**, the Board of Education of the District (the “**Board**”) has determined that it is in the best interests of the District and for the common benefit of the citizens residing in the District to construct the Project by leasing the Project Site(s) to Contractor and by simultaneously entering into this Facilities Lease under which the District will lease back the Project Site(s) and the Project from Contractor and make Lease Payments as indicated in **Exhibit C** attached hereto and incorporated herein by reference; and

**WHEREAS**, the Parties have performed all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and entering into of this Facilities Lease and all those conditions precedent do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the Parties hereto are now duly authorized to execute and enter into this Facilities Lease; and

**WHEREAS**, the District further acknowledges and agrees that it has entered into the Site Lease and the Facilities Lease pursuant to Education Code Section 17406 as the best available and most expeditious means for the District to satisfy its substantial need for the facilities to be provided by the Project and to accommodate and educate District students and to utilize its facilities proceeds expeditiously.

**NOW, THEREFORE**, in consideration of the above recitals and of the mutual covenants hereinafter contained, the Parties hereto do hereby agree as follows:

**1. Definitions.** In addition to the terms and entities defined above or subsequent provisions defined herein, and unless the context otherwise requires, or unless expressly stated otherwise, the terms defined in this section shall, for all purposes of this Facilities Lease, have the meanings herein specified.

**1.1. "Contractor" or "Lessor"** means **Kevin M. Sullivan & Associates**, a Corporation, organized and existing under the laws of the State of California, and its successors and assigns.

**1.2. "Contractor's Representative"** means the Managing Member of Contractor, or any person authorized to act on behalf of Contractor under or with respect to this Facilities Lease.

**1.3. "Contract Documents"** are defined in **Exhibit D** to this Facilities Lease.

**1.4. "District" or "Lessee"** means the **Piedmont Unified School District**, a school district duly organized and existing under the laws of the State of California.

**1.5. "District Representative"** means the Superintendent of the District, or any other person authorized by the Board of Trustees of the District to act on behalf of the District under or with respect to this Facilities Lease.

**1.6. "Permitted Encumbrances"** means, as of any particular time:

1.6.1. Liens for general and valorem taxes and assessments, if any, not then delinquent, or which the District may permit to remain unpaid;

1.6.2. The Site Lease;

1.6.3. This Facilities Lease,

1.6.4. Easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions which exist of record as of the date of this Facilities Lease.

1.6.5. Easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions established following the date of recordation of this Facilities Lease and to which Contractor and the District consent in writing which will not impair or impede the operation of the Project Site(s); and

**2. Exhibits.** The following Exhibits are attached to and by reference incorporated and made a part of this Facilities Lease ("Exhibit(s)"):

**2.1. Exhibit A: Site(s) Information and Project(s) Information**

**2.2. Exhibit B: [RESERVED].**

**2.3. Exhibit C: Guaranteed Project Cost and Other Project Cost(s), Funding, and Payment Provisions for Each of the Leased Project Site(s):** A detailed description of the Guaranteed Project Cost and the provisions related to the payment of that amount by the District to the Contractor.

**2.4. Exhibit D: General Construction Provisions:** The provisions generally describing the Project's construction.

**2.5. Exhibit E: Memorandum of Commencement Date for the Facilities Lease for Each of the Leased Project Site(s):** The Memorandum which will memorialize the commencement and expiration dates of the Term.

**2.6. Exhibit F: Construction Schedules for each of the Project Site(s):** The Construction Schedule(s) shall be submitted in computer generated network format and shall be organized by Activity Codes representing the Contractor's intended sequencing of the Work, and with time scaled network diagrams of activities. The Preliminary Construction Schedule(s) shall include activities such as mobilization, preparation of submittals, specified review periods, procurement items, fabrication items, milestones, and all detailed construction activities.

**2.7. Exhibit G: Schedule(s) of Values for Each of the Project Site(s) [NOT USED]**

**2.8. Exhibit H: Subcontractor Procurement Process**

**2.9. Exhibit I: Certificates and Bonds to Lease-Leaseback Documents**

**2.10. Exhibit J: Plans, Technical Specifications, and Drawings**

### **3. Contract Documents / Order of Precedence**

**3.1.** Questions concerning the intent, precedence, or meaning of the Contract Documents, including the Drawings or Specifications, shall be submitted to the District for interpretation. Inconsistencies in the Contract Documents shall be resolved by giving precedence in the following order:

- 3.1.1. District-approved modifications, beginning with the most recent (if any);
- 3.1.2. Exhibit K: Revisions to Contract Documents;
- 3.1.3. Exhibit D: General Construction Provisions ;
- 3.1.4. Facilities Lease;
- 3.1.5. Site Lease;
- 3.1.6. Exhibit C: GPC and Other Project Costs;
- 3.1.7. Remaining Exhibits to the Facilities Lease;
- 3.1.8. Division 1 Documents (Documents beginning with "01");
- 3.1.9. Division 2 through Division 49 documents (Technical Specifications);
- 3.1.10. Figured dimensions;
- 3.1.11. Large-scale drawings; and
- 3.1.12. Small-scale drawings.

In case of conflict, the greater quantity and/or higher standard of workmanship shall apply unless the District expressly states in writing (e.g., via a Change Order) accepting a lesser quantity or lower quality of workmanship and the Contract Price is adjusted accordingly. The decision of the District in the matter shall be final.

**3.2. Integration / Modification.** The Contract Documents and any documents specifically incorporated by reference are completely integrated as the complete and exclusive statement of the terms of the Agreement. This Facilities Lease and Site Lease supersedes all previous contracts, agreements, and / or communications, both oral and written, and constitutes the entire understanding of the District and Contractor. No extrinsic evidence whatsoever shall be admissible or used to explain or supplement the terms of the Contract, Contract Documents, or any items incorporated by reference. No changes, amendments or alterations shall be effective unless in writing, signed by both Parties, and unless provided otherwise by the Contract Documents.

#### 4. Lease of Project and Project Site(s).

4.1. Contractor hereby leases the Project and the Project Site(s) to the District, and the District hereby leases said Project and Project Site(s) from Contractor upon the terms and conditions set forth in this Facilities Lease.

4.2. The leasing by Contractor to the District of the Project Site(s) shall not affect or result in a merger of the District's leasehold estate pursuant to this Facilities Lease and its fee estate as lessor under the Site Lease. Contractor shall continue to have and hold a leasehold estate in the Project Site(s) pursuant to the Site Lease throughout the term thereof and the term of this Facilities Lease.

4.3. As to the Project Site(s), this Facilities Lease shall be deemed and constitute a sublease.

#### 4.4. No Disruption to Educational Activities

4.4.1. **Occupied School Site(s).** The Contractor acknowledges that portions of the Project Site(s) shall, at all times, be occupied by the District as an operating school. The Parties have agreed to a plan and process whereby the Contractor's activities shall be kept separate from the operating school even though the operating school is within the Project Site(s). The specifics of the plan and process are as indicated in **Exhibit K**.

4.4.2. **Work During Instructional Time.** Contractor affirms that Work may be performed during ongoing instruction in existing facilities. If so, Contractor agrees to cooperate to the best of its ability to minimize any disruption to the School Site(s) up to, and including, rescheduling specific work activities, at no additional cost to the District.

4.4.3. **Student Testing.** Contractor shall, at no additional cost to the District and at the District's request, coordinate its Work to not disturb District students when students at the School Site(s) are taking State-required tests. No extensions to the Contract Time shall be accommodated as a result of State-required tests, and Contractor shall account for State-required testing when preparing the Construction Schedule(s).

#### 5. Term.

5.1. **Facilities Lease is Legally Binding.** This Facilities Lease is legally binding on the Parties upon execution by the Parties and the District Board's approval of this Facilities Lease. The Term of this Facilities Lease for the purposes of District's occupancy shall commence after the Parties have satisfied all preconditions for the Parties execution of the Memorandum of Commencement Date as set forth in "Timing of Lease Payments" in **Exhibit C**, and then on the earlier of the following two (2) events ("**Commencement Date**"), and shall terminate **twelve (12) months** after the Commencement Date (the "**Term**"):

5.1.1. The date the District takes Beneficial Occupancy of the entire Project; or

5.1.2. The date of Project Completion, as defined in **Exhibit D** to this Facilities Lease.

5.2. On the Commencement Date, the Parties shall execute the Memorandum of Commencement Date attached hereto as **Exhibit E** to memorialize the commencement and expiration dates of the Term. Notwithstanding this Term, the Parties hereby acknowledge that each has obligations, duties, and rights under this Facilities Lease that exist upon execution of this Facilities Lease and prior to the Commencement Date of the Term.

5.3. The Parties expressly agree that the District's obligation to make Tenant Improvement Payments for Work performed on the Project arises upon the Effective date of this Facilities Lease, and shall be made pursuant to

the "Payment of the Guaranteed Project Cost" Provisions as indicated in **Exhibit C**.

**5.4.** The Parties expressly agree that the District's obligation to make Lease Payments, notwithstanding the Commencement Date, is conditioned on the Contractor completing and satisfying all conditions indicated in **Exhibit C**, that are required prior to the District being obligated to make the first Lease Payment.

**5.5.** The Term may be extended or shortened upon the occurrence of the earliest of any of the following events, which shall constitute the end of the Term:

- 5.5.1. An Event of Default by District as defined herein and Contractor's election to terminate this Facilities Lease as permitted herein, or
- 5.5.2. An Event of Default by Contractor as defined herein and District's election to terminate this Facilities Lease as permitted herein, or
- 5.5.3. A third-party taking of the Project under Eminent Domain, only if the Term is ended as indicated more specifically herein.
- 5.5.4. Damage or destruction of the Project, only if the Term is ended as indicated more specifically herein.

**6. Payment.** In consideration for the lease of the Project Site(s) by the Contractor back to the District and for other good and valuable consideration, the District shall make the Tenant Improvements Payments and Lease Payments pursuant to the "Payment of the Guaranteed Project Cost" Provisions as indicated in **Exhibit C**.

**7. Termination.**

**7.1. Termination Due to Default of the Contractor.**

7.1.1. The District, in its sole discretion, may terminate the Facilities Lease and/or terminate the Contractor's right to perform the work of the Contract based upon Contractor's default.

7.1.2. Default of Contractor includes, without limitation:

- 7.1.2.1. Contractor refuses or fails to execute the Work or any separable part thereof with sufficient diligence as will ensure its completion within the time specified or any extension thereof, or
- 7.1.2.2. Contractor fails to complete said Work within the time specified or any extension thereof, or
- 7.1.2.3. Contractor persistently fails or refuses to perform Work or provide material of sufficient quality as to be in compliance with Contract Documents; or
- 7.1.2.4. Contractor files a petition for relief as a debtor, or a petition is filed against the Contractor without its consent, and the petition is not dismissed within sixty (60) days; or
- 7.1.2.5. Contractor makes a general assignment for the benefit of its creditors, or a receiver is appointed on account of its insolvency; or
- 7.1.2.6. Contractor persistently or repeatedly refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workers or proper materials to complete the Work in the time specified; or

7.1.2.7. Contractor fails to make prompt payment to Subcontractors, or for material, or for labor; or

7.1.2.8. Contractor persistently disregards laws, or ordinances, or instructions of District; or

7.1.2.9. Contractor fails to supply labor, including that of Subcontractors, that can work in harmony with all other elements of labor employed or to be employed on the Work; or

7.1.2.10. Contractor or its Subcontractor(s) is/are otherwise in breach, default, or in substantial violation of any provision of this Contract.

7.1.3. Upon termination, District may immediately serve written notice of tender upon Surety whereby Surety shall have the right to takeover and perform this Contract only if Surety:

7.1.3.1. Within three (3) days after service upon it of the notice of tender, gives District written notice of Surety's intention to takeover and perform this Contract; and

7.1.3.2. Commences performance of the Contract within seven (7) days from date of serving of its notice to District.

7.1.4. If Surety fails to notify District or begin performance as indicated herein, District may takeover the Work and execute the Work to completion by any method it may deem advisable at the expense of Contractor and/or its Surety. Contractor and/or its Surety shall be liable to District for any excess cost or other damages the District incurs thereby. Time is of the essence in the Contract. If the District takes over the Work as herein provided, District may, without liability for so doing, take possession of and utilize in completing the Work such materials, appliances, plan, and other property belonging to Contractor as may be on the Site of the Work, in storage, or previously paid for.

**7.2. Termination Due to Default by District.** If District defaults pursuant to the provision(s) of the Facilities Lease, the Contractor, or its assignee, will have the right, for the then remaining term of the Site Lease, to:

7.2.1. Take possession of the Project Site(s);

7.2.2. If it deems it appropriate, cause appraisal of the Project Site(s) and a study of the then reasonable uses thereof; and

7.2.3. Relet the Project Site(s).

**7.3. Termination of Contractor for Convenience.** The District in its sole discretion may terminate for convenience this Facilities Lease upon three (3) days written notice to the Contractor. In case of a termination for convenience, the Contractor shall have no claims against the District except the actual portion of the Guaranteed Project Cost expended for labor, materials, and services performed that is unpaid and can be documented through timesheets, invoices, receipts, or otherwise, up to and until the date of termination, plus necessary and reasonable documented demobilization costs.

**7.4. Lease Terminable Only as Set Forth Herein.** Except as otherwise expressly provided in this Facilities Lease and the "Termination and Suspension and Scope Reduction" section of **Exhibit D** to this Facilities Lease, this Facilities Lease shall not terminate, nor shall District have any right to terminate this Facilities Lease or be entitled to the abatement of any all necessary payments pursuant to the "Payment of Guaranteed Project Cost" Provisions as indicated in **Exhibit C** or any reduction thereof. The obligations hereunder of District shall not be otherwise affected by reason of any damage to or destruction of all or any part of the Project; the taking of the Project or any portion thereof by condemnation or otherwise; the prohibition, limitation or restriction of District's use of the Project; the interference with such use by any private person or Contractor;

the District's acquisition of the ownership of the Project (other than pursuant to an express provision of this Facilities Lease); any present or future law to the contrary notwithstanding. It is the intention of the Parties hereto that all necessary payments pursuant to the "Payment of Guaranteed Project Cost Provisions" as indicated in **Exhibit C** shall continue to be payable in all events, and the obligations of the District hereunder shall continue unaffected unless the requirement to pay or perform the same shall be terminated or modified pursuant to an express provision of this Facilities Lease.

**7.5.** Nothing contained herein shall be deemed a waiver by the District of any rights that it may have to bring a separate action with respect to any Event of Default by Contractor hereunder or under any other agreement to recover the costs and expenses associated with that action. The District covenants and agrees that it will remain obligated under this Facilities Lease in accordance with its terms.

**7.6.** Following Project Completion, and to the extent applicable, the District will not take any action to terminate, rescind or avoid this Facilities Lease, notwithstanding the bankruptcy, insolvency, reorganization, composition, readjustment, liquidation, dissolution, winding-up or other proceeding affecting Contractor or any assignee of Contractor in any such proceeding, and notwithstanding any action with respect to this Facilities Lease which may be taken by any trustee or receiver of Contractor or of any assignee of Contractor in any such proceeding or by any court in any such proceeding. Following Project Completion, except as otherwise expressly provided in this Facilities Lease, District waives all rights now or hereafter conferred by law to quit, terminate or surrender this Facilities Lease or the Project or any part thereof.

**7.7.** District acknowledges that Contractor may assign an interest in some or all of the necessary payments pursuant to the "Payment of Guaranteed Project Cost Provisions" as indicated in **Exhibit C** to a lender in order to obtain financing for the cost of constructing the Project and that the lender may rely on the foregoing covenants and provisions in connection with such financing.

## **8. Title.**

**8.1.** During the Term of this Facilities Lease, the District shall hold fee title to the School Site(s), including the Project Site(s), and nothing in this Facilities Lease or the Site Lease shall change, in any way, the District's ownership interest.

**8.2.** During the Term of this Facilities Lease, Contractor shall have a leasehold interest in the Project Site(s) pursuant to the Site Lease.

**8.3.** During the Term of this Facilities Lease, the Contractor shall hold title to the Project improvements provided by Contractor which comprise fixtures, repairs, replacements or modifications thereto.

**8.4.** If the District makes all necessary payments under the Guaranteed Project Cost Provisions indicated in **Exhibit C**, all right, title and interest of Contractor, its assigns and successors in interest in and to the Project and the Project Site(s) shall be transferred to and vested in the District at the end of the Term. Title shall be transferred to and vested in the District hereunder without the necessity for any further instrument of transfer; provided, however, that Contractor agrees to execute any instrument requested by District to memorialize the termination of this Facilities Lease and transfer of title to the Project.

**9. Quiet Enjoyment.** Upon District's possession of the Project, Contractor shall thereafter provide the District with quiet use and enjoyment of the Project, and the District shall during the Term peaceably and quietly have and hold and enjoy the Project, without suit, trouble or hindrance from Contractor, except as otherwise may be set forth in this Facilities Lease. Contractor will, at the request of the District and at Contractor's cost, join in any legal action in which the District asserts its right to such possession and enjoyment to the extent Contractor may lawfully do so. Notwithstanding the foregoing, Contractor shall have the right to inspect the Project and the Project Site(s) as provided herein.

**10. Representations of the District.** The District represents, covenants and warrants to the Contractor as follows:

**10.1. Due Organization and Existence.** The District is a school district, duly organized and existing under the Constitution and laws of the State of California.

**10.2. Authorization.** The District has the full power and authority to enter into, to execute and to deliver this Facilities Lease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution of this Facilities Lease.

**10.3. No Violations.** Neither the execution and delivery of this Facilities Lease nor the Site Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the District is now a party or by which the District is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the District, or upon the Project Site(s), except Permitted Encumbrances

**10.4. CEQA Compliance.** The District has complied with all requirements imposed upon it by the California Environmental Quality Act (Public Resource Code Section 21000 *et seq.* ("**CEQA**") in connection with the Project, and no further environmental review of the project is necessary pursuant to CEQA before the construction of the Project may commence. Contractor shall comply will all applicable mitigation measures, if any, adopted by any public agency with respect to this Project pursuant to the California Environmental Quality Act. (Public Resources Code section 21000 *et. seq.*).

**10.5. No Litigation.** Except for a validation action related to this transaction that the District may file, there is no pending or, to the knowledge of District, threatened action or proceeding before any court or federal, state, municipal, or other government authority or administrative agency which will materially adversely affect the ability of District to perform its obligations under this Facilities Lease.

**10.6. Condemnation Proceedings.**

10.6.1. District covenants and agrees, but only to the extent that it may lawfully do so, that so long as this Facilities Lease remains in effect, the District will not seek to exercise the power of eminent domain with respect to the Project so as to cause a full or partial termination of this Facilities Lease.

10.6.2. If for any reason the foregoing covenant is determined to be unenforceable or in some way invalid, or if District should fail or refuse to abide by such covenant, then, to the extent it may lawfully do so, District agrees that the financial interest of Contractor shall be as indicated in Section 6.1 of this Facilities Lease.

**11. Representations of the Contractor.** The Contractor represents, covenants and warrants to the District as follows:

**11.1. Due Organization and Existence.** The Contractor is a California corporation licensed to provide such services in the state of California, duly organized and existing under the laws of the State of California, has the power to enter into this Facilities Lease and the Site Lease; is possessed of full power to lease, lease back, and hold real and personal property and has duly authorized the execution and delivery of all of the aforesaid agreements.

**11.2. Authorization.** Contractor has the full power and authority to enter into, execute and deliver this



Facilities Lease; to perform all of its duties and obligations hereunder; and has duly authorized the execution of this Facilities Lease.

**11.3. No Violations.** Neither the execution and delivery of this Facilities Lease and the Site Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which Contractor is now a party or by which Contractor is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of Contractor, or upon the Project Site(s), except Permitted Encumbrances.

**11.4. No Bankruptcy.** Contractor is not now and has never been in bankruptcy or receivership.

**11.5. No Litigation.** There is no pending or, to the knowledge of Contractor, threatened action or proceeding before any court or administrative agency which will materially adversely affect the ability of Contractor to perform its obligations under this Facilities Lease.

**11.6. No Encumbrances.** Contractor shall not pledge any District payments of any kind, related to the Site Lease, this Facilities Lease, or in any way derived from the Project Site(s), and shall not mortgage or encumber the Project Site(s), except as may be specifically permitted pursuant to the provisions of this Facilities Lease related to Contractor's financing the construction of the Project.

**11.7. Continued Existence.** Contractor shall not voluntarily commence any act intended to dissolve or terminate the legal existence of Contractor, at or before the latest of the following:

11.7.1. Eighteen (18) months following Project Completion,

11.7.2. After dismissal and final resolution of any and all disputes between the Parties and/or any third-party claims related, in any way, to the Project,

Contractor shall give District sixty (60) days written notice prior to dissolving or terminating the legal existence of Contractor.

**11.8. Infectious Disease.** Contractor shall comply with all provisions related to Infectious Disease as indicated in **Exhibit D**.

## **12. Preliminary Services [IF APPLICABLE]**

**12.1.** The terms and conditions pertaining to the performance of Preliminary Services, if any, under this Facilities Lease, are set forth in the Agreement for Preliminary Services (**Exhibit L**) to this Facilities Lease. To the extent any terms and conditions set forth therein conflict with terms and conditions in the body of the Facilities Lease, the terms and conditions contained in **Exhibit L** shall control regarding the performance of Preliminary Services.

**12.2.** The payment provisions for the Preliminary Services, if any, under this Facilities Lease, are set forth in **Exhibit C** and **Exhibit L** to this Facilities Lease.

**12.3.** Notwithstanding any provision contained in this Facilities Lease, Contractor shall not be required to perform any Preliminary Services for which a contractor is required to be licensed pursuant to Article 5 (commencing with Section 7065) of Chapter 9, Division 3 of the Business and Professions Code and/or for which DSA approval is required unless and until the District receives DSA approval for the Project.

### 13. Construction of Project

**13.1. Project Site(s) Conditions and Contract Documents.** Contractor acknowledges that it has and will perform certain special services in preparation to construct the Project.

#### 13.2. Construction of Project.

13.2.1. After the District's issuance of a Notice to Proceed, Contractor agrees to cause the Project to be developed, constructed, and installed in accordance with the terms hereof and the Construction Provisions set forth in **Exhibit D**, including those things reasonably inferable in the Construction Provisions as being within the scope of the Project and necessary to produce the stated result even though no mention is made in the Construction Documents.

#### 13.2.2. Contract Time / Construction Schedule.

13.2.2.1. The Construction shall be performed pursuant to the construction schedule(s), attached hereto as **Exhibit F ("Construction Schedule(s))**". The time period between the **Notice to Proceed** for construction of the Project and **Completion** shall be the total Contract time ("**Contract Time**").

13.2.2.2. The Construction Schedule must be approved by the District prior to execution of this Facilities Lease. District and Contractor may, if agreed to in writing, approve changes in the Construction Schedule.

13.2.3. **Schedule of Values.** The Contractor has provided a schedule of values, approved by the District, which attached hereto as **Exhibit G ("Schedule(s) of Values")**". The Schedule of Values must be approved by the District prior to the District's approval of the Contractor's first Application for Tenant Improvement Payment.

#### 13.2.4. Liquidated Damages: [NOT USED]

13.2.5. **Guaranteed Project Cost.** Contractor will cause the Project to be constructed within the Guaranteed Project Cost as set forth and defined in the Guaranteed Project Cost provisions indicated in **Exhibit C** and Contractor will not seek additional compensation from District in excess of that amount.

13.2.6. **Modifications.** If the DSA requires changes to the Contract Documents submitted by District to Contractor, and those changes change the construction costs and/or construction time for the Project, then those changed costs will be handled as a change in the Work pursuant to the provisions of **Exhibit D**.

13.2.7. Contractor shall cooperate with the District's efforts to obtain State funding for the Project by complying with any State requirements as reasonably requested by the District.

#### 13.2.8. Compliance Monitoring and Enforcement by the Department of Industrial Relations.

13.2.8.1. District hereby provides notice of the requirements described in Labor Code section 1771.1, subdivision (a), which states the following:

"A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a

violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.”

13.2.8.2. Contractor acknowledges that, for purposes of Labor Code section 1725.5, this work is a public work to which Labor Code section 1771 applies. Contractor shall comply with Labor Code section 1725.5, including without limitation the registration requirements. Additionally, all “subcontractors” (as defined by Labor Code section 1722.1) shall comply with Labor Code section 1725.5 to be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of the Project. Contractor represents to the District that all “subcontractors” (as defined by Labor Code section 1722.1) are registered pursuant to Labor Code section 1725.5.

13.2.8.3. The Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Contractor shall post job site notices, as prescribed by regulation. Contractor shall comply with all requirements of Labor Code section 1771.4, except the requirements that are exempted by the Labor Commissioner for the Project.

**14. Maintenance.** Following delivery of possession of the Project by Contractor to District, the repair, improvement, replacement and maintenance of the Project and the Project Site(s) shall be at the sole cost and expense and the sole responsibility of the District, subject only to all warranties against defects in materials and workmanship of Contractor as provided in **Exhibit D**. The District shall pay for or otherwise arrange for the payment of the cost of the repair and replacement of the Project resulting from ordinary wear and tear. The District waives the benefits of subsections 1 and 2 of Section 1932 of the California Civil Code, but such waiver shall not limit any of the rights of the District under the terms of this Facilities Lease.

**15. Utilities.** Following delivery of possession of the Project by Contractor to District, the cost and expenses for all utility services, including, but not limited to, electricity, natural gas, telephone, water, sewer, trash removal, cable television, janitorial service, security, heating, water, internet service and all other utilities of any type shall be paid by District.

**16. Taxes and Other Impositions.** All ad valorem real property taxes, special taxes, possessory interest taxes, bonds and special lien assessments or other impositions of any kind with respect to the Project, the Project Site(s) and the improvements thereon, charged to or imposed upon either Contractor or the District or their respective interests or estates in the Project, shall at all times be paid by District. In the event any possessory interest tax is levied on Contractor, its successors and assigns, by virtue of this Facilities Lease or the Site Lease, District shall pay such possessory interest tax directly, if possible, or shall reimburse Contractor, its successors and assigns for the full amount thereof within thirty (30) days after presentation of proof of payment by Contractor.

## **17. Insurance**

**17.1. Contractor’s Insurance.** The Contractor shall comply with the insurance requirements as indicated herein.

17.1.1. **Commercial General Liability and Automobile Liability Insurance.** Contractor shall procure and maintain, during the life of the Project, Commercial General Liability Insurance and Automobile Liability Insurance that shall protect Contractor, District, and the State, from all claims for bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising from operations under the Project. Contractor shall ensure that Products Liability and Completed Operations coverage, Fire Damage Liability, and Any auto including owned and non-

owned, are included within the above policies and at the required limits, or Contractor shall procure and maintain these coverages separately.

17.1.2. **Umbrella Liability Insurance**

17.1.2.1. Contractor shall procure and maintain, during the life of the Contract, an Excess Liability and/or Umbrella Liability Insurance Policy. Any Umbrella Liability Insurance Policy shall protect Contractor, District, State, Construction Manager(s), Program Manager(s), and Architect(s) in the amounts indicated herein, and shall comply with all requirements for Commercial General Liability and Automobile Liability, Employers' Liability Insurance, and Sexual Molestation and Abuse Liability. This coverage shall be provided in a form at least as broad as the Insurance Services Office (ISO) standard form.

17.1.2.2. There shall be no gap between the per occurrence amount of any underlying policy and the start of the coverage under the Umbrella Liability Insurance Policy.

17.1.2.3. Whether this Excess Liability and/or Umbrella Liability Insurance Policy is written on a "follow form" or "stand alone" form, the coverages shall be equal or greater than the Contractor's Commercial General Liability and Automobile Liability, Employers' Liability Insurance, and Sexual Molestation and Abuse Liability with no exclusions that reduce or eliminate coverage items.

17.1.3. **Subcontractor**: Contractor shall require its Subcontractor(s), if any, to procure and maintain Commercial General Liability Insurance, Automobile Liability Insurance, and Umbrella Liability Insurance with minimum limits as agreed to by the District's risk manager.

17.1.4. **Workers' Compensation and Employers' Liability Insurance**

17.1.4.1. In accordance with provisions of section 3700 of the California Labor Code, the Contractor and every Subcontractor shall be required to secure the payment of compensation to its employees.

17.1.4.2. Contractor shall procure and maintain, during the life of the Project, Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees engaged in work under the Project, on/or at the Site of the Project. This coverage shall cover, at a minimum, medical and surgical treatment, disability benefits, rehabilitation therapy, and survivors' death benefits. Contractor shall require its Subcontractor(s), if any, to procure and maintain Workers' Compensation Insurance and Employers' Liability Insurance for all employees of Subcontractor(s). Any class of employee or employees not covered by a Subcontractor's insurance shall be covered by Contractor's insurance. If any class of employee or employees engaged in Work under the Project, on or at the Site of the Project, is not protected under the Workers' Compensation Insurance, Contractor shall provide, or shall cause a Subcontractor to provide, adequate insurance coverage for the protection of any employee(s) not otherwise protected before any of those employee(s) commence work.

17.1.5. **Sexual Molestation and Abuse Liability Insurance**. Contractor shall procure and maintain, during the life of this Contract, sexual molestation and abuse insurance. Contractor shall require its Subcontractor(s), if any, to procure and maintain sexual molestation and abuse insurance for any and all employee(s) of Subcontractor(s). Any class of employee or employees not covered by a Subcontractor's insurance shall be covered by Contractor's insurance. If any class of employee or employees engaged in Work under the Contract, on or at the Site of the Project, are not

covered under the sexual molestation and abuse insurance, Contractor shall provide, or shall cause a Subcontractor to provide, adequate insurance coverage to cover any employee(s) not otherwise covered before any of those employee(s) commence work.

**17.1.6. Contractor's Risk Insurance: Contractor's Risk "All Risk" Insurance (NO Earthquake or Flood).**

17.1.6.1. Contractor (Builder) shall procure and maintain, during the life of the Project, Contractor's Builders Risk (Course of Construction), or similar first party property coverage acceptable to the District, issued on a replacement cost value basis. The cost shall be consistent with the total replacement cost of all insurable Work of the Project included within the Contract Documents.

17.1.6.2. Coverage is to insure against all risks of accidental physical loss and shall include without limitation the perils of vandalism and/or malicious mischief (both without any limitation regarding vacancy or occupancy), sprinkler leakage, civil authority, sonic disturbance, collapse, wind, fire, lightning, and smoke. Coverage shall include debris removal, demolition, increased costs due to enforcement of all applicable ordinances and/or laws in the repair and replacement of damaged and undamaged portions of the property, and reasonable costs for the Architect's and engineering services and expenses required as a result of any insured loss upon the Work and Project, including completed Work and Work in progress, to the full insurable value thereof.

17.1.6.3. **Earthquake and Flood Coverage.** The District may require the Contractor to include coverage for "earthquake(s)" and/or "flood" and Contractor shall provide the price for those additional coverages for the District's consideration prior to including or charging the District for those coverages.

17.1.6.4. Coverage shall be maintained until final payment has been made as provided under the Contract Documents or until no person or entity other than the District has an insurable interest in the property to be covered, whichever is later. This insurance shall cover as insureds the District, Contractor, all Subcontractors of every tier on the Project, and all vendors and suppliers.

17.1.6.5. **Offsite Storage.** Coverage must also be maintained for any materials stored offsite that will be incorporated into the Project.

17.1.6.6. The deductible for this insurance shall be paid by Contractor.

17.1.7. **Professional Liability Insurance.** This insurance shall cover the Contractor and his/her sub-consultant(s) for professional liability in at least the amounts set forth herein below. Additionally, the policy must contain terms or endorsements extending coverage that requires the insurer to defend and indemnify for acts which happen before the effective date of the policy provided the claim is first made during the policy period, coverage to continue through Project Completion plus "tail" coverage for two (2) years thereafter.

17.1.8. **Property of Others Insurance (if not expressly stated as part of above insurance policies).** If equipment and material are stored off-site and are in the Contractor's possession, the Contractor shall procure and maintain, during the storage of equipment and material, insurance coverage acceptable to the District that shall protect Contractor and District from all claims for Project equipment and materials stored off-site that is lost, stolen, or damaged. The District shall be named as a loss payee for this insurance coverage. The insurance coverage shall include a "loss payable endorsement" stating that all amounts payable will be paid as a joint-check to the Contractor and District. If approved in advance by District, this required insurance may be obtained by an "Employee Theft Protection Insurance Policy" or an "Employee Theft Protection Bond."

**17.1.9. Proof of Insurance and Other Requirements: Endorsements and Certificates**

17.1.9.1. Contractor shall not commence Work nor shall it allow any Subcontractor to commence Work under the Project, until Contractor and its Subcontractor(s) have procured all required insurance and Contractor has delivered in duplicate to the District all insurance certificates indicating the required coverages have been obtained, and the District has approved these documents. If the District requests copies of Contractor’s insurance policies and/or endorsements from Contractor, Contractor shall provide them within fourteen (14) days.

17.1.9.2. Endorsements, certificates, and insurance policies shall include the following:

17.1.9.2.1. A clause stating:

“This policy shall not be amended, canceled or modified and the coverage amounts shall not be reduced until notice has been mailed to the District and Construction Manager stating date of amendment, modification, cancellation or reduction. Date of amendment, modification, cancellation or reduction may not be less than thirty (30) days after date of mailing notice.”

17.1.9.2.2. Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.

17.1.9.3. All endorsements, certificates and insurance policies shall state that District, its Board members, employees and agents, and the State of California, Construction Manager(s), Program Manager(s), Inspector(s) and Architect(s) are named additional insureds under all policies except Workers’ Compensation Insurance, Professional Liability Insurance, and Employers’ Liability Insurance. After the Project has reached Completion, the Contractor need only retain the named additional insureds on the Completed Operations Policy.

17.1.9.4. Contractor’s and Subcontractors’ insurance policy(s) shall be primary and non-contributory to any insurance or self-insurance maintained by District, its trustees, employees and/or agents, the State of California, Construction Manager(s), Project Manager(s), Inspector(s), and/or Architect(s).

17.1.9.5. All endorsements, except for Professional Liability, shall waive any right to subrogation against any of the named additional insureds, except Architect.

17.1.9.6. All policies shall be written on an occurrence form, except for Professional Liability which shall be on a claims-made form.

17.1.9.7. All of Contractor’s insurance shall be with **ADMITTED** insurance companies with an A.M. Best rating of no less than **A: VII**. Contractor shall provide documentation to the District demonstrating this rating.

17.1.10. **Insurance Policy Limits.** The limits of insurance shall not be less than the following amounts or as per the District’s standard attached:

<b>Commercial General Liability</b> (Includes: Bodily Injury, Property Damage, Personal &	Combined Single Limit	\$2,000,000
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Advertising Injury, Product Liability and Completed Operations)	General Aggregate Product Liability and Completed Operations	\$4,000,000 \$2,000,000
<b>Automobile Liability – Any Auto</b>	Combined Single Limit <b>NO</b> General Aggregate	\$2,000,000
<b>Excess Liability (Umbrella)</b>		\$6,000,000 per occurrence; \$6,000,000 aggregate
<b>Workers Compensation</b>		Statutory limits pursuant to State law
<b>Employers’ Liability</b>		\$2,000,000 each incident
<b>Sexual Abuse / Molestation</b>		\$1,000,000 each incident; \$2,000,000 policy limit
<b>Contractors Risk (Course of Construction)</b>		Issued for the value and scope of Work indicated herein, until the Project has reached Completion
<b>Property of Others</b>	Combined Single Limit General Aggregate	Issued for the value and scope of Work stored off-site.
<b>Professional Liability, if required by the District and either:</b> - the premium is approved by the District, or - by each subconsultant and/or designer of documents produced by Contractor.		\$1,000,000 per occurrence and annual aggregate

**17.2. District’s Insurance.**

17.2.1. Upon the execution of the Memorandum of Commencement Date, the District will include the facilities constructed as part of the Project to be thereafter a facility that the District is leasing and that will thereafter be covered by the insurance program in which the District currently participates. If requested by Contractor, District shall provide portions of the District’s current insurance documents for the following. At the Contractor’s request, District shall request the District’s insurance administrator to include Contractor as an additional covered party on those policies, but the District will not ensure that the District’s insurance administrator will agree to the request:

- 17.2.1.1. Property Program Liability Coverage
- 17.2.1.2. Interruption of Business / Extra Expense and Rental Value Coverage

**18. Indemnification.**

**18.1. Contractor’s Indemnity Obligation.**

18.1.1. To the furthest extent permitted by California law, Contractor shall indemnify, defend with legal counsel reasonably acceptable to the District, keep and hold harmless the District and its consultants, the Architect and its consultants, the Construction Manager and its consultants, separate contractors, and their respective board members, officers, representatives, contractors, agents, and employees, in both individual and official capacities (“Indemnitees”), against all suits, claims, damages, losses, and expenses, including but not limited to attorney’s fees, caused by, arising out of, resulting from, or incidental to, the performance of the Work by Contractor, its Subcontractors, vendors, or suppliers, including, without limitation, any such suit, claim, damage, loss, or expense attributable to, without limitation, bodily injury,

sickness, disease, death, alleged patent violation or copyright infringement, or to injury to or destruction of tangible property (including damage to the Work itself) including the loss of use resulting therefrom, except to the extent caused by the sole negligence, active negligence, or willful misconduct of the Indemnitees, and/or to any extent that would render these provisions void or unenforceable. This agreement and obligation of Contractor shall not be construed to negate, abridge, or otherwise reduce any right or obligation of indemnity that would otherwise exist as to any party or person described herein. This indemnification, defense, and hold harmless obligation includes, without limitation:

18.1.1.1. Any failure or alleged failure by Contractor to comply with any provision of law, any failure or alleged failure to timely and properly fulfill all of its obligations under the Contract Documents in strict accordance with their terms, and without limitation, any stop payment notice actions or liens, including liens by the California Department of Labor Standards Enforcement.

18.1.1.2. Any claim arising (including protests) from any errors or mistakes in Contractor's documents provided to Subcontractors.

18.1.2. Contractor shall give prompt notice to the District in the event of any injury (including death), loss, or damage included herein. Without limitation of the provisions herein, if Contractor's agreement to indemnify, defend, and hold harmless the Indemnitees as provided herein against liability for damage arising out of bodily injury to persons or damage to property caused by or resulting from the negligence of any of the Indemnitees shall to any extent be or be determined to be void or unenforceable, it is the intention of the parties that these circumstances shall not otherwise affect the validity or enforceability of Contractor's agreement to indemnify, defend, and hold harmless the rest of the Indemnitees, as provided herein, and in the case of any such suits, claims, damages, losses, or expenses caused in part by the default, negligence, or act or omission of Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, and in part by any of the Indemnitees, Contractor shall be and remain fully liable on its agreements and obligations herein to the full extent permitted by law.

18.1.3. In any and all claims against any of the Indemnitees by any employee of Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, Contractor's indemnification obligation herein shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

18.1.4. The defense and indemnification obligations hereunder shall survive the Completion of Work, including the warranty/guarantee period, and/or the termination of the Contract.

## **18.2. District's Indemnity Obligation.**

18.2.1. District shall indemnify, but shall not be obligated to defend, Contractor from and against any claims, damages, expenses or liabilities connected with this Facilities Lease, only:

18.2.1.1. If those claims, damages, expenses or liabilities relate to District's status as a sublessee under this Facilities Lease;

18.2.1.2. To the extent that those claims, damages, expenses or liabilities arise from the negligence or willful acts or omissions of District, its officers, agents or employees; and

18.2.1.3. If those claims, damages, expenses or liabilities are unrelated to District's obligations to pay the Guaranteed Project Cost.



18.2.2. After the Commencement Date, the District shall also indemnify and defend Contractor from and against any claims, damages, expenses or liabilities including third-party tort or contract claims that arise from the District's use of the Facilities and that are not caused by the Contractor's Work on the Project or are not covered by Contractor's warranty(s) or guarantee(s) and.

18.2.3. Under no circumstances does the District's indemnity obligation herein include any obligation to indemnify the Contractor from any claims, damages, expenses or liabilities connected in any way with a third-party's challenge to the validity of the Site Lease and/or the Facilities Lease.

**18.3.** The Parties understand and acknowledge that the indemnity obligations stated herein may be mutual, comparative or contributory depending on the facts of specific circumstances.

## **19. Eminent Domain.**

**19.1. Total Taking After Project Delivery.** If, following delivery of possession of the Project by Contractor to District, all of the Project and the Project Site(s) is taken permanently under the power of eminent domain, the Term shall cease as of the day possession shall be so taken.

19.1.1. The financial interest of Contractor shall be limited to the amount of principal payments pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** that are then due or past due together with all remaining and succeeding principal payments pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** for the remainder of the original Term.

19.1.2. The balance of the award, if any, shall be paid to the District.

**19.2. Total Taking Prior to Project Delivery.** If all of the Project and the Project Site(s) is taken permanently under the power of eminent domain and the Contractor is still performing the work of the Project and has not yet delivered possession of the Project to District, the Term shall cease as of the day possession shall be so taken. The financial interest of Contractor shall be the amount Contractor has expended to date for work performed on the Project, subject to documentation reasonably satisfactory to the District.

**19.3. Partial Taking.** If, following delivery of possession of the Project by Contractor to District, less than all of the Project and the Project Site(s) is taken permanently, or if all of the Project and the Project Site(s) or any part thereof is taken temporarily, under the power of eminent domain:

19.3.1. This Facilities Lease shall continue in full force and effect and shall not be terminated by virtue of that partial taking and the Parties waive the benefit of any law to the contrary, and

19.3.2. There shall be a partial abatement of any principal payments pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** as a result of the application of the net proceeds of any eminent domain award to the prepayment of those payments hereunder. The Parties agree to negotiate, in good faith, for an equitable split of the net proceeds of any eminent domain award and a corresponding reduction in the payments required pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C**, and

**20. Damage and Destruction.** If, following delivery of possession of the Project by Contractor to District, the Project is totally or partially destroyed due to fire, acts of vandalism, flood, storm, earthquake, Acts of God, or other casualty beyond the control of either party hereto, the Term shall end and District shall no longer be required to make any payments required pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** that are then due or past due or any remaining and succeeding principal payments pursuant to the Guaranteed

Project Cost Provisions indicated in **Exhibit C** for the remainder of the original Term. The Contractor shall still be due any funds, payments, or disbursements from the District's rental interruption insurance to pay for the amounts that would otherwise have been due and owing from the District under **Exhibit C**.

## **21. Abatement.**

**21.1.** If, after the Parties have executed the Memorandum of Commencement Date attached hereto as **Exhibit E**, the Project becomes destroyed or damaged beyond repair, the District may determine its use of the Project abated. Thereafter, the District shall have no obligation to make, nor shall the Contractor have the right to demand, any future Lease Payments as indicated in the Guaranteed Project Cost Provisions indicated in **Exhibit C** to this Facilities Lease. The Term shall cease at that time.

**21.2.** The Parties hereby agree that the net proceeds of the District's rental interruption insurance that the District must maintain during the Term, as required herein, shall constitute a special fund for the payment of the Lease Payments indicated in the Guaranteed Project Cost Provisions indicated in **Exhibit C**.

**21.3.** The District shall as soon as practicable after such event, at its discretion, apply the net proceeds of its insurance policy intended to cover that loss ("**Net Proceeds**"), either to:

21.3.1. Repair the Project to full use;

21.3.2. Replace the Project, at the District's sole cost and expense, with property of equal or greater value of the Project immediately prior to the time of the destruction or damage, with that replacement, once completed, shall be substituted in this Facilities Lease by appropriate endorsement; or

**21.4.** The District shall notify the Contractor of which course of action it desires to take within thirty (30) days after the occurrence of the destruction or damage. The Net Proceeds of all insurance payable with respect to the Project shall be available to the District and shall be used to discharge the District's obligations under this Section.

## **22. Access**

**22.1. By Contractor.** Contractor shall have the right at all reasonable times to enter upon the Project Site(s) to construct the Project pursuant to this Facilities Lease. Following the acceptance of the Project by District, Contractor may enter the Project at reasonable times with advance notice and arrangement with District for purposes of making any repairs required to be made by Contractor.

**22.2. By District.** The District shall have the right to enter upon the Project Site(s) at all times. District shall comply with all safety precautions and procedures required by Contractor.

## **23. Assignment, Subleasing**

**23.1. Assignment and Subleasing by the District.** Any assignment or sublease by District shall be subject to all of the following conditions:

23.1.1. This Facilities Lease and the obligation of the District to make the payments required pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** shall remain obligations of the District; and

23.1.2. The District shall, within thirty (30) days after the delivery thereof, furnish or cause to be furnished to Contractor a true and complete copy of any assignment or sublease; and

**23.2. Assignment by Contractor.** Contractor may assign its right, title and interest in this Facilities Lease, in whole or in part to one or more assignees, only after the written consent of District, which District will not unreasonably withhold. No assignment shall be effective against the District unless and until the District has consented in writing. Notwithstanding anything to contrary contained in this Facilities Lease, no consent from the District shall be required in connection with any assignment by Contractor to a lender for purposes of financing the Project as long as there are not additional costs to the District.

## **24. Events of Default of District**

**24.1. Events of Default by District Defined.** The following shall be “Events of Default” of the District under this Facilities Lease. The terms “Event of Default” and “Default” shall mean, whenever they are used as to the District in the Site Lease or this Facilities Lease, shall only be one or more of the following events:

- 24.1.1. Failure by the District to pay payments required pursuant to the “Payment of the Guaranteed Project Cost” Provisions as indicated in **Exhibit C**, and the continuation of such failure for a period of forty-five (45) days.
- 24.1.2. Failure by the District to perform any material covenant, condition or agreement in this Facilities Lease and that failure continues for a period of forty-five (45) days after Contractor provides District with written notice specifying that failure and requesting that the failure be remedied; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, Contractor shall not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the District within the applicable period and diligently pursued until the default is corrected.

**24.2. Remedies on District’s Default.** If there has been an Event of Default on the District’s part, the Contractor may exercise any and all remedies available pursuant to law or granted pursuant to this Facilities Lease; provided, however, there shall be no right under any circumstances to accelerate any of the payments required pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** or otherwise declare those payments not then past due to be immediately due and payable.

- 24.2.1. Contractor may rescind its leaseback of the Project Site(s) to the District under this Facilities Lease and re-rent the Project Site(s) to another lessee for the remaining Term for no less than the fair market value for leasing the Project Site(s), which shall be:
  - 24.2.1.1. An amount determined by a mutually-agreed upon appraiser, or
  - 24.2.1.2. If an appraiser cannot be agreed to, an amount equal to the mean between a District appraisal and a Contractor appraisal for the Project Site(s), both prepared by an MAI-certified appraiser.
- 24.2.2. District’s obligation to make the payments required pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** shall be:
  - 24.2.2.1. Increased by the amount of costs, expenses, and damages incurred by the Contractor in re-renting the Project Site(s), and
  - 24.2.2.2. Decreased by the amount of rent Contractor receives in reletting the Project Site(s).
- 24.2.3. The District agrees that the terms of this Facilities Lease constitute full and sufficient notice of the right of Contractor to re-rent the Project Site(s) in the Event of Default without effecting a

surrender of this Facilities Lease, and further agrees that no acts of Contractor in performing a re-renting as permitted herein shall constitute a surrender or termination of this Facilities Lease, but that, on the contrary, in the event of an Event of Default by the District the right to re-rent the Project Site(s) shall vest in Contractor as indicated herein.

**24.3. District's Continuing Obligation.** Unless there has been damage, destruction, a Taking as described above, or the Contractor is in Default as indicated herein, the District shall continue to remain liable for the payments required pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** and those amounts shall be payable to Contractor at the time and in the manner as therein provided.

**24.4. No Remedy Exclusive.** No remedy herein conferred upon or reserved to Contractor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Facilities Lease or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle Contractor to exercise any remedy reserved herein, it shall be necessary to give notice, as indicated in this Facilities Lease and by law.

## **25. Events of Default of Contractor**

**25.1. Events of Default by Contractor Defined.** The following shall be "Events of Default" of the Contractor under this Facilities Lease. The terms "Event of Default" and "Default" shall mean, whenever they are used as to the Contractor in the Site Lease or this Facilities Lease, shall only be one or more of the following events:

25.1.1. Contractor unreasonably refuses or fails to prosecute the work on the Project with such reasonable diligence as will accomplish Project Completion within the Contract Time or any extension thereof;

25.1.2. Prior to Project Completion, Contractor is adjudged a bankrupt, or files for bankruptcy, or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency;

25.1.3. Contractor persistently disregards applicable law as indicated in **Exhibit D**, or otherwise be in violation of **Exhibit D**.

25.1.4. Failure by the Contractor to perform any material covenant, condition or agreement in this Facilities Lease and that failure continues for a period of seven (7) days after District provides Contractor with written notice specifying that failure and requesting that the failure be remedied; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, District shall not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the Contractor within the applicable period and diligently pursued until the default is corrected.

**25.2. Remedies on Contractor's Default.** If there has been an Event of Default on the Contractor's part, the District may, without waiver of or prejudice to any other right or remedy, terminate the Site Lease and Facilities Lease.

25.2.1. If District terminates the Site Lease and the Facilities Lease pursuant to this section, the Project Site(s) and any improvements built upon the Project Site(s) shall vest in District upon termination of the Site Lease and Facilities Lease, and District shall thereafter be required to pay only the principal amounts then due and owing pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C**, less any damages incurred by District due to Contractor's Default.

25.2.2. The District shall retain all rights it possesses as indicated in **Exhibit D** including, without limitation,

25.2.2.1. The right to assess liquidated damages due as permitted herein;

25.2.2.2. All rights the District holds to demand performance pursuant to the Contractor's required performance bond;

**26. Notices.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed to have been received as indicated below and to the persons indicated below:

**26.1.** If notice is given by personal delivery thereof, it shall be considered delivered on the day of delivery.

**26.2.** If notice is given by overnight delivery service, it shall be considered delivered on (1) day after date deposited, as indicated by the delivery service.

**If to District:**  
**Piedmont Unified School District**  
760 Magnolia Drive  
Piedmont, CA 94611  
ATTN: Donald Evans, Ed.D

**With a copy to:**  
Orbach Huff & Henderson LLP  
6200 Stoneridge Mall Rd., Ste. 225  
Pleasanton, CA 94588  
ATTN: Glenn Gould, Esq.

**If to Contractor:**  
**Kevin M. Sullivan & Associates**  
431 N. Buchanan Circle, Ste.2  
Pacheco, CA 94553  
ATTN: Kevin Sullivan

**With a copy to:**  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, CA 9\_\_\_\_\_  
ATTN: \_\_\_\_\_

The Contractor and the District, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent.

**27. Binding Effect.** This Facilities Lease shall inure to the benefit of and shall be binding upon Contractor and the District and their respective successors, transferees and assigns.

**28. No Additional Waiver Implied by One Waiver.** In the event any agreement contained in this Facilities Lease should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

**29. Severability.** In the event any provision of this Facilities Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, unless elimination of such invalid provision materially alters the rights and obligations embodied in this Facilities Lease or the Site Lease.

**30. Amendments, Changes and Modifications.** Except as to the termination rights of both Parties as indicated herein, this Facilities Lease may not be amended, changed, modified, altered or terminated without the written agreement of both Parties hereto.

**31. Execution in Counterparts.** This Facilities Lease may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**32. Contractor and District Representatives.** Whenever under the provisions of this Facilities Lease the approval of Contractor or the District is required, or Contractor or the District is required to take some action at the request of the other, such approval or such request shall be given for Contractor by Contractor’s Representative and for the District by the District’s Representative, and any party hereto shall be authorized to rely upon any such approval or request.

**33. Applicable Law.** This Facilities Lease shall be governed by and construed in accordance with the laws of the State of California, and venue for any action arising therefrom shall be in the County within which the School Site(s) is located.

**34. Attorney's Fees.** If either party brings an action or proceeding involving the Property or to enforce the terms of this Facilities Lease or to declare rights hereunder, each party shall bear the cost of its own attorneys’ fees.

**35. Captions.** The captions or headings in this Facilities Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Sections of this Facilities Lease.

**36. Prior Agreements.** This Facilities Lease and the corresponding Site Lease collectively contain all of the agreements of the Parties hereto with respect to any matter covered or mentioned in this Facilities Lease and no prior agreements or understanding pertaining to any such matter shall be effective for any purpose.

**37. Further Assurances.** Parties shall promptly execute and deliver all documents and instruments reasonably requested to give effect to the provisions of this Facilities Lease.

**38. Recitals Incorporated.** The Recitals set forth at the beginning of this Facilities Lease are hereby incorporated into its terms and provisions by this reference.

**39. Time of the Essence.** Time is of the essence with respect to each of the terms, covenants, and conditions of this Facilities Lease.

**40. Force Majeure.** A party shall be excused from the performance of any obligation imposed in the Contract for any period and to the extent that a party is prevented from performing those obligation(s), in whole or in part, as result of a Force Majeure Event consistent with the provisions of **Exhibit D**. A Force Majeure event shall not be a basis for a default hereunder or a ground for termination of the Facilities Lease.

**41. Interpretation.** None of the Parties hereto, nor their respective counsel, shall be deemed the drafters of this Facilities Lease for purposes of construing the provisions thereof. The language in all parts of this Facilities Lease shall in all cases be construed according to its fair meaning, not strictly for or against any of the Parties hereto.

**IN WITNESS WHEREOF,** the Parties have accepted and agreed to this Facilities Lease, as of the Effective Date, and have directed and authorized their respective officers to execute this Facilities Lease:

**Piedmont Unified School District**

**Kevin M. Sullivan & Associates**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

Print Title: \_\_\_\_\_

**EXHIBIT A  
TO FACILITIES LEASE**

**SITE INFORMATION  
AND  
PROJECT INFORMATION**

**DESCRIPTION OF DISTRICT SITE(S):**

Piedmont Middle School	740 Magnolia Avenue, Piedmont, CA 94611
Piedmont High School	800 Magnolia Avenue, Piedmont, CA 94611



**DESCRIPTION OF THE LEASED PREMISES**

**Project Site(s) Description:** The above constitutes the leased premises. The legal description of the parcel is maintained by the District in the District Office and is incorporated into this Exhibit A as though fully set forth.

**PROJECT(S) DESCRIPTION:**

**HVAC Retrofit – Piedmont Middle School and Piedmont High School**

Includes the following scope of work:

- Piedmont High School: Replace (3) three rooftop heat pump units, (5) indoor fan coil units, adding remote OA damper controls.  
See Dropbox for design. <https://www.dropbox.com/sh/w673r7bsje78ugu/AAClZbDUsgmt1uI4EWO5-CRla?dl=0>
- Piedmont Middle School:
  - Phase One: Replacing (3) three rooftop heat pump units, (5) indoor fan coil units, adding remote OA damper controls.
  - Phase Two: **Demo current split-level system and replace with an all-electric split system heat pump unit.**

**EXHIBIT B  
TO FACILITIES LEASE  
[RESERVED]**



**EXHIBIT C  
TO FACILITIES LEASE**

**GUARANTEED PROJECT COST AND  
OTHER PROJECT COST, FUNDING, AND PAYMENT PROVISIONS**

- 1. Preliminary Services Payments. [IF APPLICABLE]** The terms and conditions pertaining to the payment for Preliminary Services, if any, under the Facilities Lease, are set forth in the Agreement for Preliminary Services (**Exhibit L** to the Facilities Lease).
- 2. Site Lease Payments.** As indicated in the Site Lease, Contractor shall pay One Dollar (\$1.00) per year to the District as consideration for the Site Lease until the expiration or early termination of the Site Lease and/or the Facilities Lease.
- 3. Guaranteed Project Cost (or Guaranteed Maximum Price).** Pursuant to the Facilities Lease, Contractor will cause the Project to be constructed for **Five Hundred Twenty-Six Thousand Dollars (\$526,000)**, (“**Guaranteed Project Cost**” or “**GPC**” or “**Guaranteed Maximum Price**” or “**GMP**”). Except as indicated herein for modifications to the Project approved by the District pursuant to **Exhibit D**, or by written amendment, Contractor will not seek additional compensation from District in excess of Guaranteed Project Cost. District shall pay the Guaranteed Project Cost to Contractor in the form of Tenant Improvement Payments and Lease Payments. District shall also pay the accrued interest on Lease Payments as indicated herein. The Guaranteed Project Cost shall be calculated as follows, and shall include the following components, as further detailed below:
  - 3.1. Cost to Perform Work.**
    - 3.1.1. Subcontract Costs.** Payments made by the Contractor to Subcontractors, which payments shall be made in accordance with the requirements of the Contract Documents. The final, contracted-for amount between the Contractor and each Subcontractor shall be the exact amount that is put into the final GPC, after all leveling between trades and subcontractors and without any added allowances or contingencies, unless specifically identified and approved, in advance, by the District.
    - 3.1.2. Contractor-Performed Work.** Costs incurred by the Contractor for self-performed work, if approved in advance by the District and procured pursuant to the Contract Documents.
  - 3.2. General Conditions.** The fixed amount to be paid for all costs for labor, equipment and materials for the items identified therein which are necessary for the proper management of the Project, and shall include all costs paid or incurred by the Contractor (except for insurance); all fees, permits, assessments and charges that are required to be paid to other agencies or entities to permit, authorize or entitle construction, reconstruction or completion of the Project; taxes; and all contributions, assessments and benefits, holidays, vacations, retirement benefits, and incentives, whether required by law or collective bargaining agreements or otherwise paid or provided by Contractor to its employees. The District reserves the right to request changes to the personnel, equipment, or facilities provided as General Conditions as may be necessary or appropriate for the proper management of the Project, in which case, the cost of General Conditions shall be increased or reduced accordingly.
  - 3.3. The GPC includes all costs for payment and performance bonds, insurance, overhead and profit.**
- 4. Payment of Guaranteed Project Cost.** District shall pay the Guaranteed Project Cost to Contractor in the form of Tenant Improvement Payments and Lease Payments plus interest as indicated herein.
  - 4.1. Tenant Improvement Payments.** Prior to the District’s taking delivery or occupancy of the Project, the District shall pay to Contractor **Four Hundred Ninety-Nine Thousand Seven Hundred Dollars (\$499,700)** (“**Tenant Improvement Payment(s)**”), based on the amount of Work satisfactorily performed and approved by the District less the total amount to be paid as Lease Payments, according to the Contractor’s Schedule of Values (**Exhibit G** to the Facilities Lease) and pursuant to the provisions in **Exhibit D** to the Facilities Lease.
  - 4.2. Lease Payments Plus Interest.** Thirty (30) days after the Parties execute the Memorandum of Commencement Date attached to the Facilities Lease as **Exhibit E** and the Contractor has completed and satisfied the conditions indicated below, the District shall pay to Contractor **Twenty-Six Thousand Three Hundred Dollars (\$26,300)**

("Lease Payment(s)") plus interest, as indicated below.

- 4.2.1. It is the intent of the Parties that the Lease Payments plus interest will be kept from the Contractor's final payment application(s), including payment application(s) seeking payment of any Retention held pursuant to the Contract Documents.
- 4.2.2. The Lease Payments plus interest shall be consideration for the District's rental, use, and occupancy of the Project and the School Site(s) and shall be made in equal monthly installments for the duration of the Term.
- 4.2.3. The District represents that the total annual Lease Payment plus interest obligation does not surpass the District's annual budget and will not require the District to increase or impose additional taxes or obligations on the public that did not exist prior to the execution of the Facilities Lease.
- 4.2.4. **Fair Rental Value.** District and Contractor have agreed and determined that the total Lease Payments plus interest constitute adequate consideration for the lease term in the Facilities Lease and are reasonably equivalent to the fair rental value of the Project. In making such determination, consideration has been given to the obligations of the Parties under the Facilities Lease and Site Lease, the uses and purposes which may be served by the Project and the benefits therefrom which will accrue to the District and the general public.
- 4.2.5. **Each Payment Constitutes a Current Expense of the District.**
  - 4.2.5.1. The District and Contractor understand and intend that the obligation of the District to pay Lease Payments plus interest and other payments hereunder constitutes a current expense of the District and shall not in any way be construed to be a debt of the District in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by the District, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or moneys of the District.
  - 4.2.5.2. Lease Payments plus interest due hereunder shall be payable only from current funds which are budgeted and appropriated or otherwise made legally available for this purpose. This Facilities Lease shall not create an immediate indebtedness for any aggregate payments that may become due hereunder.
  - 4.2.5.3. The District covenants to take all necessary actions to include the estimated Lease Payments plus interest in each of its final approved annual budgets.
  - 4.2.5.4. The District further covenants to in good faith make all necessary appropriations (including any supplemental appropriations) from any source of legally available funds of the District for the actual amount of Lease Payments plus interest that come due and payable during the period covered by each such budget. Contractor acknowledges that the District has not pledged the full faith and credit of the District, State of California or any state agency or state department to the payment of Lease Payments plus interest or any other payments due hereunder. The covenants on the part of District contained in this Facilities Lease constitute duties imposed by law and it shall be the duty of each and every public official of the District to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the District to carry out and perform the covenants and agreements in this Facilities Lease agreed to be carried out and performed by the District.
  - 4.2.5.5. The Contractor cannot, under any circumstances, accelerate the District's payments under the Facilities Lease, but the District may elect to buyout the Facilities Lease as provided for herein.
- 4.2.6. **Timing of Lease Payments.** The first Lease Payment is due only after the following conditions have been completed and satisfied:
  - 4.2.6.1. The Final Tenant Improvement Payment has been paid;

- 4.2.6.2. All applicable Retention (less the Lease Payments) has been paid pursuant to the terms of the Contract Documents;
  - 4.2.6.3. The Parties have executed the Memorandum of Commencement Date, attached to the Facilities Lease as **Exhibit E**; and
  - 4.2.6.4. The Contractor has provided a duly completed and executed “**Unconditional Waiver and Release upon Final Payment**” compliant with Civil Code section 8138 from all subcontractors of any tier and suppliers that each has been paid all amounts owing to it from the Contractor for all work on the Project.
- 4.2.7. The Lease Payment Amount shall be paid pursuant to the following structure and the annual interest rate shall be at **4.5 percent**. To the extent that the Term runs into a subsequent calendar year, the interest rate shall not adjust, unless agreed upon by the District in writing. The first payment is due 30 Days after execution of the Memorandum of Commencement Date and the above conditions have been completed and satisfied.

Date of Payment	(A) Lease Payments	(B) Interest Due on Lease Payment	Amount Due by District to Contractor (A + B)
First Payment	\$2,146.83	\$98.63	\$2,245.46
30 days thereafter	\$2,154.88	\$90.57	\$2,245.46
30 days thereafter	\$2,162.96	\$82.49	\$2,245.46
30 days thereafter	\$2,171.07	\$74.38	\$2,245.46
30 days thereafter	\$2,179.21	\$66.24	\$2,245.46
30 days thereafter	\$2,187.39	\$58.07	\$2,245.46
30 days thereafter	\$2,195.59	\$49.87	\$2,245.46
30 days thereafter	\$2,203.82	\$41.63	\$2,245.46
30 days thereafter	\$2,212.09	\$33.37	\$2,245.46
30 days thereafter	\$2,220.38	\$25.07	\$2,245.46
30 days thereafter	\$2,228.71	\$16.75	\$2,245.46
30 days thereafter	\$2,237.07	\$8.39	\$2,245.46
<b>Total</b>	<b>\$26,300</b>	<b>\$645.46</b>	<b>\$26,945.46</b>

4.2.8. **Financed Portion of Lease Payments.** The District requires the Contractor to finance a portion of the Lease Payments and that financing is reflected in the table above.

4.3. In no event shall the cumulative total of the Tenant Improvement Payments and the Lease Payments plus interest ever exceed the Guaranteed Project Cost as defined herein, unless modified pursuant to **Exhibit D** to the Facilities Lease.

**5. Changes to Guaranteed Project Cost.**

- 5.1. As indicated in the Facilities Lease, the Parties may add or remove specific scopes of work from the Project. Based on these change(s), the Parties may agree to a reduction or increase in the Guaranteed Project Cost. If a cost impact or a change is agreed to by the Parties, it shall be reflected as a reduction or increase in the Tenant Improvement Payments and paid upon the payment request from the Contractor when the work is performed or deducted from the next payment request from the Contractor, as applicable. Any change to the Guaranteed Project Cost shall not affect the Lease Payments, nor the interest rate, unless expressly agreed upon by the District in writing.
- 5.2. The Parties acknowledge that the Guaranteed Project Cost is based on the Construction Documents, including the Plans and Specifications, as identified in **Exhibit J** to the Facilities Lease.
- 5.3. **Cost Savings.** Contractor shall work cooperatively with Architect, subcontractors and District, in good faith, to identify appropriate opportunities to reduce Project costs and promote cost savings. Any identified cost savings from the Guaranteed Project Cost shall be identified by Contractor, and if approved in writing by the District, that cost savings shall be deducted from the Guaranteed Project Cost. If any cost savings require revisions to the

Construction Documents, Contractor shall work with the District with respect to revising the Construction Documents and, if necessary, obtaining the approval of DSA with respect to those revisions. At the District's discretion, any reasonable cost incurred by District and/or the Contractor for those revisions may be paid for out of the identified savings before it is deducted from the Guaranteed Project Cost. Contractor shall be entitled to an extension of Contract Time equal to the delay in Project Completion caused by any cost savings adopted by District, if requested in writing before the approval of the cost savings.

**5.4. Insurance and Bond Reimbursements.** At Project Completion, Contractor shall require reimbursement from its insurance brokers and/or insurers and its bond brokers and/or sureties, all portions of Contractor's bond premiums, either paid or to be paid, that are not at-risk due to a reduction in the Guaranteed Project Cost. All amounts of premium reimbursement that Contractor receives from the Contractor's insurance brokers and/or insurers and its bond brokers and or sureties, shall be withheld by District from Contractor's Lease Payment(s). The District shall estimate this amount until Contractor indicates what the total amount of this reimbursement.

**6. Future Buyout of Facilities Lease.** The District may choose to buyout the Lease Payments in a lump sum during the term of the Facilities Lease. The Parties agree that any buyout will be memorialized in writing and serve to terminate the Site Lease and the Facilities Lease and will reduce the interest owed based on the time of the buyout. Under no circumstances can this buyout occur until at least sixty (60) days after Project Completion or the Execution of the Memorandum of Commencement Date, whichever is later. In no event shall any buyout increase the total amount of Lease Payment amounts, plus interest in excess of the amounts included in the Project's Guaranteed Project Cost.

**EXHIBIT D  
TO FACILITIES LEASE**

**GENERAL CONDITIONS**

**1. NOTICE TO PROCEED:** District shall provide a Notice to Proceed to Contractor pursuant to the Contract at which time Contractor shall proceed with the Work.

**2. SITE EXAMINATION:** Contractor has examined the Site and certifies that it accepts all measurements, specifications and conditions affecting the Work to be performed at the Site. By submitting its quote, Contractor warrants that it has made all Site examination(s) that it deems necessary as to the condition of the Site, its accessibility for materials, workers and utilities, and Contractor's ability to protect existing surface and subsurface improvements. No claim for allowance of time or money will be allowed as to any other undiscovered condition on the Site.

**3. CONSTRUCTION SCHEDULE / SUBCONTRACTOR LIST:** Contractor shall provide the District a Construction Schedule for the Work and a Subcontractor List as indicated in Contractor's Bid Form. Both the Construction Schedule and Subcontractor List are subject to the District's approval.

**4. EQUIPMENT AND LABOR:** The Contractor shall furnish all tools, equipment, apparatus, facilities, transportation, labor, and material necessary to furnish the Services, the Services to be performed at such times and places as directed by and subject to the approval of the authorized District representative indicated in the Work specifications attached hereto

**5. SUBCONTRACTORS:** Contractor shall comply with the Subletting and Subcontracting Fair Practices Act (Public Contract Code, section 4100 et. seq.) Contractor shall identify by name and location of the place of business of each subcontractor who will perform work or labor or render service in or about the construction of the Project in an amount in excess of one-half of 1 percent of the Contractor's contract price or ten thousand dollars (\$10,000) whichever is greater. Subcontractors, if any, engaged by the Contractor for any Service or Work under this Contract shall be subject to the approval of the District. Contractor agrees to bind every subcontractor by the terms of the Contract as far as such terms are applicable to subcontractor's work, including, without limitation, all indemnification, insurance, bond, and warranty requirements. If Contractor subcontracts any part of this Contract, Contractor shall be fully responsible to the District for acts and omissions of its subcontractor and of persons either directly or indirectly employed by itself. Nothing contained in the Contract Documents shall create any contractual relations between any subcontractor and the District.

**6. TERMINATION:** If Contractor fails to perform the Services and Contractor's duties to the satisfaction of the District, or if Contractor fails to fulfill in a timely and professional manner Contractor's obligations under this Contract, or if Contractor violates any of the Terms or Provisions of this Contract, the District shall have the right to terminate this Contract effective immediately upon the District giving written notice thereof to the Contractor. District shall also have the right in its sole discretion to terminate the Contract for its own convenience. Termination shall have no

effect upon any of the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of termination. Upon termination, Contractor shall provide the District with all documents produced maintained or collected by Contractor pursuant to this Contract, whether or not such documents are final or draft documents.

**7. SAFETY AND SECURITY:** Contractor is responsible for maintaining safety in the performance of this Contract. Contractor shall be responsible for complying with the District's rules and regulations pertaining to safety, security, and driving on school grounds, particularly when children are present.

**8. CHANGE IN SCOPE OF WORK:** Any change in the scope of the Work, method of performance, nature of materials or price thereof, or any other matter materially affecting the performance or nature of the Work shall not be paid for or accepted by the District unless such change, addition, or deletion is approved in advance and in writing by a valid change order executed by the District. Contractor specifically understands, acknowledges, and agrees that the District shall have the right to request any alterations, deviations, reductions, or additions to the Project or Work, and the cost thereof shall be added to or deducted from the amount of the Contract Price by fair and reasonable valuations. Contractor also agrees to provide the District with all information requested to substantiate the cost of any change order and to inform the District whether the Work will be done by the Contractor or a subcontractor. . If Contractor fails to reasonably substantiate any requested change in the scope of work, Contractor waives any claim for additional compensation. In addition to any other information requested, Contractor shall submit, prior to approval of any change order, its request for a time extension (if any), as well as all information necessary to substantiate Contractor's belief that such change will delay the completion of the Work. If Contractor fails to submit its request for a time extension or the necessary supporting information, it shall be deemed to have waived its right to request such extension. Contractor waives any claim for additional compensation for any change in the scope of work if Contractor performs the work without written approval of the District.

**9. TRENCH SHORING:** If this Contract is in excess of \$25,000 and is for the excavation of any trench deeper than five (5) feet, Contractor must submit and obtain District's approval and acceptance, in advance of excavation, of a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. If the plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer.

**10. EXCAVATIONS OVER FOUR FEET:** If this Contract includes excavations over four (4) feet, Contractor shall promptly, and before the following conditions are disturbed, notify the District, in writing, of any: (1) Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the

Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law; (2) Subsurface or latent physical conditions at the Site differing from those indicated; or (3) Unknown physical conditions at the Site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract. The District shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the Work shall issue a change order under the procedures described in the Contract. In the event that a dispute arises between the District and the Contractor regarding whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all Work. Contractor shall retain any and all rights provided either by Contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

**11. LEAD-BASED PAINT:** Pursuant to the Lead-Safe Schools Protection Act (Education Code Section 32240 et seq.) and other applicable law, no lead-based paint, lead plumbing and solders, or other potential sources of lead contamination shall be utilized on this Project, and only trained and state-certified contractors, inspectors and workers shall undertake any action to abate existing risk factors for lead. Contractor must execute the Lead-Based Paint Certification, if applicable.

**12. WORKERS:** Contractor shall at all times enforce strict discipline and good order among its employees and the employees of its subcontractors and shall not employ or work any unfit person or anyone not skilled in work assigned to him or her. Any person in the employ of the Contractor or a subcontractor whom the District may deem incompetent or unfit shall be dismissed from the Site and shall not again be employed at the Site without written consent from the District.

**13. DRUG-FREE / TOBACCO FREE / SMOKE FREE POLICY:** No drugs, alcohol, tobacco, and/or smoking are allowed at any time in any buildings and/or grounds on District property. No students, staff, visitors, consultants or contractors are to use drugs on these sites.

**14. FINGERPRINTING:** Contractor shall comply at all times with the provisions of Education Code section 45125.2 regarding the submission of employee fingerprints to the California Department of Justice and the completion of criminal background investigations of its employees, its subcontractor(s), and its subcontractors' employees. Verification of compliance with this section shall be provided in writing to the District prior to each individual's commencement of employment or performing any portion of the Services and prior to permitting contact with any student.

**15. CORRECTION OF ERRORS:** Contractor shall perform, at its own cost and expense and without reimbursement from the District, any work necessary to correct errors or omissions that are caused by the Contractor's failure to comply with the standard of care required herein. If Contractor fails to correct any those errors, the District reserves the right to deduct the value of the work from any

payment(s) owed to Contractor, or to perform the work itself and deduct from any payment(s) owed to contractor the cost to perform the work.

**16. FAILURE TO PERFORM.** If the District at any time believes that the Contractor is behind schedule, is failing to construct the Project pursuant to the Contract Documents, or is otherwise failing to perform any provisions of this Contract, the District, after FORTY-EIGHT (48) hours written notice to the Contractor, may take any action necessary or beneficial to the District to complete the Project, takeover the Work of the Contract, terminate or suspend the Contract as indicated herein, or any combination or portion of those actions. The Contractor shall be liable to the District for any cost incurred by the District in those actions and the District has the right to deduct the cost thereof from any payment then or thereafter due the Contractor.

**17. SUBSTITUTIONS:** No substitutions of material from those specified in the Work Specifications shall be made without the prior written approval of the District.

**18. CONTRACTOR SUPERVISION:** Contractor shall provide competent supervision of personnel employed on the job Site, use of equipment and quality of workmanship.

**19. CLEAN UP:** Debris shall be removed from the Premises. The Site shall be in order at all times when work is not actually being performed and shall be maintained in a reasonably clean condition.

**20. ACCESS TO WORK:** District representatives shall at all times have access to the Work wherever it is in preparation or in progress. Contractor shall provide safe and proper facilities for such access.

**21. PROTECTION OF WORK AND PROPERTY:** Contractor shall erect and properly maintain at all times, as required by conditions and progress of the Work, all necessary safeguards, signs, barriers, lights, and security persons for protection of workers and the public and shall post danger signs warning against hazards created by the Work. In an emergency affecting life and safety of life or of Work or of adjoining property, Contractor, without special instruction or authorization from District, is permitted to act at his discretion to prevent such threatened loss or injury.

**22. ASSIGNMENT OF CONTRACT:** Contractor shall not assign or transfer in any way any or all of its rights, burdens, duties, or obligations under this Contract without the prior written consent of the District.

**23. TIME IS OF THE ESSENCE:** Time is of the essence in the performance of and compliance with each of the provisions and conditions of this Contract.

**24. OCCUPANCY:** District reserves the right to occupy buildings at any time before formal Contract completion and such occupancy shall not constitute final acceptance or approval of any part of the Work covered by this Contract, nor shall such occupancy extend the date specified for completion of the Work.

**25. FORCE MAJEURE CLAUSE:** Contractor shall be excused from performance hereunder during the time and to the extent that it is prevented from obtaining delivery, or performing by act of God, fire, strike, loss, or shortage of transportation facilities, lock-out, commandeering of materials, product, plant, or facilities by the government, when satisfactory evidence thereof is presented to the District, provided that it is satisfactorily established that the

non-performance is not due to the fault or neglect of Contractor.

**26. INDEMNIFICATION / HOLD HARMLESS CLAUSE:** To the furthest extent permitted by California law, Contractor shall defend, indemnify, and hold free and harmless the District, its agents, representatives, officers, Contractors, employees, trustees, and volunteers (“the indemnified parties”) from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, including without limitation the payment of all consequential damages, arising out of, pertaining to or relating to, in whole or in part, the negligence, recklessness, errors or omissions, or willful misconduct of Contractor, its officials, officers, employees, subcontractors, Contractors, or agents directly or indirectly arising out of, connected with, or resulting from the performance of the Services or from any activity, work, or thing done, permitted, or suffered by the Contractor in conjunction with this Contract, unless the claims are caused wholly by the sole negligence or willful misconduct of the indemnified parties. The District shall have the right to accept or reject any legal representation that Contractor proposes to defend the indemnified parties.

**27. PAYMENT:** On a monthly basis, Contractor shall submit an application for payment based upon the estimated value for materials delivered or Services performed under the Contract as of the date of submission (“Application for Payment”). Within thirty (30) days after District’s approval of the Application for Payment, Contractor shall be paid a sum equal to ninety-five percent (95%) of the value of the Work performed (as verified by Architect and Inspector and certified by Contractor) up to the last day of the previous month, less the aggregate of previous payments and amount to be withheld. The District may deduct from any payment an amount necessary to protect the District from loss because of: (1) liquidated damages which have accrued as of the date of the application for payment; (2) any sums expended by the District in performing any of Contractor’s obligations under the Contract which Contractor has failed to perform or has performed inadequately; (3) defective Work not remedied; (4) stop notices as allowed by state law; (5) reasonable doubt that the Work can be completed for the unpaid balance of the total Contract Price or by the scheduled completion date; (6) unsatisfactory prosecution of the Work by Contractor; (7) unauthorized deviations from the Contract; (8) failure of the Contractor to maintain or submit on a timely basis proper and sufficient documentation as required by the Contract or by District during the prosecution of the Work; (9) erroneous or false estimates by the Contractor of the value of the Work performed; (10) any sums representing expenses, losses, or damages, as determined by the District, incurred by the District for which Contractor is liable under the Contract; and (11) any other sums which the District is entitled to recover from Contractor under the terms of the Contract or pursuant to state law, including section 1727 of the California Labor Code. The failure by the District to deduct any of these sums from a progress payment shall not constitute a waiver of the District’s right to such sums. The District shall retain five percent (5%) from all amounts owing as retention. Retention shall be paid pursuant to Public Contract Code sections 7107 and 7200.

**28. PERMITS AND LICENSES:** Contractor and all of its employees, agents, and subcontractors shall secure and maintain in force, at

Contractor’s sole cost and expense, all licenses and permits as are required by law, in connection with the furnishing of materials, supplies, or Services herein listed.

**29. INDEPENDENT CONTRACTOR STATUS:** While engaged in carrying out the Services of this Contract, the Contractor is an independent contractor, and not an officer, employee, agent, partner, or joint venture of the District. Contractor shall be solely responsible for its own Worker’s Compensation insurance, taxes, and other similar charges or obligations. Contractor shall be liable for its own actions, including its negligence or gross negligence, and shall be liable for the acts, omissions, or errors of its agents or employees.

**30. ANTI-DISCRIMINATION:** It is the policy of the District that in connection with all work performed under contracts there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, or religious creed, and therefore the Contractor agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment Practice Act beginning with Government Code Section 12900 and Labor Code Section 1735. In addition, the Contractor agrees to require like compliance by all its subcontractor(s).

**31. DISABLED VETERAN BUSINESS ENTERPRISES:** Section 17076.11 of the Education Code requires school districts using funds allocated pursuant to the State of California School Facility Program for the construction or modernization of a school building (SFP Funds) to have a participation of at least three percent (3%), per year, of the overall dollar amount expended each year by the school district, for disabled veteran business enterprises (DVBE). If this Contract uses School Facilities Program Funds, Contractor must submit, with its executed Contract, appropriate documentation to the District identifying the steps Contractor has taken to solicit DVBE participation in conjunction with this Contract.

**32. WARRANTY/QUALITY:** Unless a longer warranty is called for elsewhere in the Contract, Contractor, manufacturer, or their assigned agents shall guarantee the workmanship, product or Services performed against defective workmanship, defects or failures of materials for a minimum period of one (1) year from District’s written approval of the Work. All workmanship and merchandise must be warranted to be in compliance with applicable California energy, conservation, environmental, and educational standards.

**33. CONFIDENTIALITY:** Contractor shall maintain the confidentiality of all information, documents, programs, procedures, and all other items that Contractor encounters while performing the Contractor’s Services to the extent allowed by law. This requirement shall be ongoing and shall survive the expiration or termination of this Contract and specifically includes all student, parent, and disciplinary information.

**34. COMPLIANCE WITH LAWS:** Contractor shall give all notices and comply with all laws, ordinance, rules and regulations bearing on conduct of the Work as indicated or specified. If Contractor observes that any of the Work required by this Contract is at variance with any such laws, ordinance, rules or regulations, Contractor shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the scope of the Work shall be made and this Contract shall be appropriately amended in writing, or this Contract shall be terminated effective

upon Contractor's receipt of a written termination notice from the District. If Contractor performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Contractor shall bear all costs arising therefrom.

**35. DISPUTES/CLAIMS:** Public Contract Code § 9204. Claims between the District and the Contractor shall be resolved in accordance with the procedures established in Public Contract Code § 9204.

▪ Claim. The term "Claim" means a written demand by the Contractor sent by registered mail or certified mail with return receipt requested for:

(1) An extension of the Contract Time, including relief from damages or penalties assessed by the District for delay;

(2) Payment of money or damages arising from work done by, or on behalf of, the Contractor pursuant to the Contract and payment that is not otherwise expressly provided for in the Contract Documents or to which the Contractor is not otherwise entitled; or

(3) Payment of an amount that is disputed by the District.

▪ Submission of Claim. A Claim arises upon the District's rejection of a request by the Contractor for a Change Order. The Contractor shall submit the Claim by registered mail or certified mail with return receipt requested to the District's Director of construction and Modernization, with a copy to the Project Manager/Construction Manager. The Contractor shall submit its Claim in writing, together with all Supporting Documentation no later than the earlier of either: (1) thirty (30) days after the date the Claim arises; or (2) sixty (60) days after the date of Completion. It is the intent of the District to evaluate and resolve Claims with the Contractor as close to the events giving rise to such Claims as possible and to avoid stale or late Claims, including late notice and documenting of Claims, and to timely mitigate the issue, event, condition, circumstance and/or cause of the Claim and any adverse impacts or damages related thereto.

▪ Contents of Claim. A Claim must include all Supporting Documentation and a statement identifying it as a Claim signed by an authorized agent or officer of the Contractor under penalty of perjury and including the following language immediately above or before the Contractor's signature: "I declare under penalty of perjury under the laws of the State of California that the information provided and statements made in this Claim are true and correct, substantiated and of merit." The Contractor recognizes and acknowledges that this requirement is not a mere formality but is intended to ensure that the Contractor only submits Claims that it believes are true and correct, substantiated and have merit.

▪ Subcontractor Claims. Pursuant to Public Contract Code § 9204(d)(5), a Subcontractor may request in writing, either on its own behalf or on behalf of a lower tier Subcontractor, that the Contractor submit to the District a claim for work which was performed by the Subcontractor or by a lower tier Subcontractor on behalf of the Subcontractor. The Subcontractor requesting that the claim be submitted to the District shall furnish reasonable documentation to support the claim. Regardless of whether or not the Contractor decides to

submit the Subcontractor's claim to the District, Contractor shall provide a copy of the Subcontractor's written request, including all supporting documentation, to the Project Manager/Construction Manager within ten (10) days of Contractor's receipt of the request. In the event the Contractor agrees to submit a Subcontractor's claim to the District, the Contractor shall submit such claim as a request for a Change Order, unless such claim was previously submitted to the District as a request for a Change Order. Within forty-five (45) days of receipt of the Subcontractor's written request, the Contractor shall notify the Subcontractor in writing as to whether the Contractor submitted the claim to the District and, if the Contractor did not submit the claim, the Contractor shall provide the Subcontractor with a written statement of the reasons for not having done so and shall concurrently provide a copy of such written statement to the Project Manager/Construction Manager. In the event the Contractor includes supporting documentation with such written statement, the Contractor shall concurrently provide a copy of such supporting documentation to the Project Manager/Construction Manager. If the Contractor submits a Claim on behalf of a Subcontractor, the Claim shall include a statement in writing and signed by an authorized agent or officer of the Contractor under penalty of perjury that includes the following language immediately above or before the Contractor's signature: "I declare under penalty of perjury under the laws of the State of California that [insert name of Contractor] has thoroughly evaluated the claim of [insert name of Subcontractor] and determined that the information provided and statements made in the claim are true and correct, substantiated and of merit."

▪ District Review of Claim. Upon receipt of a Claim, the District shall review the Claim and, within a period not to exceed forty-five (45) days, shall provide Contractor a written statement identifying what portion of the Claim is disputed and what portion is undisputed. Upon receipt of a Claim, the District and the Contractor may, by mutual written agreement, extend the forty-five (45) day time period. The District shall process and make payment of any undisputed portion of a Claim within sixty (60) days after the District issues its written statement. Failure by the District to provide a written statement in response to a Claim from the Contractor within the forty-five (45) day time period, or within an agreed upon extended time period, shall result in the Claim being deemed rejected in its entirety. A Claim that is rejected by reason of the District's failure to respond, or failure to timely respond, to the Claim shall not constitute an adverse finding regarding the merits of the Claim or the claimant's responsibility or qualifications.

▪ Meet and Confer Meeting. If the Contractor disputes the District's written response, or if the District fails to respond within the time frame prescribed above, the Contractor, within fifteen (15) days of the District's written response or, if the District fails to respond, within fifteen (15) days after the District's response was due, may demand, in a writing sent to the District's Superintendent by registered mail or certified mail, return receipt requested, with a copy to the District's Director of Construction and Modernization, and Project



Manager/Construction Manager, an informal conference to meet and confer for settlement of the issues in dispute. The District shall schedule a meet and confer conference within thirty (30) days of its receipt of the Contractor's written demand.

- **Mediation.** Within ten (10) business days following the conclusion of the meet and confer conference, if the Claim or any portion of the Claim remains in dispute, the District shall provide the Contractor a written statement identifying the portion of the Claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the Claim shall be processed and made within sixty (60) days after the District issues its written statement. Any disputed portion of the Claim, as identified by the Contractor in writing, shall be submitted to nonbinding mediation. The expenses and fees of the mediator and the administrative fees shall be divided among the parties equally. Each party shall pay its own legal fees, witness fees, and other expenses. The District and the Contractor shall mutually agree to a mediator within ten (10) business days after the disputed portion of the Claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the Claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. The foregoing notwithstanding, pursuant to Public Contract Code § 9204(f), the parties may mutually agree in writing to waive mediation.

- Pending resolution of the dispute, Contractor agrees it will neither rescind the Contract nor stop the progress of the Work but will allow determination by the court of the State of California, in the county in which the District's administration office is located, having competent jurisdiction of the dispute.

- Nothing in this Article shall prevent the Parties from resolving any disputes or claims pursuant to Public Contract Code section 20104, et seq., if applicable.

- Nothing in this Contract, waives, modifies or tolls the Contractor's obligation to present a timely claim under Government Code § 910, et seq. Therefore, in addition to complying with the contractual Claims procedures, the Contractor is required to present claims to the District pursuant to Government Code § 910, et seq.

**36. LABOR CODE REQUIREMENTS:** Provided that the Contract Price is more than \$1,000, and the Work is a "public works" under the Labor Code, the parties agree as follows:

- The Work is subject to compliance monitoring and enforcement by the Department of Industrial Relations.
- District hereby provides notice of the requirements described in Labor Code § 1771.1(a) that a contractor or subcontractor shall not be qualified to bid on, be listed in a bid or proposal, or engage in the performance of any contract for public work, unless currently registered and qualified to perform public work pursuant to Labor Code § 1725.5.

- Contractor acknowledges that all or a portion of the Services under this Contract are a public work, and that it and its subcontractors have complied with Labor Code § 1725.5,

including, without limitation, the registration requirements thereof.

- Contractor shall post all required job site notices and shall comply with all applicable requirements prescribed thereby, including but not limited to Labor Code § 1771.4.

- Contractor shall comply with all applicable provisions of the Labor Code, Division 3, Part 7, Chapter 1, Articles 1-5, including, without limitation, the payment of the general prevailing per diem wage rates for public work projects of more than one thousand dollars (\$1,000).

- Copies of the prevailing rate of per diem wages are on file with the District.

- Contractor and each subcontractor shall comply with Chapter 1 of Division 2, Part 7 of the Labor Code, beginning with § 1720, and including §§ 1735, 1777.5 and 1777.6, forbidding discrimination, and §§ 1776, 1777.5 and 1777.6 concerning the employment of apprentices by Contractor or subcontractors. Willful failure to comply may result in penalties, including loss of the right to bid on or receive public works contracts. Contractor shall comply with Labor Code § 1777.5 pertaining to prevailing wage compensation to apprentices for preemployment activities.

**37. PAYROLL RECORDS:** Contractor and its subcontractor(s) shall keep accurate certified payroll records of employees and make them available to the District immediately upon request.

**38. AUDIT:** Contractor shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Contractor transacted under this Contract. Contractor shall retain these books, records, and systems of account during the Term of this Contract. Contractor shall permit the District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Contract. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Contractor and shall conduct audit(s) during Contractor's normal business hours, unless Contractor otherwise consents.

**39. ANTI-TRUST CLAIM:** Contractor and its subcontractor(s) agree to assign to the District all rights, title, and interest in and to all causes of action they may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the Contract or a subcontract. This assignment shall be made and become effective at the time the District tenders final payment to the Contractor, without further acknowledgment by the Parties.

**40. GOVERNING LAW:** This Contract shall be governed by and construed in accordance with the laws of the State of California with venue of any action in a in the county in which the District's administration office is located.

**41. PROVISIONS REQUIRED BY LAW DEEMED INSERTED:** Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and this Contract shall be read and enforced as though it were included

therein.

**42. BINDING CONTRACT:** This Contract shall be binding upon the Parties hereto and upon their successors and assigns, and shall inure to the benefit of the Parties and their successors and assigns.

**43. DISTRICT WAIVER:** District's waiver of any term, condition, covenant or waiver of a breach of any term, condition or covenant shall not constitute the waiver of any other term, condition or covenant or the waiver of a breach of any other term, condition or covenant.

**44. INVALID TERM:** If any provision of this Contract is declared or determined by any court of competent jurisdiction to be illegal,

invalid or unenforceable, the legality, validity or enforceability of the remaining parts, terms and provisions shall not be affected thereby, and said illegal, unenforceable or invalid part, term or provision will be deemed not to be a part of this Contract.

**45. ENTIRE CONTRACT:** This Contract sets forth the entire Contract between the Parties hereto and fully supersedes any and all prior agreements, understanding, written or oral, between the Parties hereto pertaining to the subject matter thereof. This Contract may be modified only by a writing evidencing the Parties' mutual consent.

**EXHIBIT E  
TO FACILITIES LEASE**

**MEMORANDUM OF COMMENCEMENT DATE**

**[TO BE ENTERED INTO AFTER CONSTRUCTION IS COMPLETE TO COMMENCE DISTRICT OCCUPANCY OF THE FACILITIES AND TO START THE LEASE TERM.]**

This Memorandum of Commencement Date is dated \_\_\_\_\_, 2023, and is made by and between **Kevin M. Sullivan & Associates** (“Contractor”), as Lessor, and the **Piedmont Unified School District** (“District”), as Lessee.

1. Contractor and District have previously entered into a Facilities Lease dated as of \_\_\_\_\_, 20\_\_, (the “Lease”) for the leasing by Contractor to District of the Project Site(s) and Project in \_\_\_\_\_, CA, referenced in the Lease.

2. District hereby confirms the following:

A. That all construction of the Project required to be performed pursuant to the Facilities Lease has been completed by Contractor in all respects;

B. That District has accepted and entered into possession of the Project and now occupies same; and

C. That the term of the leaseback period in the Facilities Lease commenced on \_\_\_\_\_, 20\_\_, and will expire at 11:59 P.M. on \_\_\_\_\_, 20\_\_.

**IN WITNESS WHEREOF**, the Parties have accepted and agreed to this Memorandum of Commencement Date, as of the date indicated above, and have directed and authorized their respective officers to execute this Memorandum of Commencement Date:

**Piedmont Unified School District**

**Kevin M. Sullivan & Associates**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

Print Title: \_\_\_\_\_

**EXHIBIT F  
TO FACILITIES LEASE**

**CONSTRUCTION SCHEDULE**

It is hereby understood and agreed that assuming the District issues a Notice to Proceed for the Project on or before **June 6, 2023**, then Project Completion shall be on or before **August 4, 2023**.

**EXHIBIT G  
TO FACILITIES LEASE  
SCHEDULE OF VALUES**

**[NOT USED]**

**EXHIBIT H  
TO FACILITIES LEASE**

**SUBCONTRACTOR PROCUREMENT PROCESS**

If the District issues an RFP or RFQ/P and requires the Contractors to submit a **final** price for this Project at the time it is competing against other Contractors, the Contractor shall comply with the subcontractor prequalification requirements of Education Code section 17406 (a)(1)(C) and may otherwise select subcontractors based on their own reasonable and non-discriminatory process.

If the District issues an RFQ or RFQ/P and selects one Contractor who will **later** provide a final price for this Project, that Contractor shall, in addition to all legal requirements, including without limitation Education Code section 17406, take the following steps when the District directs the Contractor to procure Subcontractors so that Contractor can provide a final lump sum Guaranteed Project Cost (“**GPC**”) for construction of the Project.

1. **Subcontractor Bid Packages.** Contractor shall prepare separate and specific Subcontractor bid packages that include all scope(s) of construction Work included in the Plans and Specifications.
2. **Public Notice.** Contractor shall provide notice of bidding for Subcontractors “in accordance with the publication requirements applicable to the District’s competitive selection process” to solicit Subcontractors in compliance with statutory requirements and the District’s process. (Education Code §17406.)
3. **District Review of Bid Packages and Notice.** At least fourteen (14) Days prior to the bidding of Subcontractor bid packages, Contractor shall provide the District with a copy of the written notice it will publish (including newspaper advertising) to solicit Subcontractors. The District reserves the right to request that Contractor reasonably revise its published notice.
4. **Three Bona Fide Bids.** Contractor is required to receive **at least** three (3) bona fide bids from Subcontractors for all scopes of Work on the Project that constitute more than three percent (3%) of the total Project scope of Work. Prior to the Contractor seeking bids, the District may, in its sole discretion, and upon Contractor’s written request, authorize Contractor to utilize a different minimum number of bona fide bids from Subcontractors.
5. **Prequalification.** Contractor’s Subcontractors performing work valued in excess of ½ of 1% of the GPC must comply with the following:
  - a. **MEP Prequalification.** If the Project has electrical, mechanical, and plumbing components that will be performed by subcontractors performing under the following license classification(s) (C-4, C-7, C-10, C-16, C-20, C-34, C-36, C-38, C-42, C-43, and/or C-46; “**MEP Subcontractor(s)**”), and those MEP Subcontractors will be first-tier Subcontractors to the Contractor, those MEP Subcontractors must be prequalified with the District to be eligible to be included in a Contractor’s proposal. MEP Subcontractors shall prequalify with the District utilizing the District’s Prequalification Questionnaire. **The District highly recommends that the Contractor informs all of its potential MEP Subcontractors that must be prequalified to immediately complete the prequalification process to ensure their eligibility to be included as MEP Subcontractors for the Project.**
  - b. **Non-MEP Subcontractor Prequalification Criteria and Standards.** For this Project, Contractor may **NOT** prequalify non-MEP subcontractors solicited for work on this Project, unless the Contractor provides any prequalification or qualification criteria, process or questionnaire to the District for approval at least fourteen (14) Days prior to the bidding of Subcontractor bid packages.

- c. **LIMIT ON “BEST VALUE” SELECTION.** CONTRACTOR ACKNOWLEDGES THAT THIS PROCESS – THE PREQUALIFICATION OR ANY ASSOCIATED QUALIFICATION PROCESS – IS THE ONLY “BEST VALUE” SELECTION PROCESS AS IDENTIFIED IN EDUCATION CODE SECTION 17406 THAT THE DISTRICT HAS APPROVED FOR THIS PROJECT. THE CONTRACTOR MAY REQUEST, AT LEAST FOURTEEN (14) DAYS PRIOR TO THE BIDDING OF SUBCONTRACTOR BID PACKAGES, THAT THE DISTRICT APPROVE OTHER SELECTION PROCESS(ES) OR CRITERIA THAT THE CONTRACTOR DESIRES TO IMPLEMENT ON THIS PROJECT. CONTRACTOR CAN ONLY IMPLEMENT THOSE IF THE DISTRICT PRE-APPROVES THEM.
6. **Open-Book / Bid Opening.** Contractor shall invite the District to attend all bid opening(s) for the Project and shall within 48 hours of the bid opening(s) provide copies or access to all bid documents provided by all Subcontractors.
7. **Missing Scopes of Work in Subcontractor Bids (“Bid Levelling”).** When Contractor has received all Subcontractor bids, Contractor shall identify all scope(s) of construction Work for which Contractor did not receive a bid and provide a written justification as to why the scope(s) of construction Work was either not included in a Subcontractor bid or was not bid on (“Unbid Work”). The District expects very little if any Unbid Work, far less than 1% of the GPC. After the District reviews the Contractor’s justification, the Parties shall meet and confer and the District shall reasonably determine, in its sole discretion, whether to:
- Direct the Contractor to rebid the Unbid Work; or
  - If Contractor requests, allow the Contractor to self-perform the Unbid Work. If Contractor self-performs the Unbid Work, Contractor shall provide substantiation for the pricing for the Unbid Work that Contractor intends to self-perform. The Parties shall negotiate in good faith to determine a reasonable price for the Unbid Work that Contractor intends to self-perform. The District reserves the right to seek its own pricing of that Work to verify the value of Contractor’s proposed pricing.
8. **Low Bid.** Because the “best value” process was implemented as part of the Subcontractor procurement process, once the Contractor receives Subcontractor bids, the Contractor shall award subcontracts to subcontractors with the **lowest responsive, responsible bid** that have satisfied the above prequalification and/or qualification steps, as applicable.
9. **Self-Performing Construction Work.** If Contractor intends to propose to self-perform portion(s) of the construction Work, it must
- Receive the District’s prior written approval.
  - Provide its pricing (its bid) to the District 48 hours prior to Contractor’s receipt of Subcontractor bids for those portion(s) of the Work.
  - Receive a minimum number of two (2) bona fide bids from Subcontractors for scope(s) of Work that the Contractor is bidding to self-perform, not including the Contractor’s pricing/bid.
10. **Finalizing GPC.** After Contractor completes this Subcontractor Procurement Process and the District approves the Subcontractor bids and self-performed construction Work, if any, Contractor shall prepare a final proposed GPC as set forth in **Exhibit C** to the Facilities Lease. The GPC shall be calculated consistent with the matrix in the “Guaranteed Project Cost (or Guaranteed Maximum Price)” section of **Exhibit C**.

**EXHIBIT I  
TO FACILITIES LEASE**

**CERTIFICATES AND BONDS TO LEASE-LEASEBACK DOCUMENTS  
AND  
DIVISION 1 DOCUMENTS TO LEASE-LEASEBACK DOCUMENTS**

**@ProjectName**

**Piedmont Unified School District  
and  
Kevin M. Sullivan & Associates**



**NONCOLLUSION DECLARATION**  
**Public Contract Code § 7106**

TO BE EXECUTED BY CONTRACTOR

The undersigned declares:

I am the \_\_\_\_\_ **[PRINT YOUR TITLE]**

of \_\_\_\_\_ **[PRINT FIRM NAME]**,

the party making the foregoing Contract.

The Contract is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The Contract is genuine and not collusive or sham. The Contractor has not directly or indirectly induced or solicited any other contractor to put in a false or sham bid. The Contractor has not directly or indirectly colluded, conspired, connived, or agreed with any contractor or anyone else to put in a sham proposal, or to refrain from proposing. The Contractor has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the Contract price of the Contractor or any other contractor, or to fix any overhead, profit, or cost element of the Contract price, or of that of any other contractor. All statements contained in the Contract and Contractor's proposal are true. The Contractor has not, directly or indirectly, submitted his or her Contract price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham proposal or contract, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a Contractor that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the Contractor.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on the following date:

Date: \_\_\_\_\_

Proper Name of Contractor: \_\_\_\_\_

City, State: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**(ATTACH NOTARIAL ACKNOWLEDGMENT FOR THE ABOVE SIGNATURE)**

**CERTIFICATIONS TO BE COMPLETED BY CONTRACTOR**

**THE UNDERSIGNED MUST CHECK EACH BOX AND EXECUTE THIS FORM AND HEREBY CERTIFIES TO THE GOVERNING BOARD OF THE DISTRICT THAT:**

- He/she is a representative of the Contractor,
- He/she is familiar with the facts herein certified and acknowledged,
- He/she is authorized and qualified to execute the Contract Documents and these certifications on behalf of Contractor and that by executing the Contract Documents he/she is certifying the following items.

**Labor Code Sections 1860-1861 (Workers' Compensation).** In accordance with Labor Code section 3700, every contractor will be required to secure the payment of compensation to his or her employees. I acknowledge and certify under penalty of perjury that I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

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**Government Code Sections 8355-8357 (Drug-Free Workplace).** I acknowledge and certify under penalty of perjury that I will provide a drug-free workplace by doing all of the following:

- (1) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's or organization's workplace and specifying the actions that will be taken against employees for violations of the prohibition.
- (2) Establishing a drug-free awareness program to inform employees about all of the following:
  - (A) The dangers of drug abuse in the workplace.
  - (B) The person's or organization's policy of maintaining a drug-free workplace.
  - (C) Any available drug counseling, rehabilitation, and employee assistance programs.
  - (D) The penalties that may be imposed upon employees for drug abuse violations.
- (3) Requiring that each employee engaged in the performance of the contract or grant be given a copy of the statement required by subdivision (a) and that, as a condition of employment on the contract or grant, the employee agrees to abide by the terms of the statement.

I also acknowledge that this Contract may be subject to suspension of payments under the contract or grant or termination of the contract or grant, or both, and the contractor or grantee thereunder may be subject to debarment, in accordance with the requirements of the above-referenced statute, if the contracting or granting agency determines that any of the following has occurred:

- (1) The contractor or grantee has made a false certification under Section 8355.
- (2) The contractor or grantee violates the certification by failing to carry out the requirements of subdivisions (a) to (c), inclusive, of Section 8355.

I also acknowledge that the Department of General Services shall establish and maintain a list of individuals and organizations whose contracts or grants have been canceled due to failure to comply with the above-referenced statute. This list shall be updated monthly and published each month. No state agency shall award a contract or grant to a person or organization on the published list until that person or organization has complied with the above-referenced statute.

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**Tobacco-Free Environment.** Pursuant to, without limitation, 20 U.S.C. section 6083, Labor Code section 6400

et seq., Health & Safety Code section 104350 et seq. and District Board Policies, all District sites, including the Project site, are tobacco-free environments. Smoking and the use of tobacco products by all persons is prohibited on or in District property. District property includes school buildings, school grounds, school owned vehicles and vehicles owned by others while on District property.

I acknowledge and certify under penalty of perjury that I am aware of the District's policy regarding tobacco-free environments at District sites, including the Project site and acknowledge and certify that I will adhere to the requirements of that policy and not permit any of my firm's employees, agents, subcontractors, or my firm's subcontractors' employees or agents to use tobacco and/or smoke on the Project site. The District also prohibits electronic cigarettes, "vaping" or similar product uses on District sites.

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**No Hazardous Materials.** I acknowledge and certify under penalty of perjury that no Asbestos, or Asbestos-Containing Materials, polychlorinated biphenyl (PCB), or any material listed by the federal or state Environmental Protection Agency or federal or state health agencies as a hazardous material, or any other material defined as being hazardous under federal or state laws, rules, or regulations ("New Hazardous Material"), shall be furnished, installed, or incorporated in any way into the Project or in any tools, devices, clothing, or equipment used to affect any portion of Contractor's work on the Project for District. I have instructed our employees with respect to the above-mentioned standards, hazards, risks, and liabilities.

- (i) Asbestos and/or asbestos-containing material shall be defined as all items containing but not limited to chrysotile, crocidolite, amosite, anthophyllite, tremolite, and actinolite. Any or all material containing greater than one-tenth of one percent (.1%) asbestos shall be defined as asbestos-containing material. Any disputes involving the question of whether or not material is New Hazardous Material shall be settled by electron microscopy or other appropriate and recognized testing procedure, at the District's determination. The costs of any such tests shall be paid by Contractor if the material is found to be New Hazardous Material.
- (ii) All Work or materials found to be New Hazardous Material or Work or material installed with equipment containing "New Hazardous Material," will be immediately rejected and this Work will be removed at Contractor's expense at no additional cost to the District.

**The Contractor must immediately notify the District within two (2) Business Days, if the Contractor finds and before it disturbs, any material that the Contractor believes may be hazardous waste, as defined in section 25117 of the Health and Safety Code, and requires removal to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law**

I acknowledge and certify under penalty of perjury that this certification provides notice to the Contractor that:

- (1) The Contractor's work may disturb lead-containing building materials.
  - (2) The Contractor must notify the District if any work may result in the disturbance of lead-containing building materials.
- 

**Lead as a Health Hazard.** Lead poisoning is recognized as a serious environmental health hazard facing children today. Even at low levels of exposure, much lower than previously believed, lead can impair the development of a child's central nervous system, causing learning disabilities, and leading to serious behavioral problems. Lead enters the environment as tiny lead particles and lead dust disbursts when paint chips, chinks, peels, wears away over time, or is otherwise disturbed. Ingestion of lead dust is the most common pathway of childhood poisoning; lead dust gets on a child's hands and toys and then into a child's mouth through common hand-to-mouth activity. Exposures may result from construction or remodeling activities that disturb lead paint, from ordinary wear and tear of windows and doors, or from friction on other surfaces.

Ordinary construction and renovation or repainting activities carried out without lead-safe work practices can disturb lead-based paint and create significant hazards. Improper removal practices, such as dry scraping, sanding, or water blasting painted surfaces, are likely to generate high volumes of lead dust.

Because the Contractor and its employees will be providing services for the District, and because the Contractor's work may disturb lead-containing building materials, **Contractor is hereby notified** of the potential presence of lead-containing materials located within certain buildings utilized by the District. All school buildings built prior to 1993 are presumed to contain some lead-based paint until sampling proves otherwise.

(i) **Overview of California Law**

Education Code section 32240 et seq. is known as the Lead Safe Schools Protection Act. Under this act, the Department of Health Services ("DHS") is to conduct a sample survey of schools in the State of California for the purpose of developing risk factors to predict lead contamination in public schools. (Ed. Code, § 32241.)

Any school that undertakes any action to abate existing risk factors for lead is required to utilize trained and state-certified contractors, inspectors, and workers. (Ed. Code, § 32243, subd. (b).) Moreover, lead-based paint, lead plumbing, and solders, or other potential sources of lead contamination, shall not be utilized in the construction of any new school facility or the modernization or renovation of any existing school facility. (Ed. Code, § 32244.)

Both the Federal Occupational Safety and Health Administration ("Fed/OSHA") and the California Division of Occupational Safety and Health ("Cal/OSHA") have implemented safety orders applicable to all construction work where a contractor's employee may be occupationally exposed to lead.

The OSHA Regulations apply to all construction work where a contractor's employee may be occupationally exposed to lead. The OSHA Regulations contain specific and detailed requirements imposed on contractors subject to that regulation. The OSHA Regulations define construction work as work for construction, alteration, and/or repair, including painting and decorating. It includes, but is not limited to, the following:

- a. Demolition or salvage of structures where lead or materials containing lead are present;
- b. Removal or encapsulation of materials containing lead;
- c. New construction, alteration, repair, or renovation of structures, substrates, or portions thereof, that contain lead, or materials containing lead;
- d. Installation of products containing lead;
- e. Lead contamination/emergency cleanup;
- f. Transportation, disposal, storage, or containment of lead or materials containing lead on the site or location at which construction activities are performed; and
- g. Maintenance operations associated with the construction activities described in the subsection.

Because it is assumed by the District that all painted surfaces (interior as well as exterior) within the District contain some level of lead, it is imperative that the Contractor, its workers and subcontractors fully and adequately comply with all applicable laws, rules and regulations governing lead-based materials (including title 8, California Code of Regulations, section 1532. 1).

**The Contractor must notify the District if any Work may result in the disturbance of lead-containing building materials. Any and all Work that may result in the disturbance of lead-containing building materials must be coordinated through the District. A signed copy of this Certification must be on file prior to beginning Work on the Project, along with all current insurance certificates.**

(ii) **Renovation, Repair and Painting Rule, Section 402(c)(3) of the Toxic Substances Control Act**

In 2008, the U.S. Environmental Protection Agency, issued a rule pursuant to the authority of Section 402(c)(3) of the Toxic Substances Control Act, requiring lead safe work practices to reduce exposure to lead hazards created by renovation, repair and painting activities that disturb lead-based paint (Renovation, Repair and Painting Rule). Renovations in homes, childcare facilities, and schools built prior to 1978 must be conducted by certified renovations firms, using renovators with accredited training, and following the work practice requirements to reduce human exposures to lead.

Contractor, its workers and subcontractors must fully and adequately comply with all applicable laws, rules and regulations governing lead-based materials, including those rules and regulations appearing within title 40 of the Code of Federal Regulations as part 745 (40 CFR 745).

The requirements apply to all contractors who disturb lead-based paint in a six-square-foot area or greater indoors or a 20-square-foot area outdoors. If a DPH-certified inspector or risk assessor determines that a home constructed before 1978 is lead-free, the federal certification is not required for anyone working on that particular building.

(iii) **Contractor's Liability**

If the Contractor fails to comply with any applicable laws, rules, or regulations, and that failure results in a site or worker contamination, the Contractor will be held solely responsible for all costs involved in any required corrective actions, and shall defend, indemnify, and hold harmless the District, pursuant to the indemnification provisions of the Contract, for all damages and other claims arising therefrom.

If lead disturbance is anticipated in the Work, only persons with appropriate accreditation, registrations, licenses, and training shall conduct this Work.

It shall be the responsibility of the Contractor to properly dispose of any and all waste products, including, but not limited to, paint chips, any collected residue, or any other visual material that may occur from the prepping of any painted surface. It will be the responsibility of the Contractor to provide the proper disposal of any hazardous waste by a certified hazardous waste hauler. This company shall be registered with the Department of Transportation (DOT) and shall be able to issue a current manifest number upon transporting any hazardous material from any school site within the District.

The Contractor shall provide the District with any sample results prior to beginning Work, during the Work, and after the completion of the Work. The District may request to examine, prior to the commencement of the Work, the lead training records of each employee of the Contractor.

I acknowledge and certify under penalty of perjury, that:

1. I have received notification of potential lead-based materials on the District's property;
2. I am knowledgeable regarding and will comply with all applicable laws, rules, and regulations governing work with, and disposal of, lead.



**Imported Materials.** All soils, aggregate, or related materials ("Fill") that Contractor, a Subcontractor, agent or supplier, in any way, provides or delivers and/or supplies to the Project Site shall be free of any and all

hazardous material as defined in section 25260 of the Health and Safety Code, shall satisfy the requirements of any environmental review of the Project performed pursuant to the statutes and guidelines of the California Environmental Quality Act, sections 21000 et seq. of the Public Resources Code (“CEQA”), and shall comply with the requirements of sections 17210 et seq. of the Education Code, including requirements for a Phase I environmental assessment acceptable to the State of California Department of Education and Department of Toxic Substances Control. I acknowledge that, to the furthest extent permitted by California law, the indemnification provisions in the Contract Documents apply to, without limitation, any claim(s) connected with providing, delivering, and/or supplying Fill.

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**Roofing Contract Financial Interest Certification (Public Contract Code § 3006)**

I, \_\_\_\_\_ [Your Name], \_\_\_\_\_ [Firm Name] certify that I have not offered, given, or agreed to give, received, accepted, or agreed to accept, any gift, contribution, or any financial incentive whatsoever to or from any person in connection with a roof project contract or subcontract on the Project. As used in this certification, “person” means any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

I, \_\_\_\_\_ [Your Name], \_\_\_\_\_ [Firm Name] certify that I do not have, and throughout the duration of the Contract, I will not have, any financial relationship in connection with the performance of the Contract with any architect, engineer, roofing consultant, materials manufacturer, distributor, or vendor that is not disclosed below.

I, \_\_\_\_\_ [Your Name], \_\_\_\_\_ [Firm Name] have the following financial relationships with an architect, engineer, roofing consultant, materials manufacturer, distributor, or vendor, or other person in connection with the following roof project contract:

Name of firm ("Firm"): \_\_\_\_\_  
Mailing address: \_\_\_\_\_  
Address of branch office used for this Project: \_\_\_\_\_  
If subsidiary, name and address of parent company: \_\_\_\_\_

**For Projects without substantive roofing components, check the following box and execute this certification:**

The Work on the Contract (1) does not include the replacement or repair of a roof or (2) is a repair of twenty five percent (25%) or less of the roof, (3) or is a repair project that has a total cost of twenty one thousand dollars (\$21,000) or less.

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**Russian Sanctions Certification**

On February 21, 2022, President Biden issued Executive Order 14065 (<https://www.whitehouse.gov/briefing-room/presidential-actions/2022/02/21/executive-order-on-blocking-property-of-certain-persons-and-prohibiting-certain-transactions-with-respect-to-continued-russian-efforts-to-undermine-the-sovereignty-and-territorial-integrity-of-ukraine/>; “**Federal Order**”) imposing economic sanctions and prohibiting many activities including, but not limited to, investing in, importing to, exporting from, and contracting with, areas of Ukraine and in Russia. On March 4, 2022, California Governor Newsom issued Executive Order N-6-22 requiring state agencies to take steps to ensure any agency and entity under contract with state agencies comply with the Federal Order (<https://www.gov.ca.gov/wp-content/uploads/2022/03/3.4.22-Russia-Ukraine-Executive-Order.pdf>; “**State Order**”).

The District requires the Contractor, as a vendor with the District, to comply with the economic sanctions imposed in response to Russia's actions in Ukraine, including the orders and sanctions identified on the U.S. Department of the Treasury website (<https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/ukraine-russia-related-sanctions>).

If your Firm's contract with the District has a cumulative value of \$5 million or more, your certification here is constitutes your written response to the District, indicating:

- (1) that your Firm is in compliance with the required economic sanctions of the Federal and State Orders;
- (2) the steps your Firm has taken in response to Russia's actions in Ukraine, including, but not limited to, desisting from making new investments in, or engaging in financial transactions with, Russian entities, not transferring technology to Russia or Russian entities, and directly providing support to the government and people of Ukraine.



I acknowledge and certify under penalty of perjury that I am duly authorized to legally bind the Contractor to all provisions and items included in these certifications, that the contents of these certifications are true, and that these certifications are made under the laws of the State of California.

Date: \_\_\_\_\_

Proper Name of Contractor: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**DISABLED VETERAN BUSINESS ENTERPRISE**  
**PARTICIPATION CERTIFICATION**

Section 17076.11 of the Education Code requires school districts using funds allocated pursuant to the State of California School Facility Program ("Program") for the construction and/or modernization of school buildings to have a participation goal for disabled veteran business enterprises ("DVBE") of at least three percent (3%), per year, of the overall dollar amount expended each year by the school district on projects that receive state funding.

1. **Disabled Veteran Business Enterprise.** A DVBE is a business enterprise certified by the California Office of Small Business as a DVBE.
2. **DVBE Participation Policy.** The District is committed to achieving this DVBE participation goal. The District encourages Contractor to ensure maximum opportunities for the participation of DVBEs in the Work of the Contract.
3. **DVBE Participation Goal.** The three percent (3%) participation goal is not a quota, set-aside or rigid proportion.
4. **Certification of Participation.** At the time of execution of the Contract, the Contractor will provide a statement to the District of anticipated participation of DVBEs in the contract.
5. **Submission of Report.** During performance of the Contract, Contractor shall monitor the Work of the Contract, award of subcontracts and contracts for materials, equipment and supplies for the purpose of determining DVBE participation in the Work of the Contract.
  - a) Contractor shall report on a monthly basis all DVBEs utilized in the performance of the Work, the type or classification of the Work performed by each DVBE, and the dollar value of the Work performed by each DVBE.
  - b) Upon completion of the Work of the Contract, Contractor shall submit a report to the District in the form attached hereto identifying all DVBEs utilized in the performance of the Work, the type or classification of the Work performed by each DVBE, and the dollar value of the Work performed by each DVBE.
    - i) The submission to the District of this report is a condition precedent to the District's obligation to make payment of the Final Payment under the Contract Documents. The submission of this report shall be in addition to, and not in lieu of, any other conditions precedent set forth in the Contract Documents for the District's obligation to make payment of the Final Payment.
    - ii) The District reserves the right to request additional information or documentation from the Contractor evidencing efforts to comply with the three percent (3%) DVBE participation goal.



DVBE PARTICIPATION REPORT

Contractor Name: \_\_\_\_\_ Date: \_\_\_\_\_

Project Name: \_\_\_\_\_ Project Number: \_\_\_\_\_

DVBE Firm Name	Trade / Portion of Work	Subcontract/ Contract Value
<b>Add more sheets as needed to include all information for each DVBE</b>		

Does the cumulative dollar value of these DVBE contracts meet or exceed the participation goal of three percent (3%) of the final Contract Price, as adjusted by all change orders?

YES \_\_\_\_\_ NO \_\_\_\_\_

If your response is "NO", please attach to this report a detailed description of the reasons for your firm did not achieve the participation goal of three percent (3%) of the final Contract Price.

I certify and declare under penalty of perjury under the laws of the State of California that all the foregoing information is complete, true, and correct.

Date: \_\_\_\_\_

Proper Name of Contractor: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**CRIMINAL BACKGROUND INVESTIGATION / FINGERPRINTING CERTIFICATION**

The undersigned does hereby certify to the governing board of the District that he/she is a representative of the Contractor, is familiar with the facts herein certified, is authorized and qualified to execute this certificate on behalf of Contractor; and that the information in this Criminal Background Investigation / Fingerprinting Certification is true and correct.

**All Workers Fingerprinted.** The Contractor has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all Contractor’s employees and all of its Subcontractors’ employees who interact with pupils, outside of the immediate supervision and control of the pupil’s parent or guardian or a school employee, has a valid criminal records summary as described in Education Code Section 44237 (Contractor shall “require each applicant for employment in a position requiring contact with minor pupils to submit two sets of fingerprints prepared for submittal by the employer to the Department of Justice for the purpose of obtaining criminal record summary information from the Department of Justice and the Federal Bureau of Investigation.”). A complete and accurate list of Contractor’s employees and of all of its subcontractors’ employees who may interact with District pupils during the course and scope of the Contract is attached hereto; and/or

**Physical Barrier.** Pursuant to Education Code section 45125.2, Contractor has installed or will install, prior to commencement of work, a physical barrier at the ProjectSite, that will limit contact between Contractor’s employees and District pupils at all times; and/or

**Continual Supervision by Fingerprinted Employee.** Pursuant to Education Code section 45125.2, Contractor certifies that all employees will be under the continual supervision of, and monitored by, an employee of the Contractor who the California Department of Justice has ascertained has not been convicted of a violent or serious felony. The name and title of the employee who will be supervising Contractor’s employees and its Subcontractors’ employees is:

**Name:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**Unoccupied Site.** The Work on the Contract is at an unoccupied school site and no employee and/or subcontractor or supplier of any tier of Contract shall come in contact with the District pupils.

2. **Megan’s Law (Sex Offenders).** I have verified and will continue to verify that the employees of Contractor that will be on the Project site and the employees of the Subcontractor(s) that will be on the Project site are **not** listed on California’s “Megan’s Law” Website (<http://www.meganslaw.ca.gov/>).

Contractor’s responsibility for background clearance extends to all of its employees, subcontractors, and employees of subcontractors coming into contact with District pupils regardless of whether they are designated as employees or acting as independent contractors of the Contractor.

Date: \_\_\_\_\_

Proper Name of Contractor: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**PERFORMANCE BOND (100% of Contract Price)**  
**(Note: Contractor must use this form, NOT a surety company form.)**

**KNOW ALL PERSONS BY THESE PRESENTS:**

**WHEREAS**, the governing board ("Board") of the **Piedmont Unified School District**, ("District") and

\_\_\_\_\_, ("Principal")

have entered into a contract for the furnishing of all materials and labor, services and transportation, necessary, convenient, and proper to perform the following project:

**@ProjectName** ("Project" or "Contract")

which Contract dated \_\_\_\_\_, 20\_\_\_\_, and all of the Contract Documents attached to or forming a part of the Contract, are hereby referred to and made a part hereof, and

**WHEREAS**, the Principal is required under the terms of the Contract to furnish a bond for the faithful performance of the Contract;

**NOW, THEREFORE**, the Principal and \_\_\_\_\_ ("Surety") are held and firmly bound unto the District in the penal sum of:

**\$ \_\_\_\_\_ DOLLARS,**

lawful money of the United States, for payment to the District and will and truly be made pursuant to the provisions herein. Principal and Surety, each of us, bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally to:

- Perform all the work required to complete the Project; and
- Pay to the District all damages the District incurs as a result of the Principal's failure to perform all the Work required to complete the Project.

In the event the Principal is declared by the District to be in breach or default in the performance of the Contract, then, after written notice from the District to the Surety, as provided for herein, the Surety shall either remedy the default or breach of the Principal or shall take charge of the Work of the Contract and complete the Contract with a Contractor other than the Principal at its own expense; provided, however, that the procedure by which the Surety undertakes to discharge its obligations under this Bond shall be subject to the advance written approval of the District.

The condition of the obligation is such that, if the above bounden Principal, his or its heirs, executors, administrators, successors, or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, and agreements in the Contract and any alteration thereof made as therein provided, on his or its part to be kept and performed at the time and in the intent and meaning, including all contractual guarantees and warranties of materials and workmanship, and shall indemnify and save harmless the District, its trustees, officers and agents, as therein stipulated, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect.

As a condition precedent to the satisfactory completion of the Contract, the above obligation shall hold good for a period equal to the warranty and/or guarantee period of the Contract, during which time Surety's obligation shall continue if Contractor shall fail to make full, complete, and satisfactory repair, replace, and totally protect the District from loss or damage resulting from or caused by defective materials or faulty workmanship. The

obligations of Surety hereunder shall continue so long as any obligation of Contractor remains. Nothing herein shall limit the District's rights or the Contractor's or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract or to the Work to be performed thereunder shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the Contract Documents or to the Work.

**Any claims under this bond may be addressed to the Surety at the following address. This cannot be the Contractor's broker for this bond, but must be an employee of the Surety or the Surety's legal counsel:**

\_\_\_\_\_

\_\_\_\_\_

**Attention:** \_\_\_\_\_

**Telephone No.:** ( ) -

**Fax No.:** ( ) -

**E-mail Address:** \_\_\_\_\_

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety above named, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**Principal**

**Surety**

\_\_\_\_\_  
(Name of Principal)

\_\_\_\_\_  
(Name of Surety)

\_\_\_\_\_  
(Signature of Person with Authority)

\_\_\_\_\_  
(Signature of Person with Authority)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Name of California Agent of Surety)

\_\_\_\_\_  
(Address of California Agent of Surety)

\_\_\_\_\_  
(Telephone Number of California Agent of Surety)

**Contractor must attach a Notarial Acknowledgment for all Surety's signatures and a Power of Attorney and Certificate of Authority for Surety. The California Department of Insurance must authorize the Surety to be an admitted surety insurer.**

**PAYMENT BOND -- Contractor's Labor & Material Bond (100% of Contract Price)**  
**(Note: Contractor must use this form, NOT a surety company form.)**

**KNOW ALL PERSONS BY THESE PRESENTS:**

**WHEREAS**, the governing board ("Board") of the **Piedmont Unified School District**, ("District") and

\_\_\_\_\_, ("Principal")

have entered into a contract for the furnishing of all materials and labor, services and transportation, necessary, convenient, and proper to perform the following project:

**@ProjectName** ("Project" or "Contract")

which Contract dated \_\_\_\_\_, 20\_\_\_\_, and all of the Contract Documents attached to or forming a part of the Contract, are hereby referred to and made a part hereof, and

**WHEREAS**, pursuant to law and the Contract, the Principal is required, before entering upon the performance of the work, to file a good and sufficient bond with the body by which the Contract is awarded in an amount equal to 100 percent (100%) of the Contract price, to secure the claims to which reference is made in the Civil Code of California, including section 9100, and the Labor Code of California, including section 1741.

**NOW, THEREFORE**, the Principal and \_\_\_\_\_ ("Surety") are held and firmly bound unto all laborers, material men, and other persons referred to in said statutes in the penal sum of:

\$ \_\_\_\_\_ **DOLLARS,**

lawful money of the United States, being a sum not less than the total amount payable by the terms of Contract, for the payment of which sum well and truly to be made pursuant to all applicable statutes and laws applicable to the provisions herein. Principal and Surety, each of us, bind ourselves, our heirs, executors, administrators, successors, or assigns, jointly and severally, to those applicable statutes and laws, and to the provisions herein.

The condition of this obligation is that if the Principal or any of his or its subcontractors, of the heirs, executors, administrators, successors, or assigns of any, all, or either of them shall fail to pay for any labor, materials, provisions, equipment, or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to that work or labor, that the Surety will pay the same in an amount not exceeding the amount herein above set forth, and also in case suit is brought upon this bond, will pay a reasonable attorney's fee to be awarded and fixed by the Court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under sections 9000 through 9566 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void; otherwise it shall be and remain in full force and affect.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract or to the Work to be performed thereunder shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the Contract Documents or to the Work.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety above named, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**Principal**

**Surety**

\_\_\_\_\_  
**(Name of Principal)**

\_\_\_\_\_  
**(Name of Surety)**

\_\_\_\_\_  
**(Signature of Person with Authority)**

\_\_\_\_\_  
**(Signature of Person with Authority)**

\_\_\_\_\_  
**(Print Name)**

\_\_\_\_\_  
**(Print Name)**

\_\_\_\_\_  
**(Name of California Agent of Surety)**

\_\_\_\_\_  
**(Address of California Agent of Surety)**

\_\_\_\_\_  
**(Telephone Number of California Agent of Surety)**

Contractor must attach a Notarial Acknowledgment for all Surety's signatures and a Power of Attorney and Certificate of Authority for Surety. The California Department of Insurance must authorize the Surety to be an admitted surety insurer.

**EXHIBIT J  
TO FACILITIES LEASE**

**PLANS, TECHNICAL SPECIFICATIONS, AND DRAWINGS**

400 Building Phase

1 [https://www.dropbox.com/s/43nbg43dhgs1xgx/Piedmont%20400%20Building%20Phase-1\\_signed%20v2.pdf?dl=0](https://www.dropbox.com/s/43nbg43dhgs1xgx/Piedmont%20400%20Building%20Phase-1_signed%20v2.pdf?dl=0)

400 Building Phase

2 [https://www.dropbox.com/s/5fmesekc7yg2g3n/Piedmont%20400%20Building%20Phase-2\\_signed%20v2.pdf?dl=0](https://www.dropbox.com/s/5fmesekc7yg2g3n/Piedmont%20400%20Building%20Phase-2_signed%20v2.pdf?dl=0)

20's

Building [https://www.dropbox.com/s/puxfxvq4hxp7qir/Piedmont%2020%27s%20Building\\_signed%20v2.pdf?dl=0](https://www.dropbox.com/s/puxfxvq4hxp7qir/Piedmont%2020%27s%20Building_signed%20v2.pdf?dl=0)

