

DEVELOPMENT AND FACILITY LEASE AGREEMENT

by and between

[INSERT]
as Lessor

and

SAN MATEO UNION HIGH SCHOOL DISTRICT
as Lessee

Dated as of May 9, 2019

DEVELOPMENT AND FACILITY LEASE AGREEMENT

THIS DEVELOPMENT AND FACILITY LEASE AGREEMENT (the "Facilities Lease") is dated as of May 9, 2019 for reference purposes only and is made by and between [insert], a California corporation, as lessor ("Lessor") and the San Mateo Union High School District, a school district duly organized and validly existing under the Constitution and laws of the State of California, as lessee ("District").

RECITALS

WHEREAS, the District has determined to demolish existing concrete building and site improvements. The New Peninsula High School Increment 1 Site Development Work project includes rough grading, including any required import or export of soils; the installation of site utilities, including storm drain, sanitary sewer, fire water and domestic water; electrical main service work in conjunction with PG&E; installation of underground conduits for AT&T and CATV; and installation of cast-in-drilled hole pilings, footings and grade beams, including rebar. This Increment 1 Site Development work is in preparation of the installation of modular classroom buildings at the Site ("New Peninsula High School Increment 1 Site Development Project" or "Project")

WHEREAS, the District has hired _____ as the Project architect ("Architect") to prepare plans and specifications for the Project ("Plans and Specifications"). The Project is located on that certain real property in Burlingame, California, as depicted in Exhibit "A", attached hereto and incorporated by reference ("Site");

WHEREAS, on March 15, 2019 the Plans and Specifications were submitted to the State of California's Division of the State Architect (the "DSA") and were assigned application number [insert];

WHEREAS, the District is authorized under Section 17406 of the Education Code of the State of California to lease the Site to Lessor and to have Lessor develop and construct the Project on the Site pursuant to the provisions in this Facilities Lease;

WHEREAS, the Board of Trustees 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 Site to Lessor and by concurrently entering into this Facilities Lease under which the District will lease back the Site from Lessor and cause Lessor to make Tenant Improvement Payments as provided in this Facilities Lease;

WHEREAS, the District and Lessor 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;

WHEREAS, the District has a substantial need for the Project and has entered into the Site Lease and this Facilities Lease under the authority granted to District by Section 17406 of the Education Code of the State of California ("Education Code") in order to fill that need;

WHEREAS, the District and Lessor further acknowledge and agree that following a "best value" competitive selection process, they have entered into the Site Lease and the Facilities Lease pursuant to Section 17406 of the Education Code, taking into consideration the proposer's demonstrated competence and professional qualifications for the District to satisfy its substantial need to accommodate and educate students served by the District.

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

ARTICLE 1

DEFINITIONS AND EXHIBITS

1.1 Definitions. Unless otherwise provided herein, the terms defined herein, for all purposes of this Agreement, have the meanings herein specified, and capitalized terms not otherwise defined herein shall have the meaning ascribed thereto in Article I of the GMP Contract.

1.1.1 "District Representative" means the Superintendent of the District, currently, Dr. Kevin Skelly, or any other person authorized by the Board to act on behalf of the District under or with respect to this Facilities Lease. The person or persons so designated to act as District Representative(s) shall be authorized in writing with notice served to the Lessor's Authorized Representative.

1.1.2 "Effective Date" means the date the District issues a Notice to Proceed with the Project to Contractor.

1.1.3 "Event of Default" means one or more events as defined in Section 9.1 of this Facilities Lease.

1.1.4 "Facilities Lease" means this Facilities Lease and all attached exhibits together with any duly authorized and executed amendment hereto.

1.1.5 "Guaranteed Maximum Price Construction Contract" or "GMP Contract" means the construction contract by which Lessor agrees to construct the Project for the Guaranteed Maximum Price attached hereto as Exhibit C.

1.1.6 "Guaranteed Maximum Price" means the price for which Lessor will cause the Project to be constructed as further described in the GMP Construction Contract attached hereto as Exhibit C.

1.1.7 "Notice to Proceed" shall mean a written communication signed by an authorized representative of the District, directing Lessor to cause commencement of the Project as provided in this Facilities Lease and which is delivered to Lessor at the address provided herein by registered or certified mail, return receipt requested.

1.1.8 "Tenant Improvement Payment" means any payment required to be made by the District pursuant to Section 4.5 of this Facilities Lease, and as set forth in Exhibit D attached to this Facilities Lease, and pursuant to Section 21 of the GMP Contract.

1.1.9 "Tenant Improvement Payment Schedule" means the schedule in Exhibit D attached to this Facilities Lease.

1.1.10 "Lessor's Representative" means any officer of Lessor, or any person authorized to act on behalf of Lessor under or with respect to this Facilities Lease as evidenced by a resolution conferring that representative with such authorization adopted by the board of directors of Lessor.

1.1.11 "Permitted Encumbrances" means, as of any particular time: (i) liens for general ad valorem taxes and assessments, if any, not then delinquent, or which the District may, pursuant to provisions of Section 5.3 hereof, permit to remain unpaid; (ii) the Site Lease; (iii) this Facilities Lease; (iv) 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 and which will not impede or impair the operation of the Site; and (v) 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 Lessor and the District consent in writing which will not impair or impede the operation of the Site.

1.1.12 "Plans and Specifications" shall have the meaning ascribed in the Recitals; provided, however, the parties acknowledge that the Plans and Specifications may be further defined in the Guaranteed Maximum Price Construction Contract; at which time the definition of Plans and Specifications in the Guaranteed Maximum Price Construction Contract shall become the definition of Plans and Specifications for purposes of this Facilities Lease.

1.1.13 "Site" means 858-860 Hinckley Road in Burlingame, California, as shown in Exhibit A, and improvements thereon as defined in the Recitals.

1.1.14 "Site Lease" means the Site Lease dated as of [insert date] by and between the District and Lessor together with any duly authorized and executed amendments thereto under which the District leased the Site to Lessor.

1.1.15 "Term of this Facilities Lease" or "Term" means the time in which this Facilities Lease is in effect provided for under Article 4 of this Facilities Lease.

1.1.16 "Work" means all services, materials, supplies and construction necessary to complete the Project in accordance with the Guaranteed Maximum Price Construction Contract.

1.2 Exhibits. The following Exhibits are attached to and by reference incorporated and made a part of this Facilities Lease:

Exhibit A – SITE DESCRIPTION

Exhibit B - LIST OF PLANS AND SPECIFICATIONS

Exhibit C – PRECONSTRUCTION SERVICES AGREEMENT/GMP CONTRACT

Exhibit D – TENANT IMPROVEMENT PAYMENT SCHEDULE

ARTICLE 2

REPRESENTATIONS, COVENANTS AND WARRANTIES

2.1 Representations, Covenants and Warranties of the District. The District represents, covenants and warrants to Lessor as follows:

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

2.1.2 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. The representatives of District executing this Facilities Lease and the Site Lease are fully authorized by resolution of the Board to execute the same on behalf of the District.

2.1.3 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, conflict 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 Site, except Permitted Encumbrances.

2.1.4 Payments. The District shall take such action as may be necessary to include all Tenant Improvement Payments in its annual budget and appropriate an amount necessary to make such Tenant Improvement Payments.

2.1.5 No Claims. There is no pending or threatened action or proceeding before any court or administrative agency which will adversely affect the ability of District to perform its obligations under this Facilities Lease.

2.1.6 [Intentionally Blank]

2.2 Representations, Covenants and Warranties of Lessor. Lessor represents, covenants and warrants to District as follows:

2.2.1 Due Organization and Existence. Lessor is a duly organized and existing entity under the laws of the State of California and authorized to do business in San Mateo County and the State of California.

2.2.2 Authorization. Lessor has the full power and authority to enter into, to execute and to deliver this Facilities Lease, and has duly authorized the execution and delivery of this Facilities Lease.

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

2.2.4 No Encumbrances. Lessor shall not mortgage or encumber the Site except as permitted under Section 5.1 of the Site Lease.

2.2.5 Licensing. Lessor is in compliance with all laws promulgated under the California Contractors License Law and has been issued License Number [insert].

ARTICLE 3

CONSTRUCTION OF PROJECT

3.1 Construction of Project. Lessor agrees to cause the Project to be developed, constructed, and installed in accordance with the terms hereof and the GMP Contract. District agrees to pay Contractor in accordance with the GMP Contract, which is attached hereto as Exhibit C. Lessor further agrees that it will cause the construction and installation of the Project to be diligently performed. Lessor shall provide the District a complete copy of the executed GMP Contract within ten (10) days after execution of the GMP Contract. Provided, however, that Lessor shall be allowed to remove all financial information from the construction contract with the exception of the total contract price. The District and Lessor may also approve additional changes in the Plans and Specifications for the Project as provided in the GMP Contract. If applicable, Lessor shall cooperate with the District's efforts to obtain State funding for the Project by complying with any State requirements as reasonably requested by District, including, without limitation section 1859.104 to 1859.106 of Title 2 of the California Code of Regulations; however, District shall be responsible for reimbursing Lessor for any costs reasonably incurred by Lessor associated with meeting those State funding requirements.

ARTICLE 4

AGREEMENT TO LEASE; TERMINATION OF

LEASE; TENANT IMPROVEMENT PAYMENTS; TITLE TO THE SITE

4.1 Lease of Project and Site; No Merger. Lessor hereby leases the Site to the District, and the District hereby leases said Site from Lessor upon the terms and conditions set forth in this Facilities Lease. The leasing by Lessor to the District of the Site shall not effect 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, and Lessor shall continue to have and hold a leasehold estate in said Site pursuant to the Site Lease throughout the term thereof and the term of this Facilities Lease. As to the Site, this Facilities Lease shall be deemed and constitute a sublease.

4.2 Term of Facilities Lease. The term of this Facilities Lease shall commence on the Effective Date and shall terminate on completion of the Project (the "Term"), unless terminated

earlier as provided in Section 4.3, provided, however, the Term may be extended in the case of a Default by the District as defined in this Agreement.

4.3 Termination of Term. Notwithstanding Section 4.2, the Term shall terminate upon the earliest of any of the following events:

4.3.1 An Event of Default by District and Lessor's election to terminate this Facilities Lease pursuant to Section 9.2 hereof; or

4.3.2 Exercise of the District's Purchase Option pursuant to Section 10.1 below.

4.3.3 An Event of Default by Lessor and District's election to terminate this Facilities Lease pursuant to Section 9.6 hereof.

4.3.4 The termination of the GMP Contract; provided however, Contractor shall be compensated consistent with the terms of the GMP Contract and all outstanding Tenant Improvement Payments.

4.3.5 The Parties are unable to agree on and approve the final GMP under Section 5.1 of the GMP Contract.

4.3.6 The Notice to Proceed is not issued by the District as provided in Section 5.2 of the GMP Contract.

4.4 Project Completion. Completion of the Project shall be evidenced by a Notice of Completion that shall be filed with the County Clerk at District's expense. District shall not unreasonably withhold, delay or condition the preparation and issuance of the Notice of Completion.

4.5 Tenant Improvement Payments.

Subject to the provisions of Articles 3 (titled "Construction of Project"), 6 (titled "Eminent Domain; Damage and Destruction") and 10 (titled "Purchase Option") hereof, the District agrees to pay to Lessor, its successors and assigns, the Tenant Improvement Payments during the Term. Tenant Improvement Payments shall be made in the amounts specified in the Tenant Improvement Payment Schedule attached hereto as Exhibit D and incorporated herein by reference. Tenant Improvement Payments shall be payable within 30 days of the District's receipt of a monthly verified Progress Report.

4.6 Quiet Enjoyment. Lessor shall provide the District with quiet use and enjoyment of the Site, and the District shall during such Term peaceably and quietly have and hold and enjoy the Site subject to Lessor's construction of the Project, without suit, trouble or hindrance from Lessor, except as otherwise may be set forth in this Facilities Lease or the GMP Contract. Lessor will, at the request of the District and at Lessor's cost, join in any legal action in which the District asserts its right to such possession and enjoyment to the extent Lessor may lawfully do so based on the leasehold interests Lessor holds under the Site Lease and this Facility Lease. Notwithstanding the foregoing, Lessor shall have the right to inspect the Project and the Site as provided in Section 7.1 hereof.

4.7 Title. During the Term of this Facilities Lease, the District shall hold fee title to the Site. During the Term of this Facilities Lease, Lessor shall have a leasehold interest in the Site pursuant to the Site Lease. If the District exercises its purchase option to accelerate the termination of this Facilities Lease pursuant to Article 10 hereof or if it pays all Tenant Improvement Payments during the Term of this Facilities Lease as the same become due and payable, all right, title and interest of Lessor, its assigns and successors in interest in and to the Project and the Site shall be transferred to and vested in the District at the expiration of the Term or upon the payment by the District of the final Tenant Improvement Payment, whichever shall come first. Title shall be transferred to and vested in the District hereunder without the necessity for any further instrument or transfer, provided, however, that Lessor agrees to execute any instrument reasonably requested by District to memorialize such termination of this Facilities Lease and transfer title to the District.

4.8 [Intentionally Omitted].

4.9 [Intentionally Omitted].

4.10 Lease Terminable Only As Set Forth Herein.

4.10.1 Except as otherwise expressly provided in 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 Tenant Improvement Payments, or any amounts, including without limitation Progress Payments, Retention or other amounts allowed as Cost of the Work, due under the GMP Contract, or any reduction thereof, nor shall the obligations hereunder of District be otherwise affected by reason of any damage to or destruction of all or any part of the Project from whatever cause, the taking of the Site or any portion thereof by condemnation or otherwise, the prohibition, limitation or restriction of District's use of the Site, interference with such use by any private person or corporation, or the District's acquisition of the ownership of the Site (other than pursuant to an express provision of this Facilities Lease), or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding. It is the intention of the parties hereto that the Tenant Improvement Payments, the Progress Payments Retention or other amounts allowed as Cost of the Work, due under the GMP Contract, and all other charges payable hereunder to or on behalf of Lessor 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.

4.10.2 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 default by Lessor hereunder or under any other agreement to recover the costs and expenses, including attorneys' fees if District is prevailing party, associated with such separate action.

ARTICLE 5

MAINTENANCE; TAXES; INSURANCE AND OTHER MATTERS

5.1 Maintenance. Following delivery of possession of the Project by Lessor to District, the repair, improvement, replacement and maintenance of the Project and the Site 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 provided in the GMP Contract, and 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.

5.2 Utilities. Prior to completion of the Project by Lessor, Lessor shall pay all utility costs as they specifically relate to the work Lessor is performing under the GMP Contract. Following Substantial Completion of the Project, the cost and expenses for all utility services, including, but not limited to, electricity, natural gas, telephone, water, sewer, trash removal, cable television, security, heating, water, internet service and all other utilities of any type shall be paid by District.

5.3 Taxes and Other Impositions. All ad valorem real property taxes, special taxes, excise taxes, possessory interest taxes, bonds and special lien assessments or other impositions of any kind with respect to the Project, this Facilities Lease, the Site Lease, the Property, the GMP Contract or the Site and the improvements thereon, charged to or imposed upon either Lessor 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 Lessor, its successors and assigns, by virtue of this Facilities Lease, the Site Lease, or GMP Contract, District shall pay such possessory interest tax directly, if possible, or shall reimburse Lessor, its successors and assigns for the full amount thereof within thirty (30) days after presentation of proof of payment by Lessor.

5.4 Insurance. The District shall maintain in full force or cause to be maintained for the duration of this Facilities Lease, a standard commercial comprehensive, general public liability and property damage insurance policy or policies concerning the Project for all risks. Such policy or policies shall provide coverage in the minimum liability limits of \$2,000,000 per occurrence with a \$ 4,000,000 general aggregate.

District's insurance under this section may be maintained as part of or in conjunction with any other insurance carried or required to be carried by the District. The District shall cause to be delivered to Lessor a certificate stating that the insurance policies required by this Lease are in full force and effect and that Lessor is named as an additional insured.

Lessor's insurance as required under the terms of the GMP Contract shall continue to be primary for all injuries arising out of its operations or completed operations. The District agrees to waive subrogation rights for claims covered by the District's insurance pursuant to Section 5.6 for which the District submits a claim to its insurer and agrees that the District shall insure against and bear the risk of loss for perils excluded or not covered under the builder's risk policy of insurance provided by Lessor as part of the GMP Contract. Except for the foregoing, nothing contained herein shall limit the District's equitable and contractual rights to the indemnification and insurance coverage provided by Lessor or its subcontractors pursuant to the GMP Contract and the Sublease.

5.5 Cancellation or Change of Coverage. District agrees that the insurance coverages required above in Section 5.4 shall be in effect at all times after acceptance of the Project by District. After District's Substantial Completion of the Project, all insurance required to be carried by District shall be primary except as provided herein. Insurance required in Section 5.4 shall not be canceled or changed so as to no longer meet the specified insurance requirements without thirty (30) days' prior written notice of such cancellation or change being delivered to Lessor.

5.6 Waiver of Subrogation. Lessor and District each hereby waive any right of recovery and/or subrogation against the other due to loss of, or damage to, the property of either Lessor or District to the extent covered by property insurance obtained in accordance with the provisions of this Article 5, and shall cause their respective insurance carriers to include such a waiver of subrogation in all applicable policies.

5.7 Indemnification. Except as otherwise provided in this Facilities Lease, all indemnity obligations of the parties in connection with this Facilities Lease, the Site Lease, the GMP Contract and the execution of the Project shall be governed by the express provisions set forth in the GMP Contract.

5.8 Insurance Proceeds; Form of Policies. The District shall pay or cause to be paid when due the premiums for all insurance policies required by this Facilities Lease. All such policies must provide that Lessor will be given thirty (30) days' prior written notice of expiration, any intended cancellation or reduction of the coverage provided. Lessor is not responsible for the sufficiency of any insurance herein required.

5.9 Modification of Project. The District has the right, at its expense, to make additions, modifications and improvements to the Project and the Site, provided, however, that during the one (1) year warranty period which will be provided by Lessor on defects in materials and workmanship for the Project following the Project's completion, the District shall first obtain Lessor's prior written consent to any additions, modifications and improvements to the Project. Lessor agrees not to unreasonably withhold, delay or condition approval of the District's plans for any proposed additions, modifications and improvements to the Project. All additions, modifications and improvements to the Project will thereafter comprise part of the Project and be subject to the provisions of this Facilities Lease. Such additions, modifications and improvements may not in any way damage the Project or cause the Project to be used for purposes other than those authorized under the provisions of State and federal law, and the District must file with Lessor a written certificate stating that the Project, upon the completion of any additions, modifications and improvements made thereto has a value which is not substantially less than the value of the Project immediately prior to the making of any such additions, improvements and modifications. Notwithstanding anything to the contrary contained herein, District shall have the right, without Lessor's consent, to place relocatables or portables upon the Site, along with incidental site work, and such relocatables and portables shall not become part of the Project and shall remain the personal property of the District.

5.10 Compliance with Laws. Regulations.

5.10.1 Except as disclosed in the Guaranteed Maximum Price Documents the District has no actual knowledge and has not given or received any written notice indicating that the Site or the past or present use thereof or any practice, procedure or policy employed by it in the conduct of its business materially violates any applicable law, regulation, code, order, rule, judgment or consent agreement, including, without limitation, those relating to zoning, building, use and occupancy, fire safety, health, sanitation, air pollution, ecological matters, environmental protection, hazardous or toxic materials, substances or wastes, conservation, parking, architectural barriers to the handicapped, or restrictive covenants or other agreements affecting title to the Site (collectively "Laws and Regulations"). Without limiting the generality of the foregoing, neither the District nor to its actual knowledge, any prior or present owner, tenant or subtenant of the Site has, other than as set forth in this section; (i) used, treated, stored,

transported or disposed of any material amount of flammable explosives, heavy metals, chlorinated solvents, cyanide, radon, petroleum products, methane, radioactive materials, pollutants, hazardous materials, hazardous wastes, hazardous, toxic or regulated substances or related materials, hazardous wastes, hazardous, toxic, or regulated substances as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), the Resource Conservation and Recovery act of 1976 ("RCRA"), the Clean Water Act of 1971 ("CWA"), the Clean Air Act of 1977 ("CAA"), the Toxic Substances Control Act of 1976 ("TSCA"), as they all have been or may be amended, and the regulations promulgated pursuant thereto, and in all other environmental regulations applicable to the District, the Site, or the operations conducted by the District, or any prior owner, thereon (collectively "Hazardous Materials") on, from or beneath the Site; (ii) pumped, spilled, leaked, disposed of, emptied, discharged or released (hereinafter collectively referred to as "Release") any material amount of Hazardous Materials on, from or beneath the Site; or (iii) stored any material amount of petroleum products at the Site in underground storage tanks.

5.10.2 The District has no actual knowledge as to whether any portion of the Site is located in an area of high potential incidence of radon, nor will Project have an unventilated basement or subsurface portion which is or will be occupied or used for any purpose other than the foundation or support of the improvements at the Project.

5.11 Environmental Compliance by District. Subject to Lessor's construction of the Project, the District shall not use or permit the Site or any part thereof to be used to generate, manufacture, refine, treat, store, handle, transport or dispose of, transfer, produce or process Hazardous Materials, except, and only to the extent, if necessary, to maintain the improvements at the Project and then only in compliance with all Laws and Regulations and any state equivalent laws and regulations, nor shall it permit, as a result of any intentional or unintentional act or omission on its part or by any tenant, subtenant, licensee, guest, invitee, contractor, employee and agent, the storage, transportation, disposal or use of Hazardous Materials or the Release or threat of Release of Hazardous Materials on, from or beneath the Project or onto any other property excluding, however, those Hazardous Materials in those amounts ordinarily found in the inventory of schools and school facilities, the use, storage, treatment, transportation and disposal of which shall be in compliance with all Laws and Regulations. Upon the occurrence of any release or threat of Release of Hazardous Materials through no fault of Lessor, the District shall promptly commence and perform, or cause to be commenced and performed promptly, without cost to Lessor, all investigations, studies, sampling and testing, and all remedial, removal and other actions necessary to clean up and remove all Hazardous Materials so released, on, from or beneath the Site and project or other property, in compliance with all Laws and Regulations.

ARTICLE 6

EMINENT DOMAIN; DAMAGE AND DESTRUCTION

6.1 Eminent Domain.

6.1.1. Total Taking. If the Site shall be taken permanently under the power of eminent domain, the Term of this Facilities Lease shall terminate as of the day possession shall be so taken. Lessor shall receive an amount from the eminent domain award equal to a prorata amount of the final Guaranteed Maximum Price, including all Tenant Improvement Payments and

Progress Payments, adjusted for the status of the Project as of such date, and District shall be entitled to the remaining proceeds, if any.

6.1.2 Partial Taking. If less than all of the Site shall be taken permanently, or if all of the Site or any part thereof shall be taken temporarily, under the power of eminent domain, (1) this Facilities Lease shall continue in full force and effect and shall not be terminated by virtue of such taking and the parties waive the benefit of any law to the contrary, provided the District has paid all amounts due Lessor under this Facilities Lease and the GMP Contract and the parties agree on a modification to the Project and the final Guaranteed Maximum Price to reflect the changed circumstances; and (2) there shall be a pro rata abatement of Tenant Improvement Payments such that Lessor shall receive an amount from the proceeds equal to a prorata amount of the final Guaranteed Maximum Price, including all Tenant Improvement Payments and Progress Payments, adjusted for the status of the Project as of such date.

6.2 Damage and Destruction. If the Site 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 Tenant Improvement Payments shall abate during the time that the Site or a portion of the Site is unusable for District's use as a school. Lessor and District agree that the obligation to repair or replace the Site shall be in accordance with the following provisions:

6.2.1 Escrow. Any proceeds payable to Lessor and District from property insurance policies shall be immediately deposited in an escrow account established with an escrow holder selected by Lessor (the "Escrow").

6.2.2 Total Destruction. In the event that ninety percent (90%) or more of the Site is destroyed or damaged (a "Total Destruction") then either party may terminate this Facilities Lease, the Site Lease and the GMP Contract, and Lessor shall receive the insurance proceeds equal to a prorata amount of the final Guaranteed Maximum Price, including all Tenant Improvement Payments and Progress Payments, adjusted for the status of the Project as of such date, with any remaining insurance proceeds to be retained by District. Lessor shall have no obligation to contribute funds for the rebuilding of the Site. Anything less than a Total Destruction of the Site shall be deemed a "Partial Damage or Destruction."

6.2.3 Partial Damage or Destruction. In the event that the Site is partially damaged or destroyed District shall repair or have repaired the Site utilizing the proceeds from insurance which were deposited into the Escrow.

6.2.4 Deductibles; Self Insurance. Where any loss is covered by insurance required by this Facilities Lease which contains provisions for any deductible amount, the District shall contribute to the cost of rebuilding any such deductible amount or the amount of any self-insurance maintained by District.

ARTICLE 7

ACCESS; DISCLAIMER OF WARRANTIES

7.1 By Lessor. Lessor shall have the right at all reasonable times to enter upon the Site to construct the Project pursuant to this Facilities Lease and the GMP Contract, and to exercise its remedies under an Event of Default. Following the acceptance of the Project by District, Lessor

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 Lessor and for purposes of inspection to ascertain whether District is satisfying its obligation to maintain and repair the Project as required by this Facilities Lease.

7.2 By District. Prior to the acceptance of the Project by District, the District shall have the right to enter upon the Site upon reasonable notice for the purposes of inspection of the progress of the work on the Project and District shall comply with all safety precautions required by Lessor. Following the acceptance of the Project by District, the District shall thereafter have the right at all times to enter upon the Site for the purposes of this Facilities Lease. The District shall defend, indemnify and hold harmless Lessor and Lessor's officers, directors, employees, representatives, and subcontractors, from all claims for bodily injury and property damage that may arise from, relate to, or are incidental to the District's, its agents', officers', directors', consultants', members' and/or employees' access, acts, occupancy or entry on the Site or related to the Project to the extent caused by the negligence or willful misconduct of the District, its agents, officers, directors, consultants, members or employees, directly or indirectly, by any of them, or by anyone for whose acts any of them may be liable.

7.3 Disclaimer of Warranties. District acknowledges that Lessor makes no warranties except as specifically set forth in this Facilities Lease.

ARTICLE 8

ASSIGNMENT, SUBLEASING; AMENDMENT

8.1 Assignment and Subleasing by the District. This Facilities Lease may not be assigned by the District. Any sublease by District shall be subject to all of the following conditions:

8.1.1. This Facilities Lease and the obligation of the District to make Tenant Improvement Payments hereunder shall remain obligations of the District; and

8.1.2. The District shall, within thirty (30) days after the execution thereof, furnish or cause to be furnished to Lessor a true and complete copy of such sublease; and

8.1.3. No such sublease by the District shall cause the Project or the Site to be used for a purpose other than a governmental or proprietary function authorized under the provisions of the Constitution and laws of the State of California.

8.2 Amendment of this Facilities Lease. Without the written agreement of the parties, neither party shall alter or modify this Facilities Lease.

ARTICLE 9

EVENTS OF DEFAULT AND REMEDIES

9.1 Events of Default by District Defined. The following shall be "Events of Default" under this Facilities Lease and the terms "Event of Default" and "Default" shall mean, whenever they are used in this Facilities Lease, any one or more of the following events:

9.1.1 Any grounds for termination under the GMP Contract.

9.1.2 Failure by the District to pay any Tenant Improvement Payment required to be paid hereunder at the time specified herein (unless properly withheld pursuant to provisions found in the GMP Contract) and the continuation of such failure for a period of 15 days after the District's receipt of written notice from Lessor.

9.1.3 Failure by the District to observe and perform any covenant, condition or agreement in this Facilities Lease on its part to be observed or performed, other than as referred to in Subsections 9.1.1 or 9.1.2, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied has been given to the District by Lessor; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, the District shall not be in default if it commences cure within such 30 day period and diligently pursues such cure until the default is corrected.

9.1.4 The filing by the District of a voluntary petition in bankruptcy, or failure by the District promptly to lift any execution, garnishment or attachment, or adjudication of the District as a bankrupt, or an assignment by the District for the benefit of creditors, or the entry by the District into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the District in any proceedings instituted under the provisions of the Federal Bankruptcy Code, as amended, or under any similar acts which may hereafter be enacted.

9.2 Remedies on Default. Upon an Event of Default referred to in Section 9.1 hereof, it shall be lawful for Lessor to exercise any and all remedies available pursuant to law or granted pursuant to this Facilities Lease. Each and every covenant hereof to be kept and performed by the District is expressly made a condition hereof and upon the breach thereof, Lessor may exercise any and all rights of entry and re-entry upon the Project and the Site, and also, at its option, with or without such entry, may terminate this Facilities Lease; provided, that no such termination shall be affected either by operation of law or acts of the parties hereto, except only in the manner herein expressly provided. In the event of such default and notwithstanding any re-entry by Lessor, the District shall, as herein expressly provided, continue to remain liable for the payment of the Tenant Improvement Payments and all amounts due under the GMP Contract, the Cost of the Work through the last day of performance by Contractor and/or damages for breach of this Facilities Lease and the performance of all conditions herein contained and, in any event all amounts owed to Lessor and/or damages shall be payable to Lessor at the time and in the manner as herein provided. Notwithstanding the foregoing, Lessor shall use commercially reasonable efforts to mitigate its damages.

9.3 Agreement to Pay Attorneys' Fees and Expenses. In the event either party to this Facilities Lease should default under any of the provisions hereof, and the non-defaulting party should employ attorneys or incur other expenses for the collection of moneys or the enforcement or performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party agrees that it will on demand therefore pay to the non-defaulting party the reasonable fees of such attorneys and such other expenses so incurred by the non-defaulting party, including attorneys' fees and expenses incurred for any appeals.

9.4 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.

9.5 Application of Proceeds. All amounts derived by Lessor as a result of an Event of Default hereunder, shall be applied to the Tenant Improvement Payments in order of payment date to be applied to the prepayment of the Tenant Improvement Payments.

9.6 Event of Default by Lessor. The following shall be considered an Event of Default by Lessor under the Facilities Lease: (1) Lessor is in default pursuant to the terms and conditions in the GMP Contract; (2) prior to completion of Project, Lessor should be adjudged bankrupt, or file 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; in the event of such a default which remains uncured for a period of thirty (30) days after District has given written notice specifying the failure and requesting that it be remedied, District may, without prejudice to any other right or remedy, terminate the Site Lease, Facilities Lease, and all exhibits attached hereto including, but not limited to, the GMP Contract; 3) Lessor persistently disregards all laws, or otherwise is in violation under the provisions in the GMP Contract; or (4) Lessor is in default under the Site Lease.

ARTICLE 10

[Intentionally Omitted]

ARTICLE 11

MISCELLANEOUS

11.1 Notices. Any notice to either party shall be in writing and given by delivering the same to such party in person, or by sending the same by registered or certified mail, return receipt requested, with postage prepaid, or by delivering any notice by nationally recognized overnight delivery service (such as Federal Express) for next business day delivery, to the following addresses:

If to the District: SAN MATEO UNION HIGH SCHOOL DISTRICT
650 N. Delaware Street
San Mateo, CA 94401
Attn: Elizabeth McManus

With a copy to: Stradling Yocca Carlson & Rauth
44 Montgomery Street, Suite 4200
San Francisco, CA 94104
Attn: Sean B. Absher

If to Lessor: [Insert contractor]
[Insert address]
Attn: [insert]

With a copy to: [Insert lawyer]
[Insert address]
Attn: [insert]

Any party may change its mailing address at any time by giving written notice of such change to the other parties in the manner provided therein. All notices under this Facilities Lease shall be deemed given, received, made or communicated on the date personal delivery is effected, or if mailed or sent by overnight delivery service, on the delivery date or attempted delivery date shown in the return receipt. No party shall refuse or evade delivery of any notice.

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

11.3 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 the Site Lease, or GMP Contract.

11.4 Further Assurances and Corrective Instruments. Lessor and the District agree that they will, from time to time, execute, acknowledge and deliver, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Site or the Project hereby leased or intended to be leased.

11.5 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.

11.6 Applicable Law. This Facilities Lease shall be governed by and construed in accordance with the laws of the State of California. The parties further agree that any action of proceeding brought to enforce the terms and conditions of this Facilities Lease shall be maintained in San Mateo County, California.

11.7 Lessor and District Representatives. Whenever under the provisions of this Facilities Lease the approval of Lessor or the District is required, or Lessor or the District is required to take some action at the request of the other, such approval or such request shall be given for Lessor by Lessor'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.

11.8 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.

11.9 Interpretation. It is agreed and acknowledged by District and Lessor that the provisions of this Facilities Lease and its Exhibits have been arrived at through negotiation, and that each of the parties has had a full and fair opportunity to revise portions of this Facilities Lease and its Exhibits and to have such provisions reviewed by legal counsel. Therefore, the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not apply in construing or interpreting this Facilities Lease and its Exhibits.

11.10 Time. Time is of the essence of each and all of the terms and provisions of this Facilities Lease and its Exhibits.

11.11 Force Majeure. A party shall be excused from the performance of any obligation imposed in this Facilities Lease and the exhibits hereto for any period and to the extent that a party is prevented from performing such obligation, in whole or in part, as a result of delays caused by the other party or third parties, a governmental agency or entity, an act of God, war, terrorism, civil disturbance, forces of nature, fire, flood, earthquake, strikes or lockouts, and such non performance will not be a default hereunder or a grounds for termination of this Facilities Lease.

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

11.13 [Recordation of Memorandum of Facility Lease]. Reserved.

IN WITNESS WHEREOF, the parties hereto have caused this Facilities Lease to be executed by their respective duly authorized officers, to be effective as of the day and year first written above.

SAN MATEO UNION HIGH SCHOOL
DISTRICT,
a school district organized and existing under the
laws of the State of California

By: _____
Title: _____

[INSERT CONTRACTOR]
a California corporation

By: _____
Its: _____

EXHIBIT A

(SITE DESCRIPTION)

EXHIBIT B

(LIST OF PLANS AND SPECIFICATIONS)

EXHIBIT C

(CONSTRUCTION SERVICES AGREEMENT/GMP CONTRACT)

EXHIBIT D

TENANT IMPROVEMENT PAYMENT SCHEDULE

COMMENCEMENT DATE: Upon issuance of Notice to Proceed by District to Lessor

PAYMENT SCHEDULE:

Payment	Amount*	Due Date*
Payment No. 1	\$30,000.00	30 days after receipt of monthly verified Progress Report
Payment No. 2	\$30,000.00	30 days after receipt of monthly verified Progress Report
Payment No. 3	\$30,000.00	30 days after receipt of monthly verified Progress Report
Payment No. 4	\$30,000.00	30 days after receipt of monthly verified Progress Report
Payment No. 5	\$30,000.00	30 days after receipt of monthly verified Progress Report
Payment No. 6	\$30,000.00	30 days after receipt of monthly verified Progress Report
Payment No. 7	\$30,000.00	30 days after receipt of monthly verified Progress Report
Payment No. 8	\$30,000.00	30 days after receipt of monthly verified Progress Report
Payment No. 9	\$30,000.00	30 days after receipt of monthly verified Progress Report
Payment No. 10	\$30,000.00	30 days after receipt of monthly verified Progress Report

* Subject to change based on amount shown in verified Progress Report.