

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

Pittsburg Unified School District  
2000 Railroad Avenue  
Pittsburg, California 94565  
Attention: Enrique Palacios

This document is recorded for the benefit of the  
Pittsburg Unified School District, and recording is  
fee exempt under Section 6103 of the Government  
Code.

FACILITIES LEASE

(MOT BUILDING ERECTION AND SITE WORK)

by and between

(CONTRACTOR)  
as Sublessor

and

PITTSBURG UNIFIED SCHOOL DISTRICT  
as Sublessee

Dated as of 12/11 2013

## FACILITIES LEASE

THIS FACILITIES LEASE ("Facilities Lease"), made as of 12/11, 2013 ("Effective Date"), is entered into by and between (CONTRACTOR), a California corporation doing business in the State of California, as sublessor (the "Corporation"), and Pittsburg Unified School District, a school district duly organized and validly existing under the Constitution and laws of said State of California, as sublessee (the "District").

## RECITALS

WHEREAS, the District desires to provide for the erection of a metal building and site work, as more particularly described in **Exhibit "A"** attached hereto and incorporated herein by this reference (the "Project");

WHEREAS, on the date hereof, the District has leased to the Corporation the real property for the construction of the Project, said property described on **Exhibit "B"** attached hereto (the "Site") pursuant to the terms of a Site Lease dated as of the date hereof by and between the District and the Corporation;

WHEREAS, the District is authorized under Section 17406 of the Education Code of the State of California to lease the Site to the Corporation, and to have the Corporation construct the Project on the Site and thereafter lease the Site and the Project to the District, and the District's Governing Board has duly authorized the execution and delivery of this Facilities Lease;

WHEREAS, the Corporation is authorized to sublease the Site as lessee and to construct the Project on the Site, and has duly authorized the execution and delivery of this Facilities Lease;

WHEREAS, the Governing Board 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 the Corporation and by immediately entering into this Facilities Lease under which the District will sublease the Site and lease the Project from the Corporation and make Lease Payments in accordance with the Progress Payment sections of the Construction Documents.

WHEREAS, the District has performed all acts, conditions and things required by law to have happened and to have been performed precedent to and in connection with the execution and creation of this Facilities Lease and all such acts, conditions and things 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;

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

## ARTICLE I

### DEFINITIONS AND EXHIBITS

Section 1.1 Definitions. Unless the context otherwise requires, the terms defined in this Section shall, for all purposes of this Facilities Lease, have the meanings herein specified.

"Construction Provisions" means the terms and conditions for construction of the Project as set forth in the Project Manual for the New Continuation High School Project. The Manual includes such documents as the Project Agreement, General Conditions, and Special Conditions. If there is a conflict between this Agreement and any of the Project Documents listed therein, this agreement shall govern.

"Corporation" means (CONTRACTOR), a California corporation doing business in the State of California, its successors and assigns.

"Corporation Representative" means the Chief Executive Officer of the Corporation, or any person authorized to act on behalf of the Corporation under or with respect to this Facilities Lease as evidenced by a resolution conferring such authorization adopted by the Board of Directors of the Corporation or as so designated by the Chief Operating Officer of the Corporation.

"District" means the Pittsburg Unified School District, a school district duly organized and existing under the laws of the State of California.

"District Representative" means the Superintendent or any Deputy Superintendent of the District, the Senior Project Manager of the District, or any other person authorized by the Governing Board of the District to act on behalf of the District under or with respect to this Facilities Lease.

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

"Facilities Lease" means this Facilities Lease together with any duly authorized and executed amendment hereto.

"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 5.1 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 materially impair the use 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 the Corporation and the District consent in writing which will not impair or impede the operation of the Site.

"Project" means the improvements and equipment to be constructed and installed by the Corporation as more particularly described in **Exhibit "A"** attached hereto, and includes, unless the context requires otherwise, the Site.

"Site" means that certain parcel of real property and improvements thereon (if any) more particularly described in **Exhibit "B"** attached hereto.

"Site Lease" or "Lease" means the Site Lease dated as of 12/11, 2013, by and between the District and the Corporation together with any duly authorized and executed amendment thereto under which the District leases the Site to the District.

"Term of this Facilities Lease" or "Term" means the time during which this Facilities Lease is in effect, as provided for in Section 4.2 of this Facilities Lease.

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

Exhibit A - DESCRIPTION OF PROJECT: The description of the Project.

Exhibit B - DESCRIPTION OF SITE: The descriptions of the real property constituting the Site.

Exhibit C — SCHEDULE OF LEASE PAYMENTS, GMP COST AND ALLOWANCE BREAKDOWN

## ARTICLE II

### REPRESENTATIONS, COVENANTS AND WARRANTIES

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

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

(b) 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.

(c) 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 Site, except Permitted Encumbrances.

Section 2.2 Representations Covenants and Warranties of the Corporation. The Corporation represents covenants and warrants to the District as follows:

(a) Due Organization and Existence. The Corporation is a California corporation, authorized to do business in California, has power to enter into this Facilities Lease and the Site Lease; is possessed of full power to own and hold real and personal property, and to lease and sell the same; and has duly authorized the execution and delivery of all of the aforesaid agreements.

(b) No Encumbrances. The Corporation will not pledge the Lease Payments or other amounts derived from the Site and from its other rights under this Facilities Lease, and will not mortgage or encumber the Site, except as provided under the terms of this Facilities Lease.

(c) No Violations. Neither the execution and delivery of this Facilities Lease or 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 Corporation is now a party or by which the Corporation 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 Corporation, or upon the Site, except Permitted Encumbrances.

(d) No Assignments. Except as provided herein, the Corporation will not assign this Facilities Lease, its right to receive Lease Payments and prepayments from the District, or its duties and obligations hereunder to any other person, firm or Corporation so as to impair or violate the representations, covenants and warranties contained in this Section 2.2.

(e) Authorization. The Corporation 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.

### **ARTICLE III**

#### **CONSTRUCTION OF PROJECT**

The Corporation agrees to cause the Project to be constructed and installed in accordance with the general conditions contained the Project Manual. The Corporation agrees that it will cause the construction and installation of the Project to be diligently performed. The District and the Corporation may approve changes in the plans and specifications for the Project as provided in the Construction Provisions. The Corporation will cooperate at all times with the District in bringing about the timely completion of the Project. The definition and description of the Project contained herein may be amended by the District from time to time as provided in the Construction Provisions Section 10, Extra Work/Modifications.

The District has elected to implement an Owner Controlled Insurance Program (OCIP) provided by the Statewide Educational Wrap Up Insurance Program Joint Powers Authority (SEWUP) on this Project. This program will provide Worker’s Compensation, General Liability, Contractor’s Pollution Liability and Builders Risk insurance coverage for all Contractors and Subcontractors on the Project. All bidders must meet certain minimum standards as more fully described in Article 13 of the General Conditions, entitled Insurance Qualification, to participate on this Project and in this OCIP. Failure to meet the minimum standards set forth in these instructions may result in the bidder being deemed non-responsible.

**Liquidated Damages:** Time is of the essence for all work under this Agreement. It is hereby understood and agreed that it is impracticable and infeasible and difficult and/or impossible to ascertain and determine the actual damage that the District will sustain in the event of and by reason of Contractor's delay; therefore, Contractor agrees that it shall pay to the District the sum of **ONE THOUSAND DOLLARS AND NO CENTS (\$1,000.00)** per day as liquidated damages for each and every day's delay for each phase and milestone beyond the time herein prescribed in finishing the Work. It is hereby understood and agreed that this amount is not a penalty or forfeiture.

In the event any portion of the liquidated damages are not paid to the District, the District may deduct that amount from any money due or that may become due the Contractor under this Agreement. The District's right to assess liquidated damages is as indicated herein and in the General Conditions.

The time during which the Contract is delayed for cause as hereinafter specified may extend the time of completion for a reasonable time as the District may grant. This provision does not exclude the recovery of damages for delay by either party under other provisions in the Contract Documents.

In addition, liquidated damages for Contractor’s failure to complete the following milestones within the times fixed are established in the amounts of:

<u>Description of Milestones</u>	<u>Date of Milestones</u> (Calendar Days)	<u>Liquidated Damages</u> <u>Per Calendar Day</u> <u>For Late Completion</u>
Submit original “As Planned” construction schedule	30 days after Notice of Award	\$150.00
Submit Schedule of Values	30 days after Notice of Award	\$150.00
Submit Construction Schedule	30 days after Notice of Award	\$150.00
Submit steel and switchgear shop drawings and submittals	30 days after Notice of Award	\$500.00

## ARTICLE IV

### AGREEMENT TO LEASE; TERMINATION OF LEASE; LEASE PAYMENTS; TITLE TO THE SITE

Section 4.1 Lease of Property; No Merger. The Corporation hereby leases the Project and the Site to the District, and the District hereby leases the Project and Site from the Corporation upon the terms and conditions set forth in this Facilities Lease. The leasing of the Site by the Corporation to the District 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 the Corporation 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.

Section 4.2 Completion Date and Facilities Lease Term. The Term of this Facilities Lease shall commence as of **12/16/2013**, and shall terminate on the completion of the Project and payment of the last Lease Payment. The completion date shall be **4/15/2014**.

Section 4.3 Termination of Term. The Term of this Facilities Lease shall terminate upon the earliest of any of the following events:

- (a) An Event of Default and the Corporation's election to terminate this Facilities Lease pursuant to Section 9.2 hereof; or
- (b) The arrival of the last day of the Term of this Facilities Lease and payment of all Lease Payments as provided in the Lease Payment Schedule or as modified by the parties or occupancy of a substantially complete Project by District, and payment of all Lease Payments as provided in the Lease Payment Schedule or as modified by the parties, whichever comes first.

Section 4.4 Possession. The District may take possession of the Project hereunder as it is completed.

Section 4.5 Lease Payments.

(a) Obligation to Pay. Subject to the provisions of Articles III, VI and X hereof, the District agrees to pay to the Corporation, its successors and assigns, as rental for the use and occupancy of the Project and the Site, Lease Payments in an amount equal to the approved amounts from Progress Payment Applications. Lease Payments shall be made for the Site and portions of the Project as construction of the Project is completed. All Lease Payments will not exceed the Final Guaranteed Maximum Sum ("Guaranteed Maximum Price"), set forth in the next subsection.

(b) Guaranteed Maximum Price: The Guaranteed Maximum Price owing by the District under this lease shall be (\$TBD), notwithstanding the change order provisions of the Construction Provisions. This amount may be exceeded only in the following circumstances: (1) Written Agreement of the District; (2) Unknown site

conditions; and (3) circumstances beyond the reasonable control of the Contract; and (4) District approved scope changes.

(c) Lease Payments to Constitute Current Expense of the District. The District intends and the Corporation understands that the obligation of the District to pay Lease Payments 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. Lease Payments due hereunder shall be payable only from current funds which are budgeted and appropriated, or otherwise legally available, for the purpose of paying Lease Payments or other payments due hereunder as consideration for use of the Site during the fiscal year of the District for which such funds were budgeted and appropriated or otherwise made legally available for such purpose. This Facilities Lease shall not create an immediate indebtedness for any aggregate payments which may become due hereunder. The District has not pledged the full faith and credit of the District, the State of California or any agency or department thereof to the payment of the Lease Payments or any other payments due hereunder.

#### Section 4.6 Quiet Enjoyment.

(a) General Right. Excepting any interference resulting from the Corporation's performance pursuant to the Construction Provisions, during the term of this Facilities Lease, the Corporation 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, without suit, trouble or hindrance from the Corporation, except as expressly set forth in this Facilities Lease. The Corporation will, at the request of the District, join in any legal action in which the District asserts its right to such possession and enjoyment, to the extent the Corporation may lawfully do so. Notwithstanding the foregoing, the Corporation shall have the right to inspect the Site as provided in Section 7.1 hereof.

Section 4.7 Title. During the Term of this Facilities Lease, the District shall hold title to the Site and obtain title to the Project from the Corporation, and any and all additions which comprise fixtures, repairs, replacements or modifications thereof, as construction progresses and Lease Payments are made to Corporation. During the term of this Facilities Lease, the Corporation shall have a leasehold interest in the Site pursuant to the Site Lease.

If the District prepays the Lease Payments in full pursuant to Article X hereof or makes an advance deposit pursuant to Section 10.1 hereof, or pays all Lease Payments, all remaining right, title and interest of the Corporation, if any, in and to the Project and the Site, shall be fully transferred to and vested in the District. Title shall be transferred to and vested in the District hereunder without the necessity for any further instrument of transfer. Corporation will cooperate in executing any documents that are later deemed necessary to confirm termination of the leasehold and transfer of title to the District.



Section 4.8 Abatement of Rental in the Event of Substantial Interference With Use and Occupancy of the Project and the Site. The amount of Lease Payments for the Project and the Site shall be abated during any period in which there is substantial interference with the use and occupancy of the Project and the Site by the District by reason of delay in the completion of the Project beyond the Completion Date specified in the Construction Provisions. The amount of such abatement shall be agreed upon by the District and the Corporation such that the resulting Lease Payments represent fair consideration for the use and occupancy of the portion of the Project and the Site, if any, with respect to which there is no such substantial interference. Such abatement shall continue for the period commencing with such substantial interference and ending with the termination of such interference.

Section 4.9 Fair Rental Value. The Lease Payments and any prepayment thereof coming due and payable constitute the total rental for the Project and shall be paid by the District as set forth herein for and in consideration of the right to use and occupy, and the continued quiet use and enjoyment of, the Project during each month. District and Corporation have agreed and determined that the total Lease Payments and any prepayment thereof do not exceed 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. The parties agree that the Lease Payment due may be modified in one of three following manners: (1) Through the application of Abatement, as set forth in Article 4.8, above; (2) The Change Order process, as set forth in Article 17 of the General Conditions; and (3) A change in the scope of the work, as mutually agreed to by the parties and expressed in a writing.

## ARTICLE V

### MAINTENANCE; TAXES; AND OTHER MATTERS

Section 5.1 Maintenance, Utilities, Taxes and Assessments. Except as provided for in the Construction Provisions, the repair and maintenance of the Project and the Site shall be the responsibility of the District after occupancy by the District, and only as to portions occupied by District. Corporation shall be responsible for repair, maintenance and utilities during construction. The District may take partial occupancy in accordance with the terms of the Construction Provisions.

If applicable, the District shall also pay or cause to be paid all taxes and assessments of any type or nature charged to the Corporation or the District affecting the Project and the Site.

## ARTICLE VI

### EMINENT DOMAIN

Section 6.1 Eminent Domain.

(a) Eminent Domain Takings. If all of the Project and the Site shall be taken permanently under the power of eminent domain, the term of this Facilities Lease shall cease as of the day possession shall be so taken. If less than all of the Project and

the Site shall be taken permanently, or if all of the Project and 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 partial or temporary taking and the parties waive the benefit of any law to the contrary, and

(2) There shall be a partial abatement of Lease Payments as a result of the application of the net proceeds of any eminent domain award to the prepayment of the Lease Payments hereunder.

(b) From Eminent Domain Award. The net proceeds of any eminent domain or condemnation shall be payable to the District.

## ARTICLE VII

### ACCESS

Section 7.1 The Corporation shall have the right at all reasonable times to enter upon the Site to construct the Project pursuant to the Construction Provisions. The District shall have the right at all reasonable times to enter upon the Site for whatever purpose District chooses. District access shall not interfere with Corporation's construction.

### ASSIGNMENT, SUBLEASING; AMENDMENT

Section 7.2 Assignment and Subleasing by the District. This Facilities Lease may not be assigned by the District. Any sublease shall be subject to all of the following conditions:

(a) This Facilities Lease and the obligation of the District to make Lease Payments hereunder shall remain obligations of the District; and

(b) The sublease shall not change the material terms of the Facilities Lease or the Construction Provisions or impede the Corporation's ability to complete construction.

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

(d) 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.

Section 7.3 Amendment of this Facilities Lease. Without the written consent of the Corporation, the District will not alter, modify or cancel, or agree or consent to alter, modify or cancel this Facilities Lease.

## ARTICLE VIII

### EVENTS OF DEFAULT AND REMEDIES

Section 8.1 Events of Default 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:

(a) Failure by the District to pay any undisputed Lease Payment or other payment required to be paid hereunder at the time specified herein.

(b) 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 clause (a) of this Section, 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 the Corporation; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, the Corporation shall not unreasonably withhold their 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.

(c) 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 assignment by the District for the benefit of 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 Statute, as amended, or under any similar acts which may hereafter be enacted.

Section 8.2 Remedies on Default. Whenever any Event of Default referred to in Section 9.1 hereof shall have happened and be continuing, it shall be lawful for the Corporation to 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 the Lease Payments or otherwise declare any Lease Payments not then in default to be immediately due and payable. Each and every covenant hereof to be kept and performed by the District is expressly made a condition hereof and upon the breach thereof, the Corporation 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 effected 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 the Corporation, the District shall, as herein expressly provided, continue to remain liable for the payment of the Lease Payments and/or damages for breach of this Facilities Lease and the performance of all conditions herein contained and, in any event such rent and/or damages shall be payable to the Corporation at the time and in the manner as herein provided, to wit:

(a) In the event the Corporation does not elect to terminate this Facilities Lease in the manner provided for in subparagraph (b) hereof, the District agrees to and shall remain liable for the payment of all Lease Payments and the performance of all conditions herein contained and shall reimburse the Corporation for any deficiency

arising out of the re-letting of the Project and the Site, or, in the event the Corporation is unable to re-let the Project and the Site, then for the full amount of all Lease Payments to the end of the Term of this Facilities Lease, but said Lease Payments and/or deficiency shall be payable only at the same time and in the same manner as hereinbefore provided for the payment of Lease Payments hereunder, notwithstanding such entry or reentry by the Corporation or any suit in unlawful detainer, or otherwise, brought by the Corporation for the purpose of effecting such re-entry or obtaining possession of the Project and the Site or the exercise of any other remedy by the Corporation. The District agrees that the terms of this Facilities Lease constitute full and sufficient notice of the right of the Corporation to re-rent the Project and the Site in the event of such re-entry without effecting a surrender of this Facilities Lease, and further agrees that no acts of the Corporation in effecting such re-renting or re-leasing shall constitute a surrender or termination of this Facilities Lease irrespective of the term for which such re-leasing or re-renting is made or the terms and conditions of such re-leasing or re-renting, or otherwise, but that, on the contrary, in the event of such default by the District, the right to terminate this Facilities Lease shall vest in the Corporation to be effected in the sole and exclusive manner hereinafter provided for in subparagraph (b) hereof.

(b) In an event of default by the District hereunder, the Corporation at its option may terminate this Facilities Lease and re-rent or re-lease all or any portion of the Project and the Site. In the event of the termination of this Facilities Lease by the Corporation at its option and in the manner hereinafter provided on account of default by the District (and notwithstanding any re-entry upon the Project and the Site by the Corporation in any manner whatsoever or the re-renting or re-leasing of the Project and the Site), the District nevertheless agrees to pay to the Corporation all costs, losses or damages howsoever arising or occurring, payable at the same time and in the same manner as is herein provided in the ease of payment of Lease Payments. The Net Proceeds relating to the re-renting of the Site and the Project shall be used in the manner set forth in Section 9.6 hereof. Neither notice to pay rent or to deliver up possession of the premises given pursuant to law nor any proceeding in unlawful detainer taken by the Corporation shall of itself operate to terminate this Facilities Lease, and no termination of this Facilities Lease on account of default by the District shall be or become effective by operation of law, or otherwise, unless and until the Corporation shall have given written notice to the District of the election on the part of the Corporation to terminate this Facilities Lease. The District covenants and agrees that no surrender of the Site for the remainder of the Term hereof or any termination of this Facilities Lease shall be valid in any manner or for any purpose whatsoever unless stated or accepted by the Corporation by such written notice.

Section 8.3 No Exclusive Remedy. No remedy herein conferred upon or reserved to the Corporation 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 the Corporation to exercise any remedy reserved to it in this Article

IX it shall not be necessary to give any notice, other than such notice as may be required in this Article or by law.

Section 8.4 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 nondefaulting party should employ attorneys or incur other expenses for the collection of moneys or the enforcement of performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party shall bear the cost of both parties' attorney's fees and costs.

Section 8.5 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.

Section 8.6 Application of Proceeds. All net proceeds received from the re-rent, re-lease or other disposition of the Project and the Site under this Article IX, and all other amounts derived by the Corporation as a result of an Event of Default hereunder, shall be applied to the Lease Payments in order of payment date and, in the case of the Net Proceeds received from the re-renting or re-leasing of the Project and the Site pursuant to Section 9.2(b), to be applied to the prepayment of the Lease Payments in accordance with Section 10.2 hereof.

## ARTICLE IX

### PREPAYMENT OF LEASE PAYMENTS

Section 9.1 Security Deposit. Notwithstanding any other provision of this Facilities Lease, the District may, so long as the District is not in default hereunder, on any date secure the payment of Lease Payments by a deposit with the Corporation of cash in an amount which is sufficient to pay all unpaid Lease Payments, including the principal and interest components thereof, in accordance with the Lease Payment Schedule set forth in Exhibit "C" hereto. In the event of a deposit pursuant to this Section, all obligations of the District under this Facilities Lease, and all security provided by this Facilities Lease for said obligations, shall cease and terminate, excepting only the obligation of the District to make, or cause to be made, Lease Payments from the deposit made by the District pursuant to this Section, and any title interest held by Corporation, if any, to the Project and/or the Site shall revert to the District on the date of said deposit automatically and without further action by the District or the Corporation.

Section 9.2 Optional Prepayment. The District may prepay the Lease Payments, in whole or in part, at any time. The District shall give the Corporation written notice of its intention to exercise its option and the date and amount of such prepayment not less than fifteen (15) days in advance of the date of exercise.

## ARTICLE X

### MISCELLANEOUS

Section 10.1 Notices. All notices, certificates or other communications required hereunder shall be given by electronic mail (e-mail), facsimile transmission, or U.S. mail. E-mail and facsimile transmissions shall be documented by the sending party with transmission receipts, and the transmissions will be deemed received on the date of transmission if sent during regular business hours to 5:00 p.m. If transmitted after 5:00 p.m., they will be deemed received on the next business day, Saturdays, Sundays and holidays excluded. Transmissions by U.S. mail shall be deemed to have been received forty-eight (48) hours after deposit in the United States mail in registered or certified form with postage fully prepaid:

If to the Corporation: (CONTRACTOR).

Address  
State, City, Zip  
Attn: Contact  
Telephone: (000) 000-000  
Facsimile: (000) 000-000  
[EMail:](#)

If to the District:  
Pittsburg Unified School District  
2000 Railroad Avenue  
Pittsburg, CA 94565  
Attention: Mr. Enrique E. Palacios, Deputy Superintendent  
Telephone: 925-473-2300  
Fax: 925-473-4273  
[Email: epalacios@pittsburg.k12.ca.us](mailto:epalacios@pittsburg.k12.ca.us)

With a Copy to: Fagen, Friedman & Fulfroost  
70 Washington Street, Suite 205  
Oakland, CA 94607  
Attention: Mark S. Williams, Esq.  
Telephone: 510 550-8200  
Fax: 510-550-8211  
[Email: mwilliams@fagenfriedman.com](mailto:mwilliams@fagenfriedman.com)

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

Section 10.2 Binding Effect. This Facilities Lease shall inure to the benefit of and shall be binding upon the Corporation and the District and their respective successors and assigns.

Section 10.3 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.

Section 10.4 Net-Net-Net Lease. This Facilities Lease shall be deemed and construed to be a "net-net-net lease" and the District hereby agrees that the Lease Payments shall be an absolute net return to the Corporation, free and clear of any expenses, charges or setoffs whatsoever.

Section 10.5 Further Assurances and Corrective Instruments. The Corporation and the District agree that they will, 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 Site hereby leased or intended so to be or for carrying out the expressed intention of this Facilities Lease.

Section 10.6 Execution in Counterparts. This Facilities Lease may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

Section 10.7 Applicable Law. This Facilities Lease shall be governed by and construed in accordance with the laws of the State of California.

Section 10.8 Corporation and District Representatives. Whenever under the provisions of this Facilities Lease the approval of the Corporation or the District is required, or the Corporation 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 Corporation by the Corporation Representative and for the District by the District Representative, and any party hereto shall be authorized to rely upon any such approval or request.

Section 10.9 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 section of this Facilities Lease, nor the construction or interpretation of any part thereof.

Section 10.10 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. No provision of this Facilities Lease may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors-in-interest.

IN WITNESS WHEREOF, the parties hereto have caused this Facilities Lease to be executed by their respective officers thereunto duly authorized, as of the Effective Date.

(CONTRACTOR)

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

Its: \_\_\_\_\_

PITTSBURG UNIFIED SCHOOL DISTRICT

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

ENRIQUE E. PALACIOS  
DEPUTY SUPERINTENDENT

Attest: \_\_\_\_\_

Clerk of the Governing Board  
Pittsburg Unified School District

Approved as to form

Fagen, Friedman & Fulfrost

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

Mark S. Williams Esq.  
Legal Counsel for Pittsburg Unified School District



STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 2013 before me, the undersigned notary public, personally appeared \_\_\_\_\_, [ ] personally known to me OR proved to me on the basis of satisfactory evidence to be the person(s) whose name(S) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their- authorized capacity(ies),...and that by his/her/their signature(s) the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

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Signature of Notary



## EXHIBIT "A"

### DESCRIPTION OF PROJECT

The Project consists of the following:

- SITE CLEARING, PAVING REMOVAL AND SITE DEMOLITION OF BUILDING SLAB AND FOUNDATIONS.
- CONSTRUCTION OF BUILDING SLAB AND FOUNDATION
- ERECTION/ASSEMBLY OF PRE-ENGINEERED METAL BUILDING (BUILDING MATERIAL, COMPONENTS AND ACCESSORIES TO BE FURNISHED AND DELIVERED TO SITE BY OTHERS) AND RELATED UTILITIES.
- CONSTRUCTION OF BUILDING SYSTEMS SUCH AS MEZZANINE INTERIOR PARTITION WALLS, ELECTRICAL, MECHANICAL, PLUMBING AND FIRE PROTECTION SYSTEMS.
- SITE DEVELOPMENT INCLUDING GRADING, PAVING, NEW CURB CUTS AND UNDERGROUND UTILITIES.
- NEW BACK FLOW PREVENTER AND FDCs FOR EXISTING MAINTENANCE BUILDING AND NEW MOT BUILDING.
- NEW FIRE SPRINKLER AT MOT BUILDING.
- DOCUMENTATION FOR DEFERRED APPROVALS.
- SUPPLY & CONSTRUCTION OF NEW DRIVE-IN FREEZER AND COOLER WITH RACKING FOR SUPPORT. CONSTRUCTION OF ALL RELATED MECHANICAL AND PLUMBING WORK.

Contract Documents are available for review at the AEDIS Architect FTP site **(408) 300-5160**.

### SPECIFICATIONS / DRAWINGS

#### INTRODUCTORY INFORMATION

<u>Division 0</u>	<u>Section</u>	<u>Title</u>
	00001	Title Page
	00009	List of Consultants
	00010	Table of Contents
	00030	List of Drawings, Tables and Schedules
	00040	Geotechnical Data
	00050	Existing Conditions

#### CONTRACT DOCUMENTS

##### Bid Documents

<u>Division 0</u>	<u>Section</u>	<u>Title</u>
	00100	Notice to Bidders
	00110	Instructions to Bidders
	00140	Bid Form and Proposal Form
	00150	Bid Bond
	00160	Designated Subcontractors List
	00170	Information Required of Bidders

##### Bidder's Certifications and Affidavits

<u>Division 0</u>	<u>Section</u>	<u>Title</u>
	00310	Site-Visit Certification
	00330	Non-collusion Affidavit

## **Contract Forms**

<u>Division 0</u>	<u>Section</u>	<u>Title</u>
	00510	Notice of Award
	00520	Notice to Proceed
	00530	Agreement
	00540	Escrow of Bid Documentation
	00550	Escrow Agreement for Security Deposits in Lieu of Retention
	00610	Performance Bond
	00620	Payment Bond (Contractor's Labor and Material Bond)
	00700	General Conditions
	00710	Special Conditions
	00805	Labor Compliance Program Information and Forms
	00806	Project Stabilization Agreement
	00810	Hazardous Materials Procedures and Requirements
	00880	Agreement and Release of Any and All Claims
	00890	Guarantee Form

## **Contractor's Certification**

<u>Division 0</u>	<u>Section</u>	<u>Title</u>
	00905	Worker's Compensation Certification
	00910	Prevailing Wage and Related Labor Requirements Certification
	00912	Disabled Veteran's Business Enterprise Participation Certification
	00915	Drug-Free Workplace Certification
	00925	Hazardous Materials Certification
	00930	Lead-Based Paint Certification
	00935	Imported Materials Certification
	00940	Criminal Background Investigation/Fingerprinting Certification

## **SPECIFICATIONS**

### **General Requirements**

<u>Division 1</u>	<u>Section</u>	<u>Title</u>
	01010	Summary of Work
	01020	Allowances
	01025	Changes in the Work
	01027	Application for Payment
	01030	Alternates and Unit Pricing
	01040	Project Coordination
	01045	Cutting and Patching
	01049	Supporting from Structure
	01050	Field Engineering
	01060	Regulatory Requirements
	01065	Site Standards
	01070	Abbreviations
	01090	General Definitions and References
	01095	Reference Standards and Definitions
	01120	Alteration Project Procedures
	01200	Project Meetings
	01300	Submittals

01350	Construction Schedule
01400	Quality Control
01450	Tests and Inspections
01500	Construction Facilities and Temporary Control
01600	Materials and Equipment
01610	Delivery, Storage and Handling
01630	Product Options and Substitutions
01700	Contract Closeout
01710	Record Documents
01730	Operation and Maintenance Data
01740	Warranties

**EXHIBIT "B"**

**DESCRIPTION FOR SCHOOL SITE**

**EXHIBIT "C"**

**SCHEDULE OF LEASE PAYMENTS  
GMP COST AND ALLOWANCE BREAKDOWN**

District shall make Lease Payments for the Facilities Lease in conformance with and subject to the terms and conditions for payments for the Project as set forth in the Contract Documents.