

**LEASE-LEASEBACK
FACILITIES LEASE AGREEMENT
COVINA HIGH SCHOOL POOL REMODEL PROJECT**

THIS LEASE-LEASEBACK FACILITIES LEASE AGREEMENT (“Facilities Lease”) is entered into as of this December 12, 2023 between [REDACTED], a **[Insert Company Type]** and licensed general contractor (“Contractor”), as lessor, and the **COVINA-VALLEY UNIFIED SCHOOL DISTRICT** (“Owner” and/or “District”), as lessee. Owner and Contractor are individually referred to herein as a “Party” and are collectively referred to as the “Parties” to this Facilities Lease.

WHEREAS, under Education Code section 17406 et seq., the Owner may enter into leases and agreements relating to real property and buildings used by the Owner; and

WHEREAS, the Owner wishes to finance the construction of improvements (“Project”) described in **Exhibit A** of the Lease-Leaseback Agreement entered into between the Owner and Contractor dated the date of this Facilities Lease (“Lease-Leaseback Agreement”) and situated on the Site described or depicted in **Exhibit A** of the Site Lease dated the same date between the Owner and Contractor (“Site Lease”). The site described or depicted in the Site Lease is referred to in this Facilities Lease as the “Site”; and

WHEREAS, under Education Code section 17406, the Owner is leasing the Site to Contractor under the Site Lease in consideration of Contractor subleasing the Site, including the Project, to the Owner under the terms of this Facilities Lease; and

WHEREAS, the Owner and Contractor agree to mutually cooperate now or hereafter, to the extent possible, in order to sustain the intent of this Facilities Lease and the bargain of the Parties, and to provide payments according to this Facilities Lease on the dates and in the amounts shown in **Exhibit A** of this Facilities Lease.

NOW THEREFORE, the Parties agree as follows:

- 1. Facilities Lease.** Contractor leases to the Owner, and the Owner leases from Contractor, the Site, including any real property improvements now or later placed on the Site. Following this sentence, reference in this Facilities Lease to the term “Contractor” means Contractor and Contractor’s assigns for those rights, interests, and obligations that may be assigned by Contractor. The purpose of this Facilities Lease is (1) for the Owner to have necessary access to and use of the Site at such times and in such a manner as will not impede the construction of the Project; (2) for the Owner to obtain financing for the Project from the Contractor; and (3) during the term of the Facilities Lease, for the Owner to enjoy beneficial use and occupancy of the Site and the completed Project. During the term of the Facilities Lease, Owner and its agents, employees and invitees may enter into and upon the Site and the Project at all reasonable times necessary for the Owner to conduct its business. During construction of the Project, the Owner shall not unduly disturb, or unreasonably interfere with Contractor’s work on the Project and related

improvements to the Site. Following completion of the Project, the Owner shall enjoy full and undisturbed use of the Site during the remainder of the Lease Term.

2. **Term.** The term of this Facilities Lease (“Lease Term”) shall begin as of the date above and shall be coterminous with the term of the Lease-Leaseback Agreement. Upon termination, the Parties’ respective interests under this Facilities Lease will automatically end and be released, and title to the Site and Project will automatically and fully vest in the Owner.
3. **Representations and Warranties of the Owner.** The Owner represents and warrants to Contractor that:
 - 3.1 The Owner is a public school district, duly organized and existing under the Constitution and laws of the State of California with authority to enter into and perform all of its obligations under this Facilities Lease.
 - 3.2 The Owner’s governing body has duly authorized the execution and delivery of this Facilities Lease and further represents and warrants that all requirements have been met and procedures followed to ensure its enforceability.
 - 3.3 The execution, delivery, and performance of this Facilities Lease do not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement, or instrument to which the Owner is a party by which it or its property is bound.
 - 3.4 There is no pending or, to the knowledge of the Owner, threatened action, or proceeding before any court or administrative agency that will materially adversely affect the ability of the Owner to perform its obligations under this Facilities Lease.
 - 3.5 The Project and the Site are essential to the Owner in the performance of its governmental functions and their estimated useful life to the Owner exceeds the term of this Facilities Lease.
 - 3.6 The Owner shall take such action as may be necessary to include all Facilities Lease payments in its annual budget and to annually appropriate an amount necessary to make such Facilities Lease payments.
 - 3.7 The Owner shall not abandon the Site for the use for which it is currently required by the Owner and, to the extent permitted by law, the Owner shall not seek to substitute or acquire property to be used as a substitute for the use for which the Site is maintained under the Facilities Lease.
 - 3.8 Except as may be permitted under federal or state laws, the Owner shall not allow any hazardous materials or substances to be used or stored on, under, or about the Site.

4. Representations and Warranties of Contractor. Contractor represents and warrants to the Owner that:

- 4.1** Contractor is duly organized, validly existing and in good standing as a corporation and licensed general contractor under the laws of the State of California, with full corporate power and authority to lease and own real and personal property.
- 4.2** Contractor has full power, authority and legal right to enter into and perform its obligations under this Facilities Lease, and the execution, delivery, and performance of this Facilities Lease have been duly authorized by all necessary corporate actions on the part of Contractor and do not require any further approvals or consents.
- 4.3** The execution, delivery, and performance of this Facilities Lease do not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement, or instrument to which Contractor is a party by which it or its property is bound.
- 4.4** There is no pending or, to the knowledge of Contractor, threatened action, or proceeding before any court or administrative agency that will materially adversely affect the ability of Contractor to perform its obligations under this Facilities Lease.
- 4.5** Contractor will not mortgage or encumber the Site or the Facilities Lease or assign this Facilities Lease or its rights to receive Facilities Lease payments, except as permitted under this Facilities Lease.

5. Facilities Lease Payments.

- 5.1** For services satisfactorily performed and after receipt of properly documented and submitted applications for payment, the Owner shall pay Contractor lease payments (“Facilities Lease Payments,” and each individually a “Facilities Lease Payment”), up through the Date of Completion, as set forth in the Contract Documents, at the office of Contractor or to such other person or at such other place as Contractor may from time to time designate in writing. In order to ensure that moneys sufficient to pay all costs will be available for this purpose when required, the Owner shall maintain on deposit in its general or other appropriate fund, and shall annually appropriate funds sufficient to make all Facilities Lease payments which become due to Contractor under this Facilities Lease.
- 5.2** The obligation of the Owner to pay Facilities Lease Payments shall constitute a current expense of the Owner and shall not in any way be construed to be a debt of the Owner in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the Owner, nor shall anything contained in this Facilities Lease constitute a pledge of the general tax revenues, funds, or moneys of the Owner. Delays and extra work shall be addressed through the terms of the General Construction Provisions. If

the Date for Completion is extended by change orders that grant time extensions for delay pursuant to the Contract, then the Lease Term shall be similarly extended.

- 5.3 Fair Rental Value.** Facilities Lease Payments shall be paid by the Owner in consideration of the right of possession, and the continued quiet use and enjoyment, of the Project and the Site during this Facilities Lease. The Parties have agreed and determined that such total rental is not in excess of the fair rental value of the Project and the Site. In making such determination, consideration has been given to the fair market value of the Project and the Site, other obligations of the Parties under this Facilities Lease (including, but not limited to, costs of maintenance, taxes and insurance), the uses and purposes which may be served by the Project and the Site and the benefits from the Project and Site which will accrue to the Owner and the general public, the ability of the Owner to make additions, modifications, and improvements to the Project and the Site which are not inconsistent with the Lease- Leaseback Agreement and which do not interfere with Contractor's work on the Project and Site.
- 6. Purpose.** The Owner has entered into the Lease-Leaseback Agreement and the Site Lease with Contractor in order to acquire and construct the Project, while enjoying use of the Site. The cost of the acquisition, construction, and installation of the tenant improvements defined as the Project and the Owner's use of the Site under this Facilities Lease is determined by the Guaranteed Maximum Price or Total Facilities Lease Amount as set forth in the Lease-Leaseback Agreement.
- 7. Facilities Lease Abatement.** Facilities Lease Payments due with respect to the Project shall be subject to abatement prior to the commencement of the use of the Project or during any period in which, by reason of material damage to or destruction of the Project or the Site, there is substantial interference with the use and right of possession by the Owner of the Project and the Site or any substantial portion the Site. For each potential incident of substantial interference, decisions to be made on: i) whether or not abatement shall apply; ii) the date upon which abatement shall commence; iii) the applicable portion of Facilities Lease Payments to be abated and; iv) the concluding date of the particular abatement, shall all be subject to determinations by the Owner in concert with its insurance provider. Contractor's right to dispute these decisions is not impaired. The amount of abatement shall be such that the Facilities Lease Payments paid by the Owner during the period of Project restoration do not exceed the fair rental value of the usable portions of the Site. In the event of any damage or destruction to the Project or the Site, this Facilities Lease shall continue in full force and effect.
- 8. Quiet Enjoyment.** During the term of this Facilities Lease, Contractor shall provide the Owner with quiet use and enjoyment of the Site without suit, or hindrance from Contractor or its assigns. The Owner will not use, operate, or maintain the Site or Project improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Facilities Lease. The Owner shall provide all permits and licenses, if any, necessary for the

operation of the Project. In addition, the Owner agrees to comply in all respects (including, without limitation, with respect to the time, maintenance and operation of the Project) with laws of all jurisdictions in which its operations involving the Project may extend and any legislative, executive, administrative, or judicial body exercising any power or jurisdiction over the Site or the Project; provided, however, that the Owner may contest in good faith the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of Contractor, adversely affect the estate of Contractor in and to the Site or the Project or its interest or rights under this Facilities Lease.

Upon completion of the Project or severable portions thereof, as defined in the General Construction Provisions, Contractor shall provide the Owner with quiet use and enjoyment of the Site without suit or hindrance from Contractor or its assigns, subject to reasonable interference from ongoing construction operations on any remaining portion of the Site under construction by Contractor.

9. **Right of Entry.** The Owner agrees that Contractor and any Contractor representative shall have the right, at all reasonable times, to enter upon the Site or any portion thereof to construct and improve the Project, to examine and inspect the Site and the Project and to exercise its remedies pursuant to Section 17 of this Facilities Lease. The Owner further agrees that Contractor and any Contractor representative shall have such rights of access to the Site as may be reasonably necessary to cause the proper maintenance of the Site and the Project in the event of failure by the Owner to perform its obligations under this Facilities Lease.
10. **Project Acceptance.** The Owner shall acknowledge final inspection and completion of the Project. The Owner's Board of Education ("Board") shall accept the Work to the extent required by the Contract Documents, including the General Construction Provisions. The validity of this Facilities Lease will not be affected by any delay in or failure of completion of the Project.
11. **Incorporation of Documents.** All of the terms of the Lease-Leaseback Agreement and Site Lease apply to this Facilities Lease as if they were contained in this Facilities Lease.
12. **Alterations and Attachments.** All permanent additions and improvements that are made to, and as part of, the Project shall belong to and become the property of Contractor until completion of the Project or termination of the Contract, subject to the provisions of Sections 2, 20 and 21 of this Facilities Lease. Separately identifiable attachments added to the Project by the Owner shall remain the property of the Owner.
13. **Insurance.** The Contractor and the Owner shall maintain such damage and public liability insurance policies with respect to the Project and the Site as are required of them by the Lease-Leaseback Agreement.
14. **Taxes.** The Owner shall keep the Project and the Site free and clear of all levies, liens, and encumbrances and shall pay all license fees, registration

fees, assessments, charges, and taxes (municipal, state, and federal) if applicable, which may now or later be imposed upon the ownership, leasing, renting, sale, possession, or use of the Project and the Site, excluding, however, all taxes on or measured by Contractor's income.

- 15. Indemnity.** In addition to the indemnification set forth in Article 13 of the Lease-Leaseback Agreement, and Article 35 of Exhibit C to the Lease-Leaseback Agreement (General Construction Provisions), to the extent permitted by law, and with the exception of the Contractor's responsibilities as "Contractor" under the Lease-Leaseback Agreement, the Owner shall, with respect to the Project and the Site, indemnify Contractor against and hold Contractor harmless from any and all claims, actions, suits, proceedings, costs, expenses, damages, and liabilities, including attorneys' fees, arising out of, connected with or resulting from any acts of omission or commission by the Owner's employees and agents or claims resulting from incidents or occurrences involving the financing of the Project and Lease-Leaseback aspects of the Project and third parties on the Site, including without limitation, the construction, possession, use or operation of the Project and further, the Owner agrees, to the extent the law allows, to indemnify Contractor against and hold Contractor harmless from and against any and all claims, actions, suits, proceedings, cost, expenses, damages, and liabilities, including attorney's fees, arising out of, connected with or resulting from the clean-up of any hazardous materials or toxic wastes from the Site or the Project; provided, however, that the Owner shall not be required to indemnify Contractor in the event that such liability or damages are caused by the negligence or intentional misconduct of Contractor.
- 16. Events of Default.** The term "Event of Default," as used in this Facilities Lease means the occurrence of any one or more of the following events: (i) the Owner fails to make any unexcused Facilities Lease Payment (or any other payment) within fifteen (15) days after its due date; (ii) the Owner or the Contractor fails to perform or observe any other covenant, condition or agreement to be performed or observed by it under this Facilities Lease and such failure to either make the payment or perform the covenant, condition or agreement is not cured within ten (10) days after written notice of it by the other Party; (iii) the discovery by a Party that any statement, representation or warranty made by the other Party in this Facilities Lease, or in any document ever delivered by that other Party under or in connection with this Facilities Lease is misleading or erroneous in any material respect; or (iv) a Party becomes insolvent, is unable to pay its debts as they become due, makes an assignment for the benefit of creditors, applies or consents to the appointment of a receiver, trustee, conservator or liquidator of the Party or of all or a substantial part of its assets, or a petition for relief is filed by the Party under federal bankruptcy, insolvency or similar laws.
- 17. Remedies on Default.** Upon the occurrence of any Event of Default, the non-defaulting Party may exercise all remedies available under the Contract. In a Contractor Event of Default, Owner may withhold Facilities Lease Payments. Despite any Facilities Lease provisions to the contrary, Contractor shall not under any circumstances have the right to accelerate the Facilities Lease

Payments that fall due in future Facilities Lease periods or otherwise declare any Facilities Lease Payments not then in default to be immediately due and payable.

- 18. Waiver.** No covenant or condition to be performed by the Owner or Contractor under this Facilities Lease can be waived except by the written consent of the other Party. Forbearance or indulgence by the Owner or Contractor in any regards whatsoever shall not constitute a waiver of the covenant or condition in question. Until complete performance by the Owner or Contractor of a covenant or condition, the other Party shall be entitled to invoke any remedy available to it under this Facilities Lease or by law or in equity despite that forbearance or indulgence.
- 19. Assignment.** Without the prior written consent of Contractor, the Owner shall not (a) assign, transfer, pledge, or hypothecate this Facilities Lease, the Project and the Site, or any part of them, or any interest in them, or (b) sublet or lend the use of the Project or any part of it, except as authorized by the provisions of the Civic Center Act, Education Code section 38130 et seq. Consent to any of the prohibited acts listed applies only in the given instance and is not a consent to any subsequent like act by the Owner or any other person. Contractor shall not assign its obligations under this Facilities Lease with the exception of its obligation to issue default notices and to convey or reconvey its interest in the Project and Site to the Owner upon full satisfaction of the Owner's obligations under this Facilities Lease; however, Contractor may assign its right, title and interest in this Facilities Lease, the Facilities Lease Payments and other amounts due under this Facilities Lease and the Project in whole or in part to one or more assignees or sub-assignees at any time without the consent of the Owner. No assignment shall be effective as against the Owner unless the Owner is so notified in writing. The Owner shall pay all Facilities Lease Payments according to the direction of Contractor or the assignee named in the most recent assignment or notice of assignment. During the Facilities Lease term, the Owner shall keep a complete and accurate record of all such assignments. Subject always to the foregoing, this Facilities Lease inures to the benefit of, and is binding upon, the heirs, legatees, personal representatives, successors, and assigns of the Parties.
- 20. Ownership.** The Project is and shall at all times be and remain the sole property of Contractor until completion of the Project or termination of the Contract, and the Owner shall have no right, title, or interest in or to it until completion of the Project or termination of the Contract, except as expressly set forth in this Facilities Lease (including, but not limited to, Section 2, above).
- 21. Release of Liens.**

 - 21.1** Upon the Owner executing a Certificate of Acceptance and filing a Notice of Completion on the Project, as defined in the General Construction Provisions, Contractor or its assignee and the Owner shall release Contractor's leasehold interest in the Project.
 - 21.2** Contractor shall authorize, execute, and deliver to the Owner all

documents reasonably requested by the Owner to evidence (i) the release of any and all liens created under this Facilities Lease and the Site Lease, and (ii) any other documents required to terminate the Site Lease and this Facilities Lease.

- 22. **Severability.** If a court of competent jurisdiction shall hold any provision of this Facilities Lease invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this Facilities Lease, unless elimination of such provision materially alters the rights and obligations embodied in this Facilities Lease.
- 23. **Entire Agreement.** This Facilities Lease, the Site Lease, the Lease-Leaseback Agreement, and the Contract Documents that make up the “Contract” constitute the entire agreement between the Parties with respect to the Project, and it shall not be amended, altered, or changed except by a written agreement signed by both Parties.
- 24. **Notices.** Any notices or filings required to be given or made under this Facilities Lease shall be served, given, or made in writing upon the Owner or Contractor, as the case may be, by personal delivery or registered mail (with a copy sent via fax or regular mail) to the respective addresses given below, or at such address as such Party may provide in writing from time to time.

If to Contractor:

Attn: _____

Phone: _____

Email: _____

If to District:

[Covina-Valley](#) Unified School District
Attn: Manuel Correa
Chief Business Officer
519 E. Badillo Street
Covina, California 91723
Phone: (626) 974-7000
Email: mcorrea@c-vusd.org

With a Copy to:

Fagen, Friedman & Fulfroost LLP
Attn: Jessica Ehrlich, Esq.
6300 Wilshire Boulevard, Suite 1700
Los Angeles, California 90048
Phone: (323) 330-6300
Email: jehrlich@f3law.com

25. **Amendments and Modifications.** This Facilities Lease shall not be effectively amended, changed, modified, altered, or terminated without the written agreement of both Parties.
26. **Exhibits.** The following Exhibits are attached to and by reference incorporated and made a part of this Facilities Lease:

EXHIBIT A - SCHEDULE OF FACILITIES LEASE PAYMENTS

27. **Execution in Counterparts.** This Facilities Lease may be simultaneously executed in multiple counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.
28. **Applicable Law.** This Facilities Lease and the rights of the Parties under it shall be governed by and construed in accordance with the laws of California.
29. **Headings.** 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 of this Facilities Lease.
30. **Time.** Time is of the essence in this Facilities Lease and all of its provisions.
31. **Terms Not Defined.** Capitalized terms used in this Facilities Lease that are not defined shall have the same meaning as in the Lease-Leaseback Agreement or General Construction Provisions.
32. **Board Approval.** This Facilities Lease shall be subject to the approval of the District's Board of Education.

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CONTRACTOR

OWNER

[INSERT CONTRACTOR NAME]

COVINA-VALLEY UNIFIED SCHOOL DISTRICT

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Date of Approval by District's Board of Education: _____

EXHIBIT A TO FACILITIES LEASE SCHEDULE OF FACILITIES LEASE PAYMENTS

The term of this Facilities Lease shall commence as of the date shown on page 1 of this Facilities Lease. Facilities Lease payments shall be paid monthly in accordance with the Contract Documents, and the total Facilities Lease Payments made shall not exceed the amount of the final Guaranteed Maximum Price or Total Facilities Lease Amount, as defined in the Lease-Leaseback Agreement.

Notwithstanding the foregoing, the term of this Facilities Lease may be extended and payment options may be modified by written agreement of the Parties hereto.

The initial schedule of Facilities Lease Payments shall be as follows, subject to the amount to be financed as discussed below.

Tenant Improvement Payments. Each month while Contractor is providing construction services, District shall pay Contractor a sum equal to ninety percent (90%) of the value of construction work performed on the last day of the prior month, less the aggregate of previous payments, and less Lease Payments ("Tenant Improvement Payments").

Five percent (5%) of the value of such work shall be held by the District as retention, and five percent (5%) shall be payable as Lease Payments ("Financed Amount") after the Work is Complete.

Tenant Improvement Payments shall not exceed estimates of the value of work completed which shall be prepared by Contractor on a form approved by District and certified by the Architect and District's Project Inspector and any other approved representative of District, and filed before the fifth (5th) day of the month during which payment is to be made.

Work completed as estimated shall be an estimate only and no inaccuracy or error in said estimate shall release Contractor or any surety from responsibility for the satisfactory performance of such work or from enforcing each and every provision of the General Construction Provisions. District shall have the right subsequently to correct any error made in any estimate for payment.

Contractor shall not be entitled to have any payment estimates processed or be entitled to have any payment made for work performed so long as District, or any of the public agencies with jurisdiction, has not accepted or waived compliance with any lawful or proper direction concerning non-complying work or any portion thereof.

In no event shall the cumulative total of the Tenant Improvement Payments, along with the balance of the Construction Contingency, Lease Payments and anticipated retention, ever exceed the Guaranteed Maximum Price.

The final five percent (5%) of the Guaranteed Maximum Price or Total Facilities Lease Amount shall be paid in equal monthly installments over twelve months. Each of these monthly payments shall be increased by percent (%) as a financing charge. For clarity and avoidance of doubt, the twelve payments shall be % of one twelfth of the Financed Amount.

The Owner shall have the right to pay these payments early at any time after the Completion of the Project. If Owner pays the Financed Amount early, it shall not be required to pay the _____ percent (____%) financing charge on any remaining amounts.

Payment No.	Date Payment Is Due	Amount of Payment
1	One Month after Final Completion.	____% of 1/12 of Financed Amount.
2	Two Months after Final Completion.	____% of 1/12 of Financed Amount.
3	Three Months after Final Completion.	____% of 1/12 of Financed Amount.
4	Four Months after Final Completion.	____% of 1/12 of Financed Amount.
5	Five Months after Final Completion.	____% of 1/12 of Financed Amount.
6	Six Months after Final Completion.	____% of 1/12 of Financed Amount.
7	Seven Months after Final Completion.	____% of 1/12 of Financed Amount.
8	Eight Months after Final Completion.	____% of 1/12 of Financed Amount.
9	Nine Months after Final Completion.	____% of 1/12 of Financed Amount.
10	Ten Months after Final Completion.	____% of 1/12 of Financed Amount.
11	Eleven Months after Final Completion.	____% of 1/12 of Financed Amount.
12	Twelve Months after Final Completion.	____% of 1/12 of Financed Amount.

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